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Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1930145102

Doc# 1930145102 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/28/2019 01:32 PM PG: 1 OF 6

The property identified as: **PIN:** 17-09-131-004-0000

Address:

Street: 369 West Grand Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60654

Lender: Goldman Sachs Bank USA

Borrower: Onni Grand Limited Partnership

Loan / Mortgage Amount: \$150,000,000.00

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

Certificate number: F7BFB149-FEC0-4FED-AF11-DFA3FD16FBEE

Execution date: 10/23/2019

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PREPARED BY AND AFTER
RECORDING RETURN TO:

Greenberg Traurig LLP
445 Hamilton Avenue, 9th Floor
White Plains, New York 10601
Attention: Kenneth P. Addeo, Esq.

(For Recorder's Use Only)

ONNY GRAND LIMITED PARTNERSHIP, as mortgagor (Mortgagor)

to

GOLDMAN SACHS BANK USA, as mortgagee (Lender)

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

Dated: As of October 23, 2019

Street Address: 369 West Grand Avenue, Chicago, Illinois

Property Identification No: 17-09-131-004-0000; 17-09-242-005-0000; 17-09-242-009-0000; and 17-09-242-010-0000

County: Cook

ATTENTION: COUNTY CLERK - THIS MORTGAGE COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS MORTGAGE SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND LENDER (SECURED PARTY) ARE SET FORTH IN THIS MORTGAGE.

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

THIS BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of October 23, 2019, by ONNI GRAND LIMITED PARTNERSHIP, a Delaware limited partnership, having an office at c/o Onni Group, 200-1010 Seymour Street, Vancouver BC V6B 3M6, Canada (together with its successors and permitted assigns (the "Mortgagor") to GOLDMAN SACHS BANK USA, having an address at 200 West Street, New York, New York 10282, as mortgagee ("Lender").

WITNESSETH:

WHEREAS, this Security Instrument is given to secure a building loan (the "Loan") in the principal amount of up to \$150,000,000.00 made pursuant to that certain Building Loan Agreement dated as of the date hereof by and between Mortgagor and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Loan Agreement"), with respect to the Loan, and evidenced by that certain Building Loan Note dated as of the date hereof made by Mortgagor to Lender in the principal amount of up to \$150,000,000.00 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Note"); and

WHEREAS, Mortgagor desires to secure the payment and the performance of all unpaid principal of, and accrued and unpaid interest due on, the Note and all other obligations, interest, fees, charges and expenses of the Mortgagor to the Lender arising under or in connection with the Loan Documents (as defined below) (the "Obligations"); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment and performance of the Obligations are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents dated the date hereof made by Mortgagor in favor of Lender delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Assignment of Leases"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Obligations or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

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ARTICLE 1 - DEFINITIONS

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

As used in this Security Instrument:

"**Access Laws**" shall mean, the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, in each case as amended from time to time.

"**ACORD Certificates**" has the meaning given to that term in Section 4.3 of this Security Instrument.

"**Affiliate**" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. Such term shall include each Loan Party unless otherwise specified or if the context may otherwise require.

"**Affiliated Manager**" shall mean any property manager which is an Affiliate of, or in which Mortgagor, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

"**Alteration Threshold**" shall mean an amount equal to five percent (5%) of the outstanding principal balance of the Loan.

"**Arbitration Notice**" has the meaning given to that term in Section 9.2(a)(ii) of this Security Instrument.

"**Assignment of Leases**" has the meaning given to that term in the Recitals of this Security Instrument.

"**Award**" has the meaning given to that given to that term in Section 9.1(c) of this Security Instrument.

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“**Bankruptcy Code**” shall mean Title 11 U.S.C. § 101 et seq., and the regulations adopted and promulgated pursuant thereto (as the same may be amended from time to time).

“**Casualty**” has the meaning given to that term in Section 9.1(a) of this Security Instrument.

“**Completion of the Improvements**” shall have the meaning assigned to it in the Loan Agreement.

“**Condemnation**” has the meaning given to that term in Section 9.1(a) of this Security Instrument.

“**Condition of the Real Property**” has the meaning given to that term in Section 9.2(a)(iv) of this Security Instrument.

“**Control**” (and the correlative terms “controlled by” and “controlling”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of the business and affairs of the entity in question by reason of the ownership of beneficial interests, by contract or otherwise.

“**Current Policies**” has the meaning given to that term in Section 4.3 of this Security Instrument.

“**Debtor Relief Laws**” shall mean any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, fraudulent conveyance, reorganization, or similar laws affecting the rights, remedies, or recourse of creditors generally, including without limitation, the Bankruptcy Code.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement dated as of the Effective Date given by Mortgagor (and any other parties thereto) to Lender in connection with the Loan and the Property.

“**Flood Insurance Acts**” shall mean the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended.

“**FMV**” shall mean the fair market value of the Real Property as set forth in the appraisal relied upon by Lender as of the date hereof or any subsequent Qualifying Appraisal.

“**Foreclosure Act**” has the meaning given to that term in Section 16.2 of this Security Instrument.

“**Full Replacement Cost**” shall mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or a Qualifying Appraisal paid for by Mortgagor and in no event less than the coverage required pursuant to the terms of any Lease.

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“Improvements” shall mean all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land.

“Indemnified Parties” shall mean Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business).

“Insurance Premiums” has the meaning given to that term in Section 4.3 of this Security Instrument.

“Insurance Proceeds” has the meaning given to that term in Section 2.1(h) of this Security Instrument.

“Intangibles” shall mean all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property, all accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established with respect to the Property pursuant to this Security Instrument), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the UCC, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to the extent assignable), approvals, actions, choses, suits, proofs of claims in bankruptcy, claims and causes of action (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the commercial space located in the Improvements or acquired from others, license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon.

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“**Key Person**” shall mean each of: Giulio De Cotiis, Morris De Cotiis and Rossano De Cotiis.

“**Labor and Material Costs**” has the meaning given to that term in Section 4.6(b) of this Security Instrument.

“**Land**” shall mean the real property described in Schedule A attached hereto and made a part hereof.

“**Lease Guaranties**” has the meaning given to that term in Section 2.1(f) of this Security Instrument.

“**Leases**” has the meaning given to that term in Section 2.1(f) of this Security Instrument.

“**Legal Requirements**” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, building codes, land laws, judgments, decrees and injunctions of Governmental Authorities affecting the Loan, Mortgagor and/or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, Access Laws, the Securities Act of 1933, as amended, the Securities and Exchange Act of 1934, as amended, the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any statute replacing or amending the same), the Americans with Disabilities Act of 1990, all laws, regulations, and executive orders relating to terrorism, economic or financial sanctions or trade embargoes or restrictions, narcotics trafficking, money laundering, criminal organizations, bribery, or corruption, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Mortgagor, at any time in force affecting Mortgagor, the Property or any part thereof, including any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“**Lender**” has the meaning given to that term in the Preamble of this Security Instrument.

“**Lender Approved Settlement Amount**” has the meaning given to that term in Section 9.2(a)(ii) of this Security Instrument.

“**Licenses**” has the meaning given to that term in Section 12.1(b)(iii) of this Security Instrument.

“**Lien**” shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security interest of any kind or nature whatsoever (including, without limitation, any such encumbrance arising out of or pursuant to any security agreement, conditional sale or other title retention agreement, any financing or similar statement or notice filed under any recording or notice statute, and any capital lease having substantially the same effect as any of the foregoing).

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“**Loan**” has the meaning given to that term in the Recitals of this Security Instrument.

“**Loan Agreement**” has the meaning given to that term in the Recitals of this Security Instrument.

“**Loan Documents**” has the meaning given to that term in the Recitals of this Security Instrument.

“**Losses**” shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys’ fees and other costs of defense).

“**Management Agreement**” shall mean any future management agreement entered into by and between Mortgagor and Manager, pursuant to which the Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement executed in accordance with the terms and provisions of this Security Instrument.

“**Manager**” shall mean Onni Properties LLC, an Arizona limited liability company, Onni Properties (Chicago) Inc., an Illinois corporation, or any Affiliate thereof, or such other entity selected as the manager of the Property in accordance with the terms of this Security Instrument.

“**Material Adverse Effect**” shall mean any material adverse effect, as determined by Lender, in its sole judgment but reasonable discretion, upon (a) the business, operations, affairs, performance, prospects, assets, properties or condition (financial or otherwise) of any Loan Party or the Collateral, (b) the ability of any Loan Party to perform, in all material respects, its obligations under each of the Loan Documents to which it is a party, (c) the validity or enforceability of any Loan Document or the perfection or priority of any Lien created under any Loan Document, (d) the value of, or cash flow from, the Collateral or the operations thereof, or (e) the rights, interests and remedies of Lender under any of the Loan Documents.

“**Mortgagor**” has the meaning given to that term in the Recitals of this Security Instrument.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Note**” has the meaning given to that term in the Recitals of this Security Instrument.

“**Other Charges**” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

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“Permitted Encumbrances” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters expressly set forth on Schedule A or Schedule B of the Title Insurance Policy relating to the Property or any part thereof, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet delinquent or which are being contested in accordance with the terms of Section 4.8 of this Security Instrument, (d) the Lien of any general utility easement, and (e) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion; provided that, none of which items (a) through (e), individually or in the aggregate, materially interferes with the value, current use or operation of the Property or the security intended to be provided by this Security Instrument or with the current ability of the Property to generate net cash flow sufficient to service the Loan or Mortgagor’s ability to pay and perform the Obligations under the Loan Documents when they become due.

“Permitted Transfer” has the meaning given to that term in Section 7.1(b) of this Security Instrument.

“Permitted Transfer Interest” means:

(i) any ownership, beneficial or legal interest with respect to any corporation, limited partnership, limited liability company, or trust, including, without limitation any transfer of (A) shares of a corporation, (B) limited partnership interests or a general partnership interest in a limited partnership, (C) membership interests in a limited liability company, (D) the powers of the manager of a limited liability company, (E) beneficial interests in a trust, and (F) the powers of the trustee of a trust;

(ii) any asset of any Permitted Transfer Party (including, without limitation, any real property asset, any personal property asset, any cash, and any securities), **except any asset of any Permitted Transfer Party that constitutes UCC Collateral**; or

(iii) the control of any corporation, limited partnership, limited liability company, or a trust (“control,” as used in herein means, with respect to a corporation or limited liability company, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership (including, a limited partnership), trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity).

“Permitted Transfer Party” means any: (i) shareholder, officer or director of the corporation which is the owner of the general partner of the Mortgagor; (ii) shareholder, officer or director of the corporation which is the general partner of the limited partner of the Mortgagor; (iii) trustee of any trust which is an owner of the limited partner of the limited partner of the Mortgagor; (iv) member of a limited liability company that is a general partner of the Mortgagor; (v) manager of a limited liability company that is a general partner of the

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Mortgagor; (vi) any partner (general or limited) of the limited partnership which is the limited partner of Mortgagor; (vii) individual that is a Guarantor; (viii) trustee of a trust that is a Guarantor; (ix) beneficiary of a trust (intended or otherwise) that is a Guarantor; or (x) legal representatives or successors of any of the foregoing acting on such party's behalf.

“Personal Property” has the meaning given to that term in Section 2.1(e) of this Security Instrument.

“PML” has the meaning given to that term in Section 4.3(d) of this Security Instrument.

“Policies” has the meaning given to that term in Section 4.3 of this Security Instrument.

“Principal” shall mean, as applicable, if Mortgagor is a partnership, its general partner(s), if Mortgagor is a limited liability company, its managing member(s).

“Prohibited Person” shall mean any Person:

(i) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the **“Executive Order”**);

(ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(iv) who commits, threatens or conspires to commit or supports **“terrorism”** as defined in the Executive Order;

(v) that is named as a **“specially designated national and blocked person”** on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or

(vi) who is an Affiliate of or affiliated with a Person listed above.

“Property” has the meaning given to that term in Section 2.1 of this Security Instrument.

“Property Operating Agreement” shall mean each reciprocal easement agreement, access agreement and any other covenants, restrictions or agreements of record relating to the construction, operation or use of the Property, as the same may be modified,

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amended and/or supplemented and in effect from time to time in accordance with Section 4.12 of this Security Instrument.

“**Qualified Manager**” shall mean a Person approved by Lender in writing.

“**Qualifying Appraisal**” shall mean an appraisal report of the Real Property prepared by an appraiser licensed in the State in which the Land is located and who has at least five (5) years’ experience in appraising Real Property similar to the Real Property in the county in which the Land is located, which satisfies the criteria for appraisals that may be relied upon by national banks under applicable Federal laws, rules and regulations, which contains both an “as-is” and a “stabilized value” estimate, and which is otherwise reasonably satisfactory to Lender.

“**Real Property**” shall mean, collectively, the Land and the Improvements.

“**Rent Roll**” has the meaning given to that term in Section 12.1(k) of this Security Instrument.

“**Rents**” has the meaning given to that term in Section 2.1(f) of this Security Instrument.

“**Repair Work**” has the meaning given to that term in Section 9.2(a)(iv) of this Security Instrument.

“**Replacement Management Agreement**” shall mean, collectively, (a) a management agreement with a Qualified Manager or another Person reasonably acceptable to Lender substantially in the same form and substance as the Management Agreement or in form and substance reasonably acceptable to Lender and (b) a conditional assignment and subordination of management agreement in form and substance reasonably acceptable to Lender, executed and delivered to Lender by Mortgagor and such Qualified Manager at Mortgagor’s expense.

“**Restricted Party**” shall mean Mortgagor, Principal, any Guarantor, or any Affiliated Manager or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of, Mortgagor, Principal, any Guarantor or any non-member manager.

“**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, transfer or pledge of a direct or indirect legal or beneficial interest.

“**Security Instrument**” has the meaning given to that term in the Recitals of this Security Instrument, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**SEL**” has the meaning given to that term in Section 4.3(d) of this Security Instrument.

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“**Survey**” shall mean, a survey prepared by a surveyor licensed in the State where the Property is located and reasonably satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Taking**” has the meaning given to that term in Section 9.1(b) of this Security Instrument.

“**Tax and Insurance Impound**” has the meaning given to that term in Section 4.9 of this Security Instrument.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof, together with all interest and penalties thereon.

“**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting all or any part of the Property.

“**Term**” shall mean the term of this Security Instrument.

“**Title Insurance Policy**” shall mean, individually and collectively, as the context may require, an ALTA mortgagee title insurance policy or policies in form(s) acceptable to Lender issued with respect to the Property and insuring the lien of this Security Instrument together with such endorsements and affirmative coverages as Lender may require, to the extent the same are available in the area where the Property is located.

“**Transfer**” shall mean any voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer of: (a) all or any part of the Property or any estate or interest therein including, but not be limited to, (i) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be paid in installments, (ii) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder and its affiliates, or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor’s right, title and interest in and to any Leases or any Rents; or (b) any ownership interest in (i) Mortgagor or (ii) any indemnitor or guarantor of the Obligations, or (iii) any corporation, partnership, limited liability company, limited partnership, trust or other entity owning, directly or indirectly, any interest in Mortgagor or any indemnitor or guarantor of any Obligations.

“**UCC**” has the meaning given to that term in the Loan Agreement.

“**UCC Collateral**” has the meaning given to that term in Section 2.3 of this Security Instrument.

ARTICLE 2 - GRANTS OF SECURITY

Section 2.1. PROPERTY MORTGAGED. Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and

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assigns all of its rights, title and interests to the extent now owned, or hereafter acquired by Mortgagor, in and to the following (collectively, the "**Property**"):

- (a) Land. The Land;
- (b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the Lien of this Security Instrument;
- (c) Improvements. The Improvements;
- (d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Real Property and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Real Property and every part and parcel thereof, with the appurtenances thereto;
- (e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods), furniture, software used in or to operate any of the foregoing property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon or in the Real Property, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of Real Property (or any portion thereof) and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon or in the Real Property, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Real Property (or any portion thereof) (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the UCC, superior in lien to the lien of this Security Instrument and all proceeds and products of the above;
- (f) Leases and Rents. All existing and future leases, subleases or sub-subleases, lettings, licenses, concessions or other agreements made a part thereof (whether written or oral and whether now or hereafter in effect) affecting the use, enjoyment, or occupancy of all or any part the Real Property heretofore or hereafter entered into and all extensions, amendments, modifications or other agreements relating to such leases, subleases, sub-subleases, or other agreements entered into in connection with such leases, subleases, sub-subleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto,

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and the right, title and interest of Mortgagor, its successors and assigns, therein, whether before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "**Leases**") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder ("**Lease Guaranties**"), cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Real Property (or any portion thereof) whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the "**Rents**") and the right to receive and apply the Rents to the payment of the Obligations;

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

(h) **Insurance Proceeds.** All proceeds of and any unearned premiums on any Policies covering the Property or any portion thereof (the "**Insurance Proceeds**"), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) **Tax Certiorari.** All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

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

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

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

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(m) Intangibles. The Intangibles;

(n) Proceeds. All proceeds of any of the foregoing, including, without limitation, Insurance Proceeds and condemnation awards, whether cash, liquidation or other claims or otherwise; and

Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (n) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Mortgagor expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the UCC which are applicable to secured transactions; it being understood and agreed that the Improvements are part and parcel of the Land appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

AND without further limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Security Instrument shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

Section 2.2. ASSIGNMENT OF LEASES AND RENTS. Mortgagor hereby absolutely and unconditionally assigns to Lender all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 8.1(h) of this Security Instrument, Lender grants to Mortgagor a revocable license to collect and receive the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations, for use in the payment of such sums.

Section 2.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Lender, as security for the Obligations, a security interest in all of Mortgagor's right, title and interest in and to the Personal Property and other property constituting the Property to the full extent that Mortgagor's right, title and interest in and to the Personal Property and such other property may be subject to the UCC (said portion of the Property so subject to the UCC being called the "UCC Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the UCC Collateral. Upon request or demand of Lender after the occurrence and during the

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continuance of an Event of Default, Mortgagor shall, at its expense, assemble the UCC Collateral and make it available to Lender at a convenient place (at the Real Property if tangible property) acceptable to Lender. Mortgagor shall pay to Lender on demand any and all costs and expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the UCC Collateral and in enforcing its rights hereunder with respect to the UCC Collateral upon the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the UCC Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the UCC Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Mortgagor (debtor) is as set forth on page one (1) hereof and the address of Lender (Secured Party) is as set forth on page one (1) hereof. Mortgagor hereby authorizes Lender to prepare such financing statements, including an all assets financing statement, and such further assurances as Lender may, from time to time, reasonably determine are necessary to create, perfect and preserve Lender's security interest hereunder, and Lender may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 2.4. FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the UCC) on the Real Property (or any portion thereof), described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Mortgagor as the debtor and Lender as the secured party filed as a fixture filing in accordance with the applicable provisions of said UCC upon such of the Property that is or may become fixtures. The Land to which the fixtures relate is described in **Schedule A** attached hereto. The record owner of the Land described in **Schedule A** attached hereto is Mortgagor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the first paragraph of this Security Instrument, and the name of the secured party for purposes of this financing statement is the name of the Lender set forth in the first paragraph of this Security Instrument. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the first paragraph of this Security Instrument. The mailing address of the Lender/secured party from which information concerning the security interest hereunder may be obtained is the address of the Lender set forth in the first paragraph of this Security Instrument.

Section 2.5. PLEDGES OF MONIES HELD. Mortgagor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums held in escrow by or on behalf of Lender, including, but not limited to, the Tax and Insurance Impound, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

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CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever, HEREBY RELEASING AND WAIVING ALL RIGHTS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall pay to Lender and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE 3 - - OBLIGATIONS SECURED

Section 3.1. OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 2 are given for the purpose of securing the Obligations.

ARTICLE 4 - - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

Section 4.1. PAYMENT AND PERFORMANCE OF OBLIGATIONS. Mortgagor will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

Section 4.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 4.3. INSURANCE. Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Lender, shall obtain and maintain, or cause to be obtained and maintained, during the entire Term the following policies of insurance described below.

(a) Broad Form or Special Causes of Loss Property Form.

(i) "Special" or "Broad Form" (formerly known as "all risk") commercial property insurance (including, without limitation, coverage against riot and civil commotion, vandalism, malicious mischief, water, mold (based on a covered peril, if obtainable), fire, burglary, theft, and terrorism and acts of terrorism) on the Improvements and all other insurable portions of the Property and in each case (A) insuring against any peril now or hereafter included within the classification "Special Form Cause of Loss", (B) in an amount equal to 100% of the Full Replacement Cost but in no event more than permitted by applicable

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law, (C) containing an agreed amount endorsement with respect to the Improvements, the Personal Property and all other insurable portions of the Property waiving all co-insurance provisions, and (D) providing that the deductible shall not exceed the sum of \$25,000.00, except in the case of windstorm and earthquake coverage, which shall have deductibles not in excess of 5% of the total insurable value of the Property, unless agreed to in writing by Lender. If any of the policies described in this Section 4.3(a)(i) are so-called "blanket" in nature, then Mortgagor shall comply with the following: (1) if such policies have sub limits that are aggregated limits, then Mortgagor must provide the listing of properties and values related to "other" assets on such blanket policy that would share in such limits, (2) if any aggregated limits are reduced at any time during the Term, then Mortgagor shall provide immediate written notice to Lender of the same, and such policies shall contain such increased aggregated limits as commercially reasonably determined by Lender, and (3) no blanket policy shall contain a so-called "margin clause" or "margin clause" endorsement. Lender shall be listed as "Mortgagee/Loss Payee".

(ii) Business income and extra expense insurance, if applicable, (A) with loss payable to Lender, (B) covering losses of income and Rents derived from the Real Property and any non-insured property on or adjacent to the Real Property resulting from any risk or casualty required to be covered under Section 4.3(a)(i) in an amount equal to one hundred percent (100%) of the projected gross income from the Real Property for a period of twelve (12) months, and (C) containing an extended period of indemnity endorsement which provides that after the Repair Work is completed, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date the Repair Work is completed and ordinary course of business operations have resumed at the Real Property, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income and extra expense insurance shall be determined by Lender prior to the date hereof and at least once each year thereafter based on Lender's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Section 4.3(a)(ii) shall be held by Lender and shall, as long as no Event of Default exists, be applied first to the regular monthly payments due on the Note and then to the other regular monthly payments due under the terms of this Security Instrument as the same become due and payable and the balance, if any, will be disbursed to Mortgagor; provided, however, that nothing herein contained shall be deemed to relieve Mortgagor of its obligation to pay the regular monthly payments due on the Note or make the other regular monthly payments due under the terms of this Security Instrument as the same become due and payable except to the extent such amounts are actually paid out of the proceeds of such business income insurance. Whenever an Event of Default exists, Lender may apply all Insurance Proceeds payable to Lender pursuant to this Section 4.3(a)(ii) to the Obligations in such order as Lender may determine. The perils covered by this insurance shall be the same as those accepted on the real property, including flood and earthquake, as

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necessary. This coverage shall be written on the same basis as the property policy stated in Section 4.3(a)(i) above. Lender to be listed as "Loss Payee".

(iii) The policy of insurance required pursuant to Section 4.3(a)(i) above shall contain the so-called "ordinance or law coverage" endorsements: Coverage A – Coverage For Loss to the Undamaged Portion of the Building, Coverage B – Demolition Cost Coverage, and Coverage C – Increased Costs of Construction. A = Equal Building Replacement Cost, B & C each no less than ten percent (10%) of Building Replacement Cost.

(iv) If windstorm coverage/named storm is excluded from the policy required under Section 4.3(a)(i) above, then Mortgagor must provide separate windstorm insurance in an amount equal to one hundred percent (100%) of the Full Replacement Cost plus 12 months of business income coverage, if the Property is located in an area where Lender requires such insurance. Deductibles shall not exceed 5% of the total insurable value of the Property. Lender shall be listed as "Mortgagee/Loss Payee".

(v) At all times during which structural construction, repairs or alterations are being made with respect to the Improvements: (A) Mortgagor and General Contractor shall obtain and maintain commercial general liability and umbrella liability insurance covering claims related to the repairs or restoration at the Property that are not covered by or under the terms or provisions of the commercial general liability insurance policy described in Section 4.3(b) and shall require all subcontractors to provide per occurrence limits of at least \$2,000,000 or as otherwise approved by Lender, and (B) the insurance provided for in Section 4.3(a)(i) written on a so-called builder's risk completed value form and include 100% of the recurring Hard and Soft Costs identified in the then current budget, with other terms, conditions and sub-limits acceptable to Lender (1) on a non-reporting basis, (2) against all risks insured against pursuant to Section 4.3(a)(i), (3) including permission to occupy the Improvements, and (4) with an agreed amount endorsement waiving co-insurance provisions. The amount of such coverage must be approved in writing by Lender. Notwithstanding anything to the contrary contained herein, Lender also reserves the right to review and approve all liability insurance coverage prior to commencement of any construction operations, including but not limited to any insurance coverage maintained by any contractor and/or subcontractors on any construction project involving the Improvements or nearby property. Lender shall be listed as "Mortgagee/Loss Payee".

(b) Commercial General Liability; Excess/Umbrella Liability. Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property and Improvements, such insurance (A) to be on the so-called "occurrence" form containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate, together with excess and/or umbrella liability in an amount of at least \$25,000,000.00 unless otherwise approved by Lender; (B) to contain a liquor liability endorsement if Mortgagor holds a

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liquor license; (C) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; (D) to cover at least the following hazards, (1) premises and operations, (2) products and completed operations on an "if any" basis, (3) independent contractors, (4) blanket contractual liability for all written and oral contracts, (5) contractual liability covering the indemnities contained in herein to the extent the same is available, and (6) all legal liability imposed upon Mortgagor and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Property; and (E) to be with a deductible not to exceed \$25,000.00 without Lender's prior written consent. If the Improvements are used as a hotel, then Garagekeeper's Liability (if property operates a garage), Innkeeper's Liability and Crime coverage are to be carried, as well as Auto Liability if property operates/leases vehicles. If Mortgagor has a multi-location policy or loan, then the coverage must be maintained on a "per-location basis". Lender shall be listed as an "Additional Insured".

(c) Flood Insurance. Flood insurance will be required if any portion of the Improvements is situated in a federally designated "special flood hazard area" (for example, Zones A and V) as designated by the Federal Emergency Management Agency, or any successor thereto, as an area having special flood hazards pursuant to the Flood Insurance Acts. The minimum amount of flood insurance required is the lesser of one hundred percent (100%) of the Full Replacement Cost (plus business income interruption coverage) for those portions of the Improvements located in such special flood hazard area, the maximum limit of coverage available for the Improvements under the Flood Insurance Acts, or the maximum amount permitted by applicable law. Deductibles shall not exceed \$50,000.00 without Lender's prior written consent (unless such policy is under a property policy rather than a National Flood Insurance Policy, in which case a deductible of \$100,000.00 is permitted). Lender shall be listed as "Mortgagee". Additional Excess Flood coverage may be requested by Lender.

(d) Sinkhole, Mine Subsidence and Earthquake. Sinkhole, mine subsidence and earthquake insurance shall be obtained and maintained if in the opinion of a professional engineer with experience in this professional area there is a foreseeable risk of loss due to this hazard. If any of such coverage is determined by such engineer to be necessary, then Mortgagor shall maintain coverage equal to one hundred percent (100%) of the Full Replacement Cost, but in no event more than the maximum amount permitted by applicable law, based upon the Probable Maximum Loss ("PML") or Scenario Accepted Loss ("SEL") assigned to the Property and Improvements.

(e) Boiler and Machinery Coverage/Equipment Breakdown and Testing Coverage. Comprehensive broad form boiler and machinery insurance/equipment breakdown and testing insurance (without exclusion for explosion) covering all steam boilers, heating and air conditioning equipment, high pressure piping, machinery and equipment, sprinkler systems, pressure vessels, refrigeration equipment and piping, or similar apparatus now or hereafter installed in the Improvements (including "system breakdown coverage") and insuring against loss of occupancy or use arising from any breakdown, in an amount at least equal to one hundred percent (100%) of the Full Replacement Cost or an amount agreed to by Lender. Deductibles shall not exceed

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\$25,000.00 without Lender's prior written consent. Lender shall be listed as "Mortgagee/Lender-Loss Payee".

(f) Worker's Compensation and Employer's Liability. If Mortgagor has any employees in the state where the Land is located or if the general contractor has employees performing work at the Project, then workers' compensation, subject to the statutory limits of the state in which the Land is located, and employer's liability insurance at statutory limits per accident and per disease per employee, and at statutory limits for disease aggregate in respect of any work or operations on or about the Real Property, or in connection with the Real Property or its operation (if applicable).

(g) Auto Liability. Auto liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000 (if applicable).

(h) Evidence of insurance from Architect and Engineers, including but not limited to commercial general liability, excess liability, commercial automobile, workers compensation and professional liability with limits, terms and conditions reasonably acceptable to Lender.

(i) Miscellaneous. Such other insurance on the Property, Improvements or arising out of the operations on or at the Property, or on any replacement or substitutions thereof or additions thereto as may from time to time be reasonably required by Lender against other insurable hazards or casualties which at the time are commonly insured against by reasonably prudent lenders in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All policies of insurance (the "Policies") required pursuant to this Section 4.3 shall (i) be issued by companies approved by Lender and licensed to do business in the state in which the Property is located, with a claims paying ability rating of "A" (or its equivalent) or better by S&P or Moody's or a rating of "A: X" or better in the current Best's Insurance Reports, (ii) with respect to the Policies described above, name Lender and its successors and/or assigns as their interest may appear as the lender or mortgagee, Loss Payee and Additional Insured, as applicable, (iii) contain a non-contributory standard mortgagee clause and a lender's loss payable endorsement, or their equivalents, naming Lender as the Person to which all payments made by such insurance company shall be paid, (iv) contain a waiver of subrogation against Lender, (v) be maintained throughout the Term without cost to Lender, (vi) be assigned to Lender, (vii) contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that Lender shall not be liable for the payment of any of the Insurance Premiums, that neither Mortgagor, Lender nor any other party shall be a co-insurer under said Policies, that no act or negligence of Mortgagor, or anyone acting for Mortgagor, or of any tenant under any Lease or other occupant, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation (except 10 days prior written notice of cancellation for non-payment of premium). If the issuers cannot or will not provide notice, the Borrower shall

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be obligated to provide such notice, and (viii) be reasonably satisfactory in form and substance to Lender and shall be reasonably approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds if any of the same do not meet the criteria set forth in this Section 4.3, such approval not to be unreasonably withheld, conditioned, or delayed. On or prior to the date hereof, Mortgagor shall deliver to Lender either (1) complete copies of the Policies in effect on the date hereof (the "**Current Policies**") or (2) ACORD Form 25, Certificate of Liability Insurance and ACORD Form 28, Evidence of Commercial Property Insurance (provided that if ACORD Form 28 is unavailable, Lender will accept ACORD Form 27 so long as ACORD Form 27 provides sufficient information in Lender's reasonable determination for it to evaluate the Policies) (collectively the "**ACORD Certificates**") with respect to the Current Policies (and each ACORD Certificate must specify the Lender, loss payee and additional insured status and/or waivers of subrogation, state the amounts of all deductibles and self-insured retentions, if any, set forth notice requirements for cancellation, material change, or non-renewal of insurance and be accompanied by copies of all required endorsements), provided that Mortgagor shall deliver to Lender complete copies of the Current Policies not more than thirty (30) days after the date hereof or upon actual issuance of the Current Policies. At least fifteen (15) days prior to the expiration of the Policies, Mortgagor shall deliver to Lender (at: **Goldman Sachs Bank USA, ISAOA, ATTN.: Insurance Operations, 2001 Ross Avenue, Suite 2800, Dallas, TX 75201**) either the original policies (or copies of the same certified by the issuers thereof) issued in renewal of each of the expiring Policies or ACORD Certificates with respect thereto, provided that Mortgagor shall deliver to Lender the original policies (or copies of the same certified by the issuers thereof) issued in renewal of the expired Policies not more than thirty (30) days after the expiration of the subject Policies or upon actual issuance of the renewal policies. Subject to Section 4.9 below, Mortgagor shall pay the premiums for such Policies (collectively the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided, however, that Mortgagor is not required to furnish such receipts for payment of Insurance Premiums if no Event of Default exists and Mortgagor has previously deposited with Lender sufficient funds to pay all such Insurance Premiums from the Tax and Insurance Impound). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Lender may, but shall not be obligated to, purchase such Policy and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Lender for the cost of such Insurance Premiums promptly upon written demand therefor. Mortgagor covenants and agrees to promptly forward to Lender a copy of each written notice received by Mortgagor of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies. Within thirty (30) days after written request by Lender, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

In all instances hereunder where Goldman Sachs Bank USA is to be listed as Mortgagee/Loss Payee/Additional Insured, the certification should read as follows: **Goldman Sachs Bank USA, ISAOA, Attn: Insurance Operations, 2001 Ross Avenue, Suite 2800, Dallas, TX 75201.**

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Section 4.4. MAINTENANCE AND USE OF PROPERTY; DEMOLITION; ZONING; PERMITTED ALTERATIONS; COMPLIANCE WITH LEGAL REQUIREMENTS.

(a) Mortgagor shall cause the Property to be maintained in a good and safe condition and repair. After Completion of the Improvements, the Improvements and the Personal Property shall not be removed, demolished, or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Subject to the terms of Article 9, Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation and shall complete and pay for any structure at any time in the process of construction or repair on the Real Property. Mortgagor shall keep and maintain certifications, permits, licenses and approvals, including, without limitation, certificates of occupancy required by any Governmental Authority for the use, occupancy and operation of the Property in the manner in which the Property is then being used, occupied and operated.

(b) The Property shall be used only as an apartment building and any ancillary uses relating thereto, and for no other uses without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

(c) Mortgagor shall not initiate, seek, make, join in, acquiesce in, or consent to any change or variance in any private restrictive covenant, land use or zoning law or zoning classification or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

(d) Notwithstanding Section 4.4(a) to the contrary as to alterations, after Completion of the Improvements, Mortgagor shall obtain Lender's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld except with respect to alterations that, after Completion of the Improvements, could be reasonably likely to have a Material Adverse Effect. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that will not have a Material Adverse Effect, provided that such alterations are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed in accordance with the terms hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) alterations performed in connection with Repair Work in accordance with the terms and provisions of this Security Instrument. If the total unpaid amounts with respect to any alterations to the Improvements (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed the Alteration Threshold, Mortgagor shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Mortgagor's obligations under

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the Loan Documents any of the following: (A) Cash, (B) U.S. Obligations, or (C) a completion bond or letter of credit issued by a financial institution having a rating by S&P of not less than A-1+ if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to such alterations to the Improvements other than such amounts to be paid or reimbursed by tenants under the Leases) over the Alteration Threshold and applied from time to time at the option of Lender to pay for such alterations or to terminate any of the alterations and restore the Property to the extent necessary to prevent any Material Adverse Effect.

(e) Mortgagor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits, franchises, certificates of occupancy, consents, and other approvals necessary for the operation of the Property, and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Mortgagor, nor shall Mortgagor permit, allow or cause any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Mortgagor's obligations under any of the Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Mortgagor shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its Property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in this Security Instrument. Mortgagor shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Security Instrument.

Section 4.5. WASTE. Mortgagor shall not permit, commit or suffer any waste of the Property make any change in the use of the Property that could reasonably be expected to materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that could reasonably be expected to impair the value of the Property or the security of this Security Instrument. Mortgagor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 4.6. LIENS; PAYMENT FOR LABOR AND MATERIALS.

(a) Subject to Section 4.6(c) below, Mortgagor shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

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(b) Subject to Section 4.6(c) below, Mortgagor will promptly pay when due, or cause to be paid when due, all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(c) Notwithstanding Section 4.6(a) and Section 4.6(b), after prior written notice to Lender, Mortgagor, at its own expense, shall have the right to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application in whole or in part of any Lien and/or Labor and Material Costs, provided that (i) no Event of Default has occurred and is then continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the enforcement of such Lien or the collection of such Labor and Material Costs from Mortgagor and from the Property or Mortgagor shall have paid the amount of the Lien or all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, canceled or lost as a result of such contest, and (vi) Mortgagor shall have furnished the security as may be required pursuant to the proceeding, or as may otherwise be reasonably requested by Lender to insure the payment of any contested Lien or Labor and Material Costs, together with all interest and penalties thereon.

Section 4.7. PERFORMANCE OF OTHER AGREEMENTS. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 4.8. TAXES AND OTHER CHARGES. Subject to the terms of this Section 4.8, Mortgagor shall pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the same becoming delinquent; provided, however, that Mortgagor shall not be obligated to pay any Taxes or Other Charges to the applicable taxing authority at any time when Mortgagor is required to make (and is actually making) payments into the Tax and Insurance Impound pursuant to Section 4.9. Mortgagor shall furnish to Lender receipts, or other evidence for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent. Except for Liens that are being contested in accordance with the provisions of this Section 4.8, Mortgagor shall not suffer and shall promptly cause to be paid and discharged any Lien or Other Charge whatsoever which may be or become a Lien or charge against the Property prior to the delinquency of such charges, and shall promptly pay for all utility services provided to the Property. Notwithstanding the

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foregoing, after prior written notice to Lender (unless Mortgagor shall have paid the amount of such contested Taxes or Other Charges under protest, in which event no notice to Lender shall be required), Mortgagor, at its own expense, shall have the right to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and is then continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable laws; (iii) the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost as a result of such contest; (iv) Mortgagor shall promptly, following final determination of such contest, pay the final amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property or Mortgagor shall have paid the amount of the Taxes or Other Charges under protest; and (vi) Mortgagor shall furnish such security as may be required pursuant to the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may apply such security or part thereof held by Lender at any time when, in the reasonable judgment of Lender, the amount of such Taxes or Other Charges is finally established or the Property (or part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of this Security Instrument being primed by any related Lien, in each case as a result of such contest by Mortgagor.

Section 4.9. TAX AND INSURANCE IMPOUND. During the continuance of an Event of Default, (A) Mortgagor shall pay to Lender on demand for deposit into the Tax and Insurance Impound, an amount equal to (i) the product of (x) one-twelfth of the aggregate Taxes that Lender reasonably estimates will be due to the applicable taxing authorities over the next ensuing twelve (12) months, multiplied by (y) the number of months elapsed from and including the first month for which such Taxes have been assessed and paid to and including the month in which the applicable Event of Default occurred, plus (ii) the product of (I) one-twelfth of the aggregate Insurance Premiums that Lender reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof within the next ensuing twelve (12) months, multiplied by (II) the number of months elapsed from and including the first month in which the currently effective Policies became effective to and including the month in which the applicable Event of Default occurred, and (B) thereafter, Mortgagor shall pay to Lender on the tenth (10th) day of each calendar month an amount equal to (a) one-twelfth of the Taxes that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment and (b) one-twelfth of the Insurance Premiums that Lender reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the fund into which said amounts provided in clauses (A) and (B) above shall be deposited is called the "Tax and Insurance Impound"). During the continuance of an Event of Default, the monthly payment into the Tax and Insurance

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Impound, if any, and the monthly payment payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Lender. During any time when Mortgagor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, Mortgagor agrees to notify Lender promptly following any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. Mortgagor hereby pledges to Lender and grants to Lender a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Obligations. Provided that there are sufficient amounts on deposit in the Tax and Insurance Impound and no Event of Default then exists, Lender will apply amounts on deposit in the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant hereto. In making any payment relating to the Tax and Insurance Impound, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amounts on deposit in the Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums, then Lender may at its election either return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Impound. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If, at any time when Mortgagor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, Lender determines in its reasonable discretion that the amounts on deposit in the Tax and Insurance Impound are not or will not be sufficient to pay the Taxes and Insurance Premiums prior to the same becoming delinquent, then Lender shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is necessary to make up the deficiency at least thirty (30) days prior to (x) the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment of the Taxes and/or (y) the date any of the Policies would expire, as the case may be. Whenever an Event of Default exists, Lender may apply any sums then present in the Tax and Insurance Impound to the payment of the Obligations in any order in its sole discretion. Until expended or applied as above provided, all amounts in the Tax and Insurance Impound shall constitute additional security for the Obligations. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Lender. Unless otherwise required by applicable law, Mortgagor shall not receive interest or other earnings on the Tax and Insurance Impound, which shall be held in Lender's name at a financial institution selected by Lender in its sole discretion. Following the repayment in full of the Obligations, any funds remaining on deposit in the Tax and Insurance Impound will promptly be disbursed to Mortgagor. During any time when Mortgagor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, (A) if Lender so elects at any time, then Mortgagor shall provide, at Mortgagor's reasonable expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Lender or (B) if Lender does not so elect, then Mortgagor shall reimburse Lender for the reasonable cost of making annual tax searches throughout the Term.

Section 4.10. CHANGE OF STRUCTURE. Other than in connection with any Permitted Transfer, Mortgagor shall not change Mortgagor's corporate, partnership or other structure

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without first obtaining the prior written consent of Lender. Mortgagor shall promptly notify Lender in writing of any change in its organizational identification number. Mortgagor shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Lender to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of Lender, Mortgagor shall execute a certificate in form satisfactory to Lender listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property. Access. Subject to the rights of tenants under the Leases, Mortgagor shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 4.12. Property Operating Agreements.

(a) Mortgagor shall use commercially reasonable efforts to deliver to Lender, upon request, estoppel certificates from each party under each Property Operating Agreement, provided that such certificates may be in the form required under the applicable Property Operating Agreement.

(b) Mortgagor shall (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under each Property Operating Agreement to which it is a party, and do all things necessary to preserve and to keep unimpaired its rights thereunder, (ii) promptly notify Lender in writing of the giving of any notice of any default by any party under any Property Operating Agreement of which it is aware, and (iii) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the other party under each Property Operating Agreement to which it is a party in a commercially reasonable manner.

(c) Mortgagor shall not, without Lender's prior written consent: (i) enter into, surrender or terminate any Property Operating Agreement to which it is a party (unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable), (ii) increase or consent to the increase of the amount of any charges under any Property Operating Agreement to which Mortgagor is a party, except as provided therein or on an arms-length basis and on commercially reasonable terms; or (iii) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Property Operating Agreement to which it is a party, except on an arms'-length basis and commercially reasonable terms.

Section 4.13. Leasing Matters. Mortgagor shall not enter into any Lease with respect to the Property without the express written consent of Lender.

Section 4.14. Property Management; Property Management Agreement.

(a) At such time as the Improvements are completed, the Improvements on the Property shall be operated under the terms and conditions of the Management Agreement, which Management Agreement must be reasonably satisfactory to Lender.

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In no event shall the management fees under the Management Agreement exceed three percent (3.0%) of the gross income derived from the Property. Mortgagor shall (i) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement, on the part of Mortgagor to be performed and observed to the end that all things shall be done which are necessary to keep unimpaired the rights of Mortgagor under the Management Agreement and (ii) promptly notify Lender of the giving of any notice by the Manager to Mortgagor of any default by Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Management Agreement on the part of Mortgagor to be performed and observed and deliver to Lender a true copy of each such notice. Mortgagor shall not surrender the Management Agreement, consent to the assignment by the Manager of its interest under the Management Agreement, or terminate or cancel the Management Agreement, or modify, change, supplement, alter or amend the Management Agreement, in any respect, either orally or in writing. Mortgagor hereby assigns to Lender as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of the Loan Documents, all the rights, privileges and prerogatives of Mortgagor to surrender the Management Agreement, or to terminate, cancel, modify, change, supplement, alter or amend the Management Agreement, in any respect, and any such surrender of the Management Agreement, or termination, cancellation, modification, change, supplement, alteration or amendment of the Management Agreement, without the prior consent of Lender shall be void and of no force and effect. If Mortgagor shall default in the performance or observance of any material term, covenant or condition of the Management Agreement on the part of Mortgagor to be performed or observed, then, without limiting the generality of the other provisions of this Security Instrument, and without waiving or releasing Mortgagor from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Management Agreement on the part of Mortgagor to be performed or observed to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Management Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the Manager shall deliver to Lender a copy of any notice sent to Mortgagor of default under the Management Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Mortgagor shall not, and shall not permit the Manager to, subcontract any or all of its management responsibilities under the Management Agreement to a third-party without the prior written consent of Lender, which consent shall not be unreasonably withheld. Mortgagor shall cause the Manager to maintain at all times worker's compensation insurance as required by Governmental Authorities. Mortgagor shall, from time to time, obtain from the Manager (i) a conditional assignment and subordination of management agreement in form and substance satisfactory to Lender in its reasonable discretion and (ii) such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Management Agreement as may be requested by Lender, in each case executed by Mortgagor and such Manager, as applicable, and

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delivered to Lender at Mortgagor's expense. Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Management Agreement upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and Mortgagor hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Any sums expended by Lender pursuant to this paragraph (i) shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, (ii) shall be deemed to constitute a portion of the Obligations, (iii) shall be secured by the lien of this Security Instrument and the other Loan Documents and (iv) shall be immediately due and payable upon demand by Lender therefor.

(b) Without limitation of the foregoing, Mortgagor, upon the request of Lender, shall terminate the Management Agreement and replace the Manager, without penalty or fee, if at any time during the Loan: (a) the Manager shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default or (c) there exists a default by Manager under the Management Agreement. At such time as the Manager may be removed, a Qualified Manager shall assume management of the Property pursuant to a Replacement Management Agreement.

Section 4.15. Handicapped Accessibility.

(a) Mortgagor covenants and agrees that the Property shall at all times comply to the extent applicable with the requirements of all Access Laws.

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Property, Mortgagor shall not alter the Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Mortgagor. It shall be deemed reasonable for Lender to condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Lender.

(c) Mortgagor covenants and agrees to give prompt written notice to Lender of the receipt by Mortgagor of any written complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations by Governmental Authorities which relate to compliance with applicable Access Laws.

Section 4.16. Mortgage and Intangible Taxes. To the extent applicable, Mortgagor shall pay all State, county and municipal recording, mortgage, intangible, and all other taxes imposed upon the execution and recordation of this Security Instrument

Section 4.17. Title. Mortgagor shall warrant and defend the validity and priority of the Liens of this Security Instrument and the Assignment of Leases on the Property against the claims of all Persons whomsoever, subject only to Permitted Encumbrances.

Section 4.18. Estoppel Statements.

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(a) After request by Lender, Mortgagor shall within ten (10) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the interest rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Obligations, and (vi) that the Note, this Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Mortgagor shall deliver to Lender upon request, tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Lender.

Section 4.19. Intentionally Omitted.

Section 4.20. No Joint Assessment. Mortgagor shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real Property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute Personal Property, or any other procedure whereby the Lien of any taxes which may be levied against such Personal Property shall be assessed or levied or charged to the Property.

Section 4.21. Cooperate in Legal Proceedings. Mortgagor shall cooperate fully with Lender with respect to, and permit Lender, at its option, to participate in, any proceedings before any Governmental Authority which may in any way affect the rights of Lender under any Loan Document.

ARTICLE 5 - - OBLIGATIONS AND RELIANCES

Section 5.1. RELATIONSHIP OF MORTGAGOR AND LENDER. The relationship between Mortgagor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Lender to be other than that of debtor and creditor.

Section 5.2. NO RELIANCE ON LENDER. The general partners, members, managers, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Lender's expertise, business acumen or advice in connection with the Property. Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and its general partners, members, managers, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Mortgagor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the

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payment or the performance of the Obligations, Lender can recover the Obligations by a sale of the Property.

Section 5.3. NO LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 2.1(f), (k) and (l) or Section 2.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 5.4. RELIANCE. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth herein and in Article 4 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth herein and in Article 4 of the Loan Agreement.

ARTICLE 6 - - FURTHER ASSURANCES

Section 6.1. RECORDING OF SECURITY INSTRUMENT, ETC.. Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where

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prohibited by law so to do. Mortgagor shall hold harmless and indemnify Lender, and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Security Instrument.

Section 6.2. FURTHER ACTS, ETC.. Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, on demand from Lender, will execute and deliver, and in the event Mortgagor shall fail to so execute and deliver within five (5) Business Days after Lender's written demand, hereby authorizes Lender to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Mortgagor as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Mortgagor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 6.2. To the extent not prohibited by applicable law, Mortgagor hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 6.3. CHANGES IN TAX, OBLIGATIONS, CREDIT AND DOCUMENTARY STAMP

LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in the Property, then Mortgagor will pay the tax, with interest and penalties thereon, if any, or at Lender's option, reimburse Lender for the payment of the tax, with interest and penalties thereon, if any; provided, that in no event shall Mortgagor be obligated to pay any net income or franchise taxes imposed on Lender by any Governmental Authority. If Lender is advised by counsel chosen by it that the payment, or reimbursement to Lender (if paid by Lender), of the tax by Mortgagor or any other Loan Party would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than sixty (60) days to declare the Obligations immediately due and payable.

(b) Mortgagor will not (i) claim or demand or be entitled to any credit or

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credits on account of the Obligations for any part of the Taxes assessed against the Property, or any part thereof, or (ii) claim any deduction from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than sixty (60) days, to declare the Obligations immediately due and payable.

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

Section 6.4. SPLITTING OF MORTGAGE. This Security Instrument and the Note shall, at any time until the Obligations shall be indefeasibly paid in full, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Mortgagor, upon written request of Lender, shall promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender; provided, however, that (i) the aggregate amount of interest payable under the substitute notes shall not exceed the aggregate amount payable by Mortgagor under the Note, other than to a de minimis extent, (ii) Mortgagor's rights under the substitute documents and instruments shall not be reduced, other than to a de minimis extent, and (iii) Lender's obligations under the substitute documents and instruments shall not be increased, other than to a de minimis extent

Section 6.5. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor shall issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 7 - - DUE ON SALE/ENCUMBRANCE

Section 7.1. NO TRANSFERS.

(a) Except to the extent otherwise set forth in this Section 7 (including with respect to Permitted Transfers), Mortgagor shall not permit or suffer any Transfer to occur unless Lender shall consent thereto in writing.

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(b) Notwithstanding anything to the contrary contained in Section 7.1(a), the following Transfers (each, a "**Permitted Transfer**") shall be permitted hereunder without the consent of Lender, provided that no Event of Default is then continuing:

- (i) Permitted Encumbrances;
- (ii) Leases entered into pursuant to the terms hereof;

(iii) Transfers of Permitted Transfer Interests by Permitted Transfer Parties, for estate planning purposes, to the family members of Permitted Transfer Parties (including, without limitation, the parents, spouses, siblings, children and other lineal descendants of Permitted Transfer Parties, and the spouses of parents, siblings, children and other lineal descendants of Permitted Transfer Parties); **provided that in each such case: (1) no Event of Default is then continuing, (2) the Guarantors are in compliance with the terms of Section 5(k) of the Guaranty, (3) each Loan Party is Controlled by at least one (1) Key Person, and (4) Lender shall receive not less than thirty (30) days prior written notice of such proposed Transfer.**

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Transfer in violation of this Section 7.1. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(d) Notwithstanding anything to the contrary contained in this Section 7.1, (a) no transfer (whether or not such transfer shall constitute a Transfer) shall be made to any Prohibited Person, (b) in the event of any transfer (whether or not such transfer shall constitute a Transfer), results in any Person and its Affiliates owning in excess of five percent (5%) of the ownership interest in a Restricted Party, Mortgagor shall provide to Lender, not less than thirty (30) days prior to such transfer, the name and identity of each proposed transferee, together with the names of its controlling principals, the social security number or employee identification number of such transferee and controlling principals, and such transferee's and controlling principal's home address or principal place of business, and home or business telephone number.

Section 7.2. LENDER'S RIGHTS. Without obligating Lender to grant any consent under Section 7.1 hereof, which Lender may grant or withhold in its sole discretion, Lender reserves the right to condition the consent required hereunder upon (a) a modification of the terms hereof and of the Loan Agreement, the Note or the other Loan Documents; (b) an assumption of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of the Loan Agreement; (c) payment of all of Lender's expenses incurred in connection with such Transfer; (d) the proposed transferee's continued compliance with the representations and covenants set forth in the Loan Agreement, as modified to reflect the proposed transferee's organizational structure; (e) the proposed transferee's ability to satisfy Lender's then-current underwriting standards; or (f) such other conditions as Lender shall determine in its reasonable discretion to be in the interest of Lender, including, without limitation, the creditworthiness, reputation and qualifications of the

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transferee with respect to the Loan and the Property. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Transfer in violation of Section 7.1 hereof. The restrictions set forth in this Article 7 shall apply to every Transfer, other than any Permitted Transfer, regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer. Any Transfer made in contravention of Section 7.1 shall be null and void and of no force and effect. If any Transfer shall occur without the prior written consent of Lender (if required hereunder) and otherwise in accordance with the terms and provisions of this Security Instrument, then Lender, in its sole and absolute discretion, may declare the Obligations to be immediately due and payable.

ARTICLE 8 - - RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Lender may take such action, without notice or demand (unless such notice or demand is expressly required pursuant to this Security Instrument or any other Loan Document), as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property to the extent permitted by applicable law, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the Obligations to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

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(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment and performance of the Obligations;

(h) to the extent permitted by applicable law, the license granted to Mortgagor under Section 2.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) either with or without taking possession of the Property, demand, sue for, settle, compromise, collect, and give acquittances for all Rents, issues, income and profits of and from the Property and pursue all remedies for enforcement of the Leases and all the landlord's rights therein and thereunder;

(j) proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under any applicable existing or future Debtor Relief Law and applicable law **(IF THERE SHALL BE FILED BY OR AGAINST MORTGAGOR A PETITION UNDER ANY DEBTOR RELIEF LAW, AND MORTGAGOR, AS LESSOR UNDER ANY LEASE, SHALL DETERMINE TO REJECT SUCH LEASE PURSUANT TO ANY APPLICABLE PROVISION OF ANY DEBTOR RELIEF LAW, THEN MORTGAGOR SHALL GIVE LENDER NOT LESS THAN TEN (10) DAYS' PRIOR NOTICE OF THE DATE ON WHICH MORTGAGOR SHALL APPLY TO THE**

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BANKRUPTCY COURT FOR AUTHORITY TO REJECT THE LEASE. LENDER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO SERVE UPON MORTGAGOR WITHIN SUCH TEN-DAY PERIOD A NOTICE STATING THAT (I) LENDER DEMANDS THAT MORTGAGOR ASSUME AND ASSIGN THE LEASE TO LENDER PURSUANT TO ANY APPLICABLE PROVISION OF ANY DEBTOR RELIEF LAW, AND (II) LENDER COVENANTS TO CURE OR PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE UNDER THE LEASE. IF LENDER SERVES UPON MORTGAGOR THE NOTICE DESCRIBED IN THE PRECEDING SENTENCE, THEN MORTGAGOR SHALL NOT SEEK TO REJECT THE LEASE AND SHALL COMPLY WITH THE DEMAND PROVIDED FOR IN CLAUSE (I) OF THE PRECEDING SENTENCE WITHIN THIRTY (30) DAYS AFTER THE NOTICE SHALL HAVE BEEN GIVEN, SUBJECT TO THE PERFORMANCE BY LENDER OF THE COVENANT PROVIDED FOR IN CLAUSE (II) OF THE PRECEDING SENTENCE);

(k) exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Mortgagor at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender (at the Real Property if tangible property). Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor (unless a longer notice period is required by applicable law and such period cannot be waived);

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

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

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

(m) require Mortgagor to pay monthly in advance to Lender or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise;

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(n) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Property; or

(o) apply the undisbursed balance of any deposit together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

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

Section 8.2. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and of any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper.

Section 8.3. RIGHT TO CURE DEFAULTS.

(a) Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor, and without releasing Mortgagor from any obligation hereunder, make any payment or do any act that is the subject of such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be due and payable within ten (10) days of demand by Lender therefor.

(b) Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to the Obligations, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless the Obligations then due has been paid

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and all obligations secured by this Security Instrument performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the Lien of this Security Instrument.

Section 8.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

Section 8.5. RECOVERY OF SUMS REQUIRED TO BE PAID. During the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default existing at the time such earlier action was commenced.

Section 8.6. EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable prior notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect upon its financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 8.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 8.7. OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to

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maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

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

Section 8.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

Section 8.9. VIOLATION OF LAWS. If the Property is not in material compliance with Legal Requirements, then Lender may impose additional requirements upon Mortgagor in connection with such non-compliance, including, without limitation, monetary reserves or financial equivalents, until such time as Mortgagor complies with the Legal Requirements.

Section 8.10. RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, to the extent permitted by applicable law, Lender and other Indemnified Parties are entitled to enforce the obligations of Mortgagor and any guarantor and/or indemnitor with respect to the Loan without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor and any guarantor and/or indemnitor with respect to the Loan. A separate action or actions may be brought and prosecuted against Mortgagor pursuant to the terms of this Security Instrument, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity. Notwithstanding anything to the contrary in this Section, nothing in this Section shall give Lender any rights against any guarantor or indemnitor which are not expressly set forth in a written agreement made by such guarantor or indemnitor to and for the benefit of Lender.

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Section 8.11. RIGHT OF ENTRY. In addition to any other rights or remedies granted under this Security Instrument, Lender and its agents, shall have the right to enter and inspect the Property at any reasonable time during the term of this Security Instrument. The cost of such inspections or audits shall be borne by Mortgagor should Lender determine that an Event of Default shall have occurred and shall be continuing, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Lender. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Security Instrument and shall bear interest thereafter until paid at the Default Rate.

ARTICLE 9 -- CASUALTY AND CONDEMNATION

Section 9.1. Casualty and Condemnation.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty") or if Mortgagor shall have knowledge of the actual or threatened, in writing, commencement of any condemnation or eminent domain proceeding that would affect the Real Property (or any portion thereof) (a "Condemnation"), then Mortgagor shall give prompt written notice thereof to Lender and, with respect to a Condemnation, shall deliver to Lender copies of any and all papers served in connection with such Condemnation.

(b) Lender may participate in any proceedings for any taking by any public or quasi-public authority accomplished through a Condemnation or any transfer made in lieu of or in anticipation of a Condemnation (which transfer in lieu and Condemnation are collectively referred to as a "Taking") to the extent permitted by law. Upon Lender's written request, Mortgagor shall deliver to Lender all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Mortgagor shall not consent or agree to a Taking without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed in the case of a Taking of an insubstantial portion of the Land.

(c) Subject to the terms of Section 9.2, all Insurance Proceeds and all awards or payments payable on account of a Taking ("Award"), and all causes of action, claims, compensation, awards and recoveries for any other damage, injury, or loss or diminution in value of the Real Property, are hereby assigned, transferred and set over to and shall be paid to Lender. Mortgagor agrees to execute and deliver from time to time such further instruments as may be reasonably requested by Lender to confirm the foregoing assignment to Lender. Mortgagor hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable so long as any of the Obligations is outstanding, shall be deemed coupled with an interest, and shall survive the voluntary or involuntary dissolution of Mortgagor), with full power of substitution, subject to the terms of Section 9.2, to settle for, collect and receive all Insurance Proceeds and/or any Award and any other awards, damages, Insurance Proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor; provided that Lender shall not exercise such power of attorney except either when an Event of Default exists or when Mortgagor has failed to take any of the actions described in this

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sentence after a reasonable period of time has passed following receipt of written notice from Lender of its intent to use such power to take the action.

(d) If Lender applies an Award to the Obligations pursuant to and in accordance with Section 9.2, then Lender shall be entitled to allocate out of the Award for the purpose of paying accrued unpaid interest on the Note interest at the rate or rates provided in the Note and shall not be limited to the interest paid on an Award by the condemning authority. Mortgagor shall use all commercially reasonable efforts to cause any Award that is payable to Mortgagor to be paid directly to Lender, and if any such Award is nevertheless paid to Mortgagor, then Mortgagor shall promptly remit such Award to Lender to be held and applied in accordance with the terms of this Security Instrument. If the Real Property (or any portion thereof) is sold, through foreclosure or deed-in-lieu thereof, prior to the receipt by Lender of the Award, then Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof, to the extent sufficient to pay the unpaid portion, if any, of the Obligations.

(e) The expenses incurred by Lender in the adjustment and collection of the Insurance Proceeds or any Award shall become part of the Obligations and be secured hereby and shall be reimbursed by Mortgagor to Lender within ten (10) days after written demand therefor or, at Lender's election, deducted by and reimbursed to Lender from such Insurance Proceeds or Award, as applicable.

Section 9.2. USE OF INSURANCE PROCEEDS OR AWARD.

(a) In case of loss or damages covered by any of the Policies and in case of an Award for any Taking, the following provisions shall apply:

(i) In the event of a Casualty that does not exceed fifteen percent (15%) of the FMV, Mortgagor may settle and adjust any claim without the consent of Lender and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receive any such Insurance Proceeds.

(ii) In the event of a Casualty that exceeds fifteen percent (15%) of the FMV, then and in that event Lender may settle and adjust any claim, provided, however, that any final agreement with the insurance company or companies of the amount to be paid for the Casualty shall be subject to the approval of Mortgagor as hereinafter provided. In any such case, the Insurance Proceeds shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Security Instrument. Mortgagor shall have the right to participate in the settlement discussions with the applicable insurance company or companies, or applicable authorities, and Lender shall keep Mortgagor apprised of all material settlement offers and discussions and the results thereof. Lender shall provide ten (10) Business Days advance written notice to Mortgagor of the terms and amount of any proposed final agreement on any such claim (such proposed final amount, the "**Lender Approved Settlement Amount**"). If Mortgagor disapproves of Lender's settlement of the claim on such terms and at such amount, Mortgagor must furnish written notice of such disapproval (any such notice, an "**Arbitration**").

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Notice) to Lender within ten (10) Business Days after Mortgagor's receipt of Lender's notice, such notice of disapproval by Mortgagor to state Mortgagor's election to implement the arbitration procedure set forth in this Section 9.2. Mortgagor's failure to furnish notice of disapproval prior to the expiration of such ten (10) Business Day period shall constitute and be deemed Mortgagor's consent and approval to Lender's settlement of the applicable claim for an amount not less than the Lender Approved Settlement Amount.

(iii) Intentionally omitted.

(iv) In the event of (A) a Taking for which the Award is equal to or less than fifteen percent (15%) of the FMV or (B) in the event of a Casualty where the loss is in an aggregate amount equal to or less than thirty percent (30%) of the FMV, and (1) no Event of Default exists and (2) all necessary government approvals will be obtained to allow the rebuilding and reoccupancy of the Improvements, but only as required to restore the Real Property to the condition immediately prior to the Casualty or Taking, or the demolition of the Improvements, as the case may be (the "**Condition of the Real Property**"), then, and only then, the Insurance Proceeds or the Award (after reimbursement of any expenses incurred by Lender) shall be applied in the manner set forth below and disbursed to Mortgagor for the cost of restoring, repairing, replacing, rebuilding, or demolishing the Real Property (or any portion thereof), as the case may be, to the Condition of the Real Property (collectively the "**Repair Work**") subject to the Casualty or Taking. Mortgagor hereby covenants and agrees to commence and diligently to prosecute the Repair Work; provided always, that Mortgagor shall pay all costs (and if required by Lender, Mortgagor shall deposit the total thereof with Lender in advance) of the Repair Work in excess of the net Insurance Proceeds or Award made available pursuant to the terms hereof.

(v) Except as otherwise provided in this Security Instrument, in the event of any Casualty or Taking, the Mortgagor shall (a) deliver to the Lender within ninety (90) days of the occurrence of any Casualty or Taking a written notice of its election to restore or demolish the portion of the Improvements affected by the Casualty or Taking in accordance with the terms and provisions of subsection (iv) above, and (b) actually commence such restoration or demolition, as the case may be, within one-hundred fifty (150) days of the occurrence of any Casualty or Taking, in which case the provisions governing the disbursement of the Insurance Proceeds or Award to Mortgagor set forth in subsection (iv) above shall apply; provided, however, if Mortgagor fails to timely make such election and commence such restoration or demolition, as the case may be, within one-hundred fifty (150) days of the occurrence of any such Casualty or Taking, Lender may elect in its absolute sole discretion and without regard to the adequacy of the security for the Obligations, to (A) apply the Insurance Proceeds collected upon any Casualty or Award collected upon any Taking to the payment of the Obligations in accordance with the Note and the Loan Agreement with or without accelerating the Maturity Date of the Note and declaring the entire outstanding Obligations to be immediately due and payable, or (B) require Mortgagor to commence such restoration or demolition, as the case may be, of the affected Improvements or demolish the same and hold the Insurance Proceeds or Award proceeds and make them available to Mortgagor for the cost of the Repair Work or demolition costs, as the case may be, in the manner set forth below.

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(vi) In the event Mortgagor is either entitled to disbursements from the Insurance Proceeds or Award proceeds held by Lender or Lender elects to make such proceeds available to Mortgagor for the Repair Work, such proceeds shall be disbursed to Mortgagor for costs and expenses incurred by Mortgagor for the Repair Work following (A) the receipt by Lender of a written request from Mortgagor for disbursement and a certification by Mortgagor to Lender that the applicable portion of the Repair Work has been completed or will be completed with the proceeds of the subject disbursement, (B) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the applicable portion of the Repair Work, and (C) for disbursement requests in excess of \$10,000.00 with respect to any single portion of the Repair Work, or for any single portion of the Repair Work that is structural in nature, delivery to Lender of (1) affidavits, conditional lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Real Property (or any portion thereof) have been, or upon receipt of the payment described in such affidavit or conditional lien waiver will have been, paid all amounts due for labor and materials furnished to the Real Property (or any portion thereof) through the date covered by such draw request, less any retainage, and (2) a certification from an inspecting architect, engineer or other third party reasonably acceptable to Lender describing the completed portion of the Repair Work and verifying its completion and cost. Lender shall not be required to make any such advances more frequently than one time in any calendar month unless otherwise agreed to between Mortgagor and Lender. For Repair Work or demolition which is anticipated to cost in excess of \$50,000.00, Lender may, in any event, require that all plans and specifications for the Repair Work be submitted to and approved by Lender prior to commencement of the Repair Work (which approval shall not be unreasonably withheld or delayed). In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any Repair Work. With respect to disbursements to be made by Lender, no payment made prior to the final completion of the Repair Work shall exceed ninety percent (90%) of the cost of the Repair Work performed from time to time (except that a contractor or subcontractor may be paid its share of any retainage upon such contractor's or subcontractor's completion of its entire portion of the Repair Work and its execution and delivery to Mortgagor (with copies to Lender) of all applicable lien waivers and/or lien releases); funds other than Insurance Proceeds or the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for the Repair Work or irrevocably committed to the satisfaction of Lender by or on behalf of Mortgagor for the Repair Work, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Repair Work, free and clear of all liens or claims for lien. Any surplus which may remain out of the Insurance Proceeds or Award held by Lender after payment of the costs of the Repair Work shall be paid to Mortgagor or, if an Event of Default exists, shall in the sole and absolute discretion of Lender, be retained by Lender and applied to payment of the Obligations or paid to the party or parties legally entitled to such surplus.

(vii) If Mortgagor delivers an Arbitration Notice to Lender, then Mortgagor and Lender shall, within five (5) Business Days after Lender's receipt of any such notice, jointly designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of

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properties similar to the Real Property. Not later than five (5) Business Days after such joint designation of such individual, Mortgagor and Lender shall submit to such individual their separate determinations of the commercially reasonable settlement amount for the applicable Casualty together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The individual so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Mortgagor and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Mortgagor.

(viii) In the event that Mortgagor and Lender are unable to agree on one individual to act as arbitrator within the five (5) Business Day period following Lender's receipt of the Arbitration Notice as contemplated under Section 9.2(a)(vii) above, then, in such case, the procedure set forth in this subsection (viii) shall be observed in lieu thereof. Not later than five (5) Business Days after Lender's receipt of an Arbitration Notice, Mortgagor and Lender shall each designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Real Property and notify the other party of such appointment by identifying the appointee. Not later than five (5) Business Days after both arbitrators are appointed, the two selected arbitrators shall select a third arbitrator who shall also be an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Real Property, such selection to take place within five (5) Business Days after such arbitrator's appointment. Mortgagor and Lender shall submit to such third arbitrator their separate determinations of the commercially reasonable settlement amount together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The third arbitrator so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Mortgagor and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Mortgagor.

(ix) Time shall be of the essence with respect to the performance of any and all rights and obligations under this Section 9.2. The decisions of the arbitrator(s), if any, engaged under this Section 9.2, shall be final and binding and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud or corruption. All of the reasonable, actual costs and expenses of the arbitrator(s), if any, engaged under this Section 9.2, shall be the sole responsibility of Mortgagor.

(x) Notwithstanding anything to the contrary contained herein, the Insurance Proceeds or Award disbursed to Mortgagor in accordance with the terms and provisions of this Security Instrument shall be reduced by the reasonable costs (if any) incurred

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by Lender in the adjustment and collection thereof and by the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the Repair Work and reviewing the plans and specifications therefor).

(b) If Mortgagor undertakes the Repair Work, then Mortgagor shall promptly and diligently, at Mortgagor's sole cost and expense and regardless of whether the Insurance Proceeds or Award, as applicable, shall be sufficient for the purpose, complete the Repair Work to restore the Real Property as nearly as possible to its value, condition and character immediately prior to the Casualty or Taking in accordance with the foregoing provisions.

(c) Any partial reduction in the Obligations resulting from Lender's application of any sums received by it under this Section 9.2 shall take effect only when Lender actually receives such sums and elects to apply such sums to the Obligations and, in any event, the unpaid portion of the Obligations shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof.

ARTICLE 10 - - INDEMNIFICATION

Section 10.1. GENERAL INDEMNIFICATION. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations, and the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Mortgagor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Mortgagor to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 10; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements

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contained in any Lease; (1) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Mortgagor in this Security Instrument or any other Loan Document. Notwithstanding the foregoing, the Mortgagor shall have no obligation to any Indemnified Person for any Losses to the extent arising from the gross negligence or willful misconduct of such Indemnified Person as determined in a final, non-appealable decision of a court of competent jurisdiction or of an arbitration panel. Any amounts payable to Lender by reason of the application of this Section 10.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

Section 10.2. MORTGAGE AND/OR INTANGIBLE TAX. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 10.3. ERISA INDEMNIFICATION. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 4.12 of the Loan Agreement.

Section 10.4. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnified Party and Mortgagor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Mortgagor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

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ARTICLE 11 -- WAIVERS

Section 11.1. WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 11.2. MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 11.3. WAIVER OF NOTICE. To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provides for the giving of notice by Lender to Mortgagor and except with respect to matters for which Lender is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

Section 11.4. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

Section 11.5. SURVIVAL. The indemnifications made pursuant to Section 10.3 hereof and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect in accordance with their terms and shall survive and shall in no way be impaired by (except to the extent expressly set forth therein): any satisfaction, release or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument, the Note or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto.

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ARTICLE 12 - - MORTGAGOR REPRESENTATIONS AND WARRANTIES

Section 12.1. Title; Priority of Liens; Permitted Encumbrances. Mortgagor represents and warrants to the Lender that on the date hereof:

(a) Title; Priority of Liens; Permitted Encumbrances.

(i) Mortgagor has good, marketable and insurable fee simple title to the Land and good title to the balance of the Property, free and clear of all Liens whatsoever except for the Permitted Encumbrances. This Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a legal, valid and enforceable (as enforceability may be limited by Debtor Relief Laws) perfected first priority lien on the Property, subject only to the Permitted Encumbrances, and (b) perfected first priority security interests in and to, and perfected collateral assignments of, all personalty (including Leases), all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances. There are no mechanics' liens, materialmen's liens or other encumbrances affecting the Property, and no rights exist which under law could give rise to any such claims for payment of work, labor or materials which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. The Assignment of Leases is freely assignable without the consent of Mortgagor and, when properly recorded in the appropriate records, will create a perfected first priority security interest in and to, and perfected collateral assignment of, all Leases and Rents, all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances.

(ii) None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by this Security Instrument and the other Loan Documents, materially and adversely affects the value or marketability of the Property, impairs the use or the operation of the Property or impairs Mortgagor's ability to pay the Obligations as and when required under the Loan Documents.

(b) Use of Property; Compliance; Certificate(s) of Occupancy; Licenses.

(i) Following Completion of the Improvements, the Property shall be used exclusively as an apartment building and other appurtenant and related uses.

(ii) Following Completion of the Improvements, the Property and the occupancy, use and operation thereof shall comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and all covenants and restrictions. Mortgagor is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which could be reasonably likely to have a Material Adverse Effect. There has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Mortgagor's obligations under any of the Loan Documents.

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(iii) Following Completion of the Improvements, all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property by Mortgagor as an apartment building (collectively, the "Licenses"), shall have been obtained and shall be in full force and effect and shall not be subject to revocation, suspension or forfeiture. Mortgagor shall keep and maintain all Licenses necessary for the operation of the Property as an apartment building. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

(c) Physical Condition. Following Completion of the Improvements, the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, shall be in good repair and condition, there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Mortgagor has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond. The Property is free from damage covered by fire or other casualty. Following Completion of the Improvements, all liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Legal Requirements.

(d) Property Operating Agreements. Each Property Operating Agreement is or will be in full force and effect as of the time needed. With respect to Property Operating Agreements which currently exist, neither Mortgagor nor to the best of Mortgagor's knowledge, any other party to any Property Operating Agreement, is in default thereunder, and to the best of Mortgagor's knowledge after due inquiry, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Property Operating Agreement has been modified, amended or supplemented except as disclosed on Schedule B of the Title Insurance Policy.

(e) Condemnation. No Condemnation or other proceeding has been commenced or, to Mortgagor's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

(f) Utilities and Public Access. The Property (a) is located on or adjacent to a public road and has direct legal access to such road, or has access via an irrevocable easement or irrevocable right of way permitting ingress and egress to/from a public road, and (b) is served by or has uninhibited access rights to public or private water and sewer (or well and septic) and all required utilities, all of which are appropriate for the current use of the Property. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the

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use of the Property for its respective current purposes have been completed, are physically open and are dedicated to public use and have been accepted by all Governmental Authorities.

(g) Separate Lots. The Land is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

(h) Assessments. There are no taxes, pending or proposed special or other governmental assessments for public improvements or other outstanding governmental charges (including, without limitation, water and sewage charges) otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(i) Insurance. Mortgagor has obtained and has delivered to Lender certified copies of all Policies reflecting the insurance coverages, amounts and other requirements set forth in this Security Instrument. No Person, including Mortgagor, has done, by act or omission, anything which would impair the coverage of any such Policy.

(j) Flood Zone. None of the Improvements are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to this Security Instrument is in full force and effect.

(k) Leases. The Property is not subject to any Leases other than the Leases described on the rent roll delivered to Lender on or prior to the Effective Date (the "**Rent Roll**"). Mortgagor is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, there are no defaults by Mortgagor or any tenant under any Lease, and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults under any Lease. No Rent has been paid more than one (1) month in advance of its due date. There are no offsets or defenses to the payment of any portion of the Rents. All work to be performed by Mortgagor under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Mortgagor to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein which is still in effect. Except as described on the Rent Roll, no tenant under any Lease has sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any Lease has any right or option for additional space in the Improvements.

(l) Boundaries. Except as may be disclosed in any title policy or survey delivered to the Lender in connection with the Loan, all of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and

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building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements., except as otherwise disclosed on the Survey.

(m) Title Insurance Policy and Survey. The Title Insurance Policy is in full force and effect, all premiums thereon have been paid and no claims have been made thereunder and no claims have been paid thereunder. Neither Mortgagor, nor to Mortgagor's knowledge, any other Person, has done, by act or omission, anything that would materially impair the coverage under the Title Insurance Policy. The Title Insurance Policy contains no exclusion for, or affirmatively insures (except if the Property is located in a jurisdiction where such affirmative insurance is not available in which case such exclusion may exist), (a) that the area shown on the Survey is the same as the property legally described in this Security Instrument and (b) to the extent that the Property consists of two or more adjoining parcels, such parcels are contiguous.

(n) Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity and to the best of Mortgagor's knowledge, there are no illegal activities or activities relating to any controlled substances at the Property.

(o) Management Agreements. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

(p) Assignment of Leases. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to a license granted to Mortgagor to exercise certain rights and to perform certain obligations of the lessor under the Leases, as more particularly set forth therein. No Person other than Lender has any interest in or assignment of Mortgagor's interest in the Leases or any portion of the rents due and payable or to become due and payable thereunder.

(q) Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under applicable Legal Requirements in connection with the transfer of the Property to Mortgagor have been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, this Security Instrument, have been paid or are being paid simultaneously herewith. All taxes and governmental assessments due and owing in respect of the Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established hereunder.

(r) Forfeiture. Neither Mortgagor nor any other Person in occupancy of or involved with the operation or use of the Property has committed any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of the Obligations. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

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(s) Survival of Representations. Mortgagor agrees that all of the representations and warranties of Mortgagor set forth in this Article 12 and elsewhere in this Security Instrument and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Security Instrument or any of the other Loan Documents by Mortgagor. All representations, warranties, covenants and agreements made in this Security Instrument or in the other Loan Documents by Mortgagor shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE 13 - - NOTICES

All notices, service of process or other written communications required or permitted hereunder shall be given and shall become effective in accordance with Section 8.12 of the Loan Agreement.

ARTICLE 14 - - APPLICABLE LAW

Section 14.1. GOVERNING LAW.

THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS.

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ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 14.2. USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal Obligations of Mortgagor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding Obligations of Mortgagor to Lender, or if there is no such Obligations, shall immediately be returned to Mortgagor.

Section 14.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby

ARTICLE 15 - - MISCELLANEOUS PROVISIONS

Section 15.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Lender, but only by an agreement in writing signed by the Mortgagor and the Lender.

Section 15.2. SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors and assigns forever.

Section 15.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents is held to be invalid, illegal or unenforceable in any respect, then the Loan Agreement, the Note, this Security Instrument or the other Loan Documents shall be construed without such provision.

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Section 15.4. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 15.5. HEADINGS, ETC.. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any obligations or indebtedness heretofore existing against the Property, then, to the extent of the funds so used, then the Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such obligations or indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interests created herein as cumulative security for the payment and performance of the Obligations.

Section 15.8. ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Lender with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.9. LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 15.10. JOINT AND SEVERAL LIABILITY. If the Mortgagor consists of more than one Person, references herein to "the Mortgagor" shall be read as "each such Mortgagor", "all Mortgagors", or "any or all Mortgagors", jointly and severally, whichever reading maximizes the Lender's rights and the Mortgagors' obligations under this Security Instrument.

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Section 15.11. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Obligations, or any part thereof.

Section 15.12. Consents. Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Lender deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Lender for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

Section 15.13. Employee Benefit Plan. During the term of this Security Instrument, unless Lender shall have previously consented in writing, (i) Mortgagor shall take no action that would cause it to become an "employee benefit plan" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under the state statutes, and (ii) Mortgagor shall not sell, assign or transfer the Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Lender its written assumption of the obligations of this covenant.

ARTICLE 16 - - STATE-SPECIFIC PROVISIONS

Section 16.1. PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2. TYPE OF REAL ESTATE. Mortgagor acknowledges that the transaction of which this Security Instrument is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "**Foreclosure Act**") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

Section 16.3. INTEREST RATE. To the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(l)) apply, the Obligations constitute business loans to a business association which come within the purview of 815 ILCS 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

Section 16.4. ILLINOIS MORTGAGE FORECLOSURE LAW.

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(a) In the event any provision in this Security Instrument shall be inconsistent with any provision of the Foreclosure Act, the provisions of the Foreclosure Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Security Instrument shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Lender to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the indebtedness secured by this Security Instrument or by the judgment of foreclosure.

(d) In addition to any provision of this Security Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or, at its request, to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701, 5/15-1702, 5/15-1703 and 5/15-1704 of the Foreclosure Act.

(e) MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS SECURITY INSTRUMENT, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. MORTGAGOR FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS LENDER MAY DETERMINE. LENDER SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS SECURITY INSTRUMENT AND LENDER SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN LENDER'S SOLE DISCRETION.

(f) THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE

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PROPERTY SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

Section 16.5. FUTURE ADVANCES; MAXIMUM INDEBTEDNESS. This Security Instrument is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in the Loan Documents, whether such advances are obligatory or to be made at the option of Lender, or otherwise, to the same extent as if such future advances were made on the date of execution of this Security Instrument, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Security Instrument to the contrary, the maximum principal amount of the indebtedness secured by this Security Instrument shall not exceed **\$300,000,000.00**, plus all costs of enforcement and collection of this Security Instrument and the other Loan Documents, including reasonable attorney's fees, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Loan Documents.

Section 16.6. INSURANCE DISCLOSURE. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Mortgagor provides evidence of the insurance coverage required by the Loan Documents, the Lender may purchase such insurance at the Mortgagor's expense to protect the Lender's interests in the Mortgagor's collateral. This insurance may, but need not, protect the Mortgagor's interests. The coverage that the Lender purchases may not pay any claim that the Mortgagor may make or any claim that is made against the Mortgagor in connection with the collateral. The Mortgagor may later cancel any insurance purchased by the Lender, but only after providing evidence that the Mortgagor has obtained insurance as required by the Loan Documents. If the Lender purchases insurance for the collateral, the Mortgagor will be responsible for the costs of that insurance including the insurance premium, interest and any other charges that the Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations of the Mortgagor. The costs of the insurance may be more than the cost of insurance that the Mortgagor may be able to obtain on the Mortgagor's own.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

ONNI GRAND LIMITED PARTNERSHIP,
a Delaware limited partnership

By: 

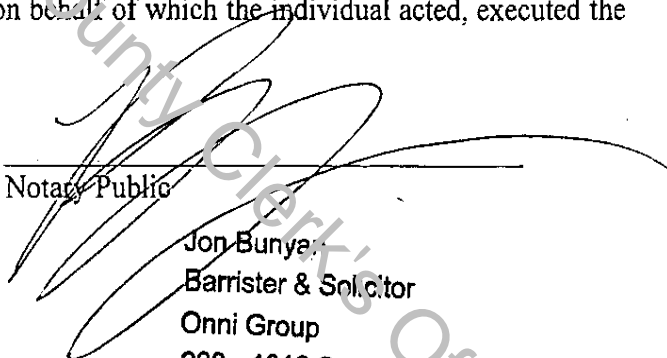
Name: Sam Parrotta
Title: Authorized Signatory

ACKNOWLEDGMENT

PROVINCE
~~STATE OF BRITISH COLUMBIA~~
CITY
~~COUNTY OF VANCOUVER ()~~ ss.:

On the 15 day of October, in the year 2019 before me, the undersigned, personally appeared SAM PARROTTA personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public



Jon Bunya
Barrister & Solicitor
Onni Group
200 - 1010 Seymour Street
Vancouver, B.C., V6B 3M6
T: (604) 602 - 7711



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U. S. Department of State

GENERAL AUTHENTICATION CERTIFICATE

VENUE

CANADA

Country

PROVINCE OF BRITISH COLUMBIA

State, Province, etc.

CITY OF VANCOUVER

City

U.S. CONSULATE GENERAL

Name of Consular Post

I certify that the official named below whose true signature and official seal are, respectively, subscribed and affixed to the annexed document, was, on this day, empowered to act in the official capacity designated in the annexed document, to which faith and credit are due.

Jon Bunyan

Typed Name of Affiant

Signature of Consular Officer

J. Rush Marburg

Typed Name of Consular Officer

Consul of the United States of America

Title of Consular Officer

10-21-2019

Date (mm-dd-yyyy)

(SEAL)

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SCHEDULE A

LEGAL DESCRIPTION

PARCEL 1:

SUB-LOTS 1 THROUGH 5, BOTH INCLUSIVE, (EXCEPT THE WEST 16 FEET OF SUB-LOTS) IN THE SUBDIVISION OF LOTS 1,2, AND 3 IN BLOCK 6 IN BUTLER, WRIGHT AND WEBSTER'S ADDITION TO CHICAGO IN THE NORTH 1/2 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 4 TO 8 INCLUSIVE, EXCEPT THE SOUTH 10 FEET THEREOF, IN BLOCK 6 OF BUTLER, WRIGHT AND WEBSTER'S ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, ALSO THE WEST 16 FEET OF LOTS 2 TO 5 TOGETHER WITH THE WEST 16 FEET, EXCEPT THE SOUTH 10 FEET THEREOF, OF LOT 1 IN E. BLACKMAN'S SUBDIVISION OF LOTS 1,2 AND 3 IN SAID BLOCK 6, ALSO THAT PART OF THE NORTH 1/2 OF BLOCK 6 IN ASSESSOR'S DIVISION OF THAT PART EAST OF THE RIVER AND SOUTH AND WEST OF ERIE STREET, KNOWN AS KINGSBURY TRACT, THAT LAYS EAST OF A LINE 144 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID BLOCK 6 ALL OF THE ABOVE BEING SITUATED IN THE NORTH 1/2 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 2 FOR INGRESS AND EGRESS AS CREATED BY DEED RECORDED OCTOBER 22, 1962 AS DOCUMENT 18624759, MADE BY J. EMIL ANDERSON & SONS, INC. TO L-H REALTY COMPANY, IN COOK COUNTY, ILLINOIS.

Property Address: 369 West Grand Avenue, Chicago, IL 60654

PERMANENT INDEX NUMBER: 17-09-131-004-0000

PERMANENT INDEX NUMBER: 17-09-242-005-0000

PERMANENT INDEX NUMBER: 17-09-242-009-0000

PERMANENT INDEX NUMBER: 17-09-242-010-0000