

Illinois Anti-Predatory Lending Database Program

Doc#: 2022320004 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 08/10/2020 09:45 AM Pg: 1 of 32

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 03-23-202-025-0000

Address:

Street: 1500 S Wolf ROad

Street line 2:

City: Wheeling

State: IL

ZIP Code: 60090

Lender: MetLife Real Estate Lending LLC

Borrower: BCORE Corridor Chicago LLC

Loan / Mortgage Amount: \$217,500,000.00

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: F78EF4B1-7C46-4B87-AD1D-88FEF5DB1BB6

Execution date: 6/25/2020

UNOFFICIAL COPY

RECORDING REQUESTED
BY AND WHEN
RECORDED RETURN TO:

Devan H. Papat, Esq.
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, Illinois 60661

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

BY

**BCORE CORRIDOR CHICAGO LLC,
a Delaware limited liability company,**

to

**METLIFE REAL ESTATE LENDING LLC,
a Delaware limited liability company**

Dated: June 25, 2020

Location: 1500 S. Wolf Rd.
Wheeling, Illinois

CC# 1190381520XKJ

UNOFFICIAL COPY

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Security Instrument**”) is made as of this 25th day of June, 2020 by **BCORE CORRIDOR CHICAGO LLC**, a Delaware limited liability company, having its principal place of business at 345 Park Avenue, New York, NY 10154 (“**Individual Borrower**”), to **METLIFE REAL ESTATE LENDING LLC**, a Delaware limited liability company, having an address at One MetLife Way, Whippany, New Jersey 07981-1449 (together with its respective successors and/or assigns, collectively, “**Lender**”).

WITNESSETH:

WHEREAS, this Security Instrument is given to secure a loan (the “**Loan**”) advanced by Lender pursuant to that certain Loan Agreement dated as of the date hereof between the parties identified on the signature pages thereof (including Individual Borrower), collectively as Borrower (each individually or collectively as the context may require, “**Borrower**”) and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”; capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement) and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the “**Note**”):

WHEREAS, Individual Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of the obligations of Borrower under the Note, the Loan Agreement and the other Loan Documents (as hereinafter defined); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and the payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, 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, and all other documents evidencing or securing the Debt 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 the Loan Documents:

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 Property Conveyed. To secure payment and performance of all terms, covenants and obligations of Borrower set forth in the Loan Documents, Individual Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender the following property, rights, interests and estates now owned, or hereafter acquired by Individual Borrower (collectively, the “**Property**”):

UNOFFICIAL COPY

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

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

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

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements 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 Individual Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Individual Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Land is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery,

UNOFFICIAL COPY

appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Individual Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Individual Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, license, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Individual Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Individual Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Individual Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**") and all right, title and interest of Individual Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Individual Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(i) 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;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, 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;

UNOFFICIAL COPY

(k) 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;

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

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses (to the extent permitted by applicable law), plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto (subject to any restrictions on assignment), respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Individual Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of any Event of Default under the Loan Agreement or any other Loan Document, to receive and collect any sums payable to Individual Borrower thereunder, provided that, unless an Event of Default has occurred and is continuing, Individual Borrower shall be entitled to act in connection with any of the foregoing in accordance with the applicable requirements of the Loan Agreement and other Loan Documents and provided such actions do not violate any covenant contained herein or therein;

(n) Trademarks. 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;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Individual Borrower with respect to the Property, including, without limitation, all accounts, escrows, reserves, deposits and impounds established or maintained pursuant to the Loan Agreement, the Cash Management Agreement, and the Clearing Account Agreement (collectively, the "**Accounts**"); together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Individual Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(q) Tort Claims. All commercial tort claims Individual Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Interest Rate Protection Agreement. Any Interest Rate Protection Agreement, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

UNOFFICIAL COPY

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

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

(u) Other Rights. Any and all other rights of Individual Borrower in and to the items set forth in subsections (a) through (t) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Individual Borrower 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 Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements, all beneficial easements appertaining thereto and the Fixtures are collectively referred to as the "Real Property") 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 conveyed hereby.

Section 1.2 Assignment of Rents. Individual Borrower hereby absolutely and unconditionally assigns to Lender all of Individual Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Individual Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to Sections 7.1(c) and 7.1(d) of this Security Instrument, Section 3.1.16 of the Loan Agreement and the terms and provisions of the Cash Management Agreement and the Clearing Account Agreement, Lender grants to Individual Borrower a revocable license to (a) collect, receive, use and enjoy the Rents and (b) otherwise deal with and enjoy the rights of lessor under the Leases. Individual Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums in accordance with the terms of the Loan Documents. This assignment of Rents shall not effect a pro tanto payment of the Indebtedness evidenced by, or arising under, the Loan Documents or the obligations of Borrower pursuant to the Environmental Indemnity.

Section 1.3 Security Agreement. This Security Instrument is both a mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Individual Borrower in the Property. By executing and delivering this Security Instrument, Individual Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in all of Individual Borrower's right, title and interest, whether now owned or hereafter acquired, in, to or under the Fixtures (including in any event all "fixtures" (as defined in Article 9 of the Uniform Commercial Code)), the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). Individual Borrower hereby grants to Lender a first-priority security

UNOFFICIAL COPY

interest in the Clearing Account and the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first-priority security interest in the Clearing Account and the Cash Management Account, including, without limitation, filing UCC-1 financing statements and continuations thereof upon Lender's request therefor. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Security Instrument. 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 Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Individual Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Individual Borrower shall pay to Lender upon written demand any and all out of pocket expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Individual Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Individual Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Individual Borrower (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement (with Individual Borrower as debtor and Lender as secured party) filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Individual Borrower 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 deposited in the Accounts (as defined in the Cash Management Agreement) and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument, the Cash Management Agreement, the Loan Agreement or the other Loan Documents.

Section 1.6 Characterization of Property. The grant of a security interest to Lender in this Security Instrument shall not be construed to limit or impair the lien of this Security Instrument or the rights of Lender with respect to any property which is real property or which the

UNOFFICIAL COPY

parties have agreed to treat as real property. To the fullest extent permitted by law, everything used in connection with the production of Rents is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to Lender and its successors and assigns, forever, pursuant to the terms and conditions set forth herein and in the Loan Documents;

WITH POWER OF SALE (to the extent permitted by applicable law), to secure the payment to Lender of the indebtedness secured hereby and performance of the Other Obligations (as hereinafter defined) at the time and in the manner provided for in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents;

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

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 **Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2 **Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (collectively, the "Other Obligations"):

- (a) the performance of all other obligations of Individual Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 **Debt and Other Obligations.** The obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

UNOFFICIAL COPY

ARTICLE 3 - BORROWER COVENANTS

Individual Borrower covenants and agrees that:

Section 3.1 **Payment of Debt.** Individual Borrower will pay, or will cause to be paid, the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.2 **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. In the event of any conflict between the provisions of this Security Instrument and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

Section 3.3 **Insurance.** Individual Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Individual Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 **Maintenance of Property.** Individual Borrower shall cause the Property to be maintained in a good and safe condition and repair pursuant to and in accordance with the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, Tenant finish and refurbishment of the Improvements) without the consent of Lender or except as permitted under the Loan Agreement. Individual Borrower shall (a) 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 (b) complete and pay for any structure at any time in the process of construction or repair on the Land, in each case, to the extent provided for in, and pursuant to and in accordance with, the Loan Agreement.

Section 3.5 **Waste.** Individual Borrower shall not commit or suffer any physical waste of the Property or make any change in the use of the Property which reasonably might 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 reasonably might be expected to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially adversely impair the value of the Property or the security of this Security Instrument. Individual Borrower 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 3.6 **Payment for Labor and Materials.** (a) Subject to and to the extent required under the Loan Agreement, Individual Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and will not permit to exist beyond the due date thereof any lien or security interest on the Property or any part of the Property, even though inferior to the liens and the security interests hereof, except as allowed under the terms of the Loan Agreement.

UNOFFICIAL COPY

(b) After prior written notice to Lender, Individual Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Individual Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) except with respect to a Permitted Encumbrance or Permitted Debt, such proceeding shall suspend the collection of the Labor and Material Costs from Individual Borrower and from the Property or Individual Borrower shall have paid all of the Labor and Material Costs under protest or Individual Borrower shall have furnished security as provided in clause (vi) below, (iv) such proceeding shall be permitted under and be conducted in accordance with (A) all applicable Legal Requirements and (B) the provisions of any other instrument to which Individual Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) except with respect to a Permitted Encumbrance or Permitted Debt, Individual Borrower shall have furnished the security as may be required in the proceeding, or as may be required pursuant to the Loan Agreement to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 3.7 Performance of Other Agreements. Individual Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Individual Borrower pursuant to the Loan Agreement and any other Loan Document.

Section 3.8 Change of Name, Identity or Structure. Except as permitted under the Loan Agreement, Individual Borrower shall not change Individual Borrower's name, identity (including its trade name or names), domicile or Individual Borrower's state of incorporation without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender and (c) in the case of a change in Individual Borrower's structure or domicile/state of incorporation, without first obtaining the prior written consent of Lender. Individual Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Individual Borrower does not now have an organizational identification number and later obtains one, Individual Borrower shall promptly notify Lender in writing of such organizational identification number. Individual Borrower shall authorize, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Individual Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Individual Borrower intends to operate the Property, and representing and warranting that Individual Borrower does business under no other trade name with respect to the Property.

ARTICLE 4 - OBLIGATIONS AND RELIANCES

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

UNOFFICIAL COPY

construed so as to deem the relationship between Individual Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 **No Reliance on Lender.** The general partners, members, principals and (if Individual Borrower is a trust) beneficial owners and affiliates of Individual Borrower are experienced in the ownership and operation of properties similar to the Property, and Individual Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Neither Individual Borrower nor any other Borrower is relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 **No Lender Obligations.** (a) Notwithstanding the provisions of subsections 1.1(h) and (m) or Section 1.2, 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 4.4 **Reliance.** Individual Borrower 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 in Article III 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 in Article III of the Loan Agreement.

ARTICLE 5 - FURTHER ASSURANCES

Section 5.1 **Recording of Security Instrument, etc.** Individual Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Individual Borrower 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,

UNOFFICIAL COPY

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 prohibited by law so to do.

Section 5.2 **Further Acts, etc.** Individual Borrower will, at the cost of Individual Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, 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 deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Individual Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Individual Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to file in the name of Individual Borrower or without the signature of Individual Borrower 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 Individual Borrower as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Individual Borrower 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. Individual Borrower 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 5.2 in the event Individual Borrower fails to perform such obligations. To the extent not prohibited by applicable law, Individual Borrower 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. Notwithstanding anything to the contrary contained in the immediately preceding two sentences, Lender shall not execute any documents as attorney-in-fact for Individual Borrower unless (a) Individual Borrower shall have failed or refused to execute the same within five (5) Business Days after Lender shall have given notice requesting execution thereof, or (b) an Event of Default has occurred and is continuing and Lender would be materially prejudiced by the delay involved in making such request.

Section 5.3 **Changes in Tax, Debt, 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 Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Individual Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Individual Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Individual Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property,

UNOFFICIAL COPY

or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than thirty (30) days, to declare the Debt 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, Individual Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 **Splitting of Security Instrument; Severing of the Mortgage.** The provisions of Sections 10.2(c) of the Loan Agreement are hereby incorporated by referenced as if fully set forth herein.

Section 5.5 **Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Individual Borrower will issue, in lieu thereof, a replacement Note or other Loan Document to which it was originally a party, 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 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 **Lender Reliance.** Individual Borrower acknowledges that Lender has examined and relied on the experience of Individual Borrower and its general partners, members, principals and (if Individual Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Individual Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Individual Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should an Event of Default under the Loan Agreement be continuing with respect to the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property in accordance with the terms of this Security Instrument and the Loan Documents.

Section 6.2 **No Transfer.** Individual Borrower shall not Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the Loan Agreement.

ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 **Remedies.** Upon the occurrence and during the continuance of any Event of Default, Individual Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Individual Borrower and in and to the Property, to the extent not prohibited by applicable law, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and

UNOFFICIAL COPY

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 entire unpaid Debt to be immediately due and payable;
- (b) institute or cause Lender to institute proceedings, judicial, non-judicial or otherwise, for the complete or partial 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 or cause Lender to institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell or cause Lender to sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Individual Borrower therein and rights of redemption thereof, pursuant to power of sale (if applicable under the laws of the state in which the Property is located), 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; and, without limiting the foregoing:
 - (i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Real Property covered hereby or any improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law; and without limiting the foregoing;
 - (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
 - (iii) Should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable law to sell together with Real Property in accordance with the laws

UNOFFICIAL COPY

governing a sale of Real Property, Lender shall give such notice of Event of Default, if any, and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Borrower, Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder;

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

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

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

(g) 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 Debt and without regard for the solvency of Individual Borrower and/or any other Borrower, any guarantor or indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) revoke the license granted to Individual Borrower under Section 1.2 hereof by written notice of such revocation to Individual Borrower, provided however that such revocation shall be automatic upon an Event of Default set forth in Section 10.1(a)(vi) and (vii) of the Loan Agreement, and upon such revocation, Lender shall immediately be entitled to possession of all Rents and sums due under Lease Guaranties, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Individual Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Individual Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Individual Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may, subject to applicable law, (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;

UNOFFICIAL COPY

(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 Individual Borrower with respect to the Property, whether in the name of Individual Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict Tenants (subject to any non-disturbance agreements that Lender may have entered into with such Tenants, if any), and demand, sue for, collect and receive all Rents and every part thereof; (v) require Individual Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair rental value for the use and occupation of such part of the Property as may be occupied by Individual Borrower; (vi) require Individual Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Individual Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, 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, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just compensation for the services of Lender, its counsel, agents and employees;

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

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

- (i) Taxes and Other Charges;
 - (ii) Insurance Premiums;
 - (iii) Interest on the unpaid principal balance of the Note;
 - (iv) Amortization of the unpaid principal balance of the Note;
 - (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;
- (k) pursue such other remedies as Lender may have under applicable law; or

UNOFFICIAL COPY

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

In the event of a sale under this Section 7.1, by foreclosure, power of sale (if applicable under the laws of the state in which the Property is located) or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, and or 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 Debt in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with law.

Section 7.3 **Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Individual Borrower or any other Borrower and without releasing Individual Borrower from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Upon the occurrence and during the continuance of any Event of Default, Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the reasonable third party cost and expense thereof (including out of pocket attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt 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 such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the date of notice from Lender to Individual Borrower or any other Borrower that such cost or expense was incurred and ending on 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 Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 **Actions and Proceedings.** Subject to the terms of the Loan Agreement, Lender has the right, in its own name or in the name and on behalf of Individual Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding which Lender, in its discretion, decides should be brought to protect its interest in the Property. All third party costs and expenses incurred by Lender in appearing in, defending or bringing such actions or proceedings shall be payable by Individual Borrower and shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.5 **Recovery of Sums Required To Be Paid.** Subject to the terms of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not

UNOFFICIAL COPY

the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Individual Borrower existing at the time such earlier action was commenced.

Section 7.6 Examination of Books and Records. Subject to and in accordance with Section 4.1.6(f) of the Loan Agreement, Lender and its representatives and agents (at Lender's sole cost and expense unless an Event of Default shall have occurred and be continuing, in which event at Individual Borrower's sole cost and expense) shall have the right upon prior written notice to Individual Borrower to examine and audit the records, books, management and other papers of Individual Borrower which reflect upon its financial condition and/or the income, expenses and operations of the Property, at the Property or at any office regularly maintained by Individual Borrower (or any other Borrower) where the books and records are located upon reasonable advance notice to Individual Borrower and with Individual Borrower having a right to have a representative present. Lender shall have the right upon reasonable advance prior notice to make copies and extracts from the foregoing records and other papers. Individual Borrower shall furnish Lender and its representatives and agents convenient facilities for the examination and audit of any such books and records.

Section 7.7 Other Rights, Etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Individual Borrower shall not be relieved of Individual Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Individual Borrower, any other Borrower, or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt 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 Individual Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to 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) Subject to the terms and conditions of the Loan Agreement and during the occurrence of an Event of Default, Lender may resort for the payment of the Debt 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 Debt, 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.

UNOFFICIAL COPY

Section 7.8 **Right to Release Any Portion of the Property.** Subject to the terms and conditions of the Loan Agreement, 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 hereunder 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. Subject to the terms and conditions of the Loan Agreement, Lender may take or release from the liens created by the Loan Documents other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Security Instrument.

Section 7.9 **Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may, to the extent required under the Loan Agreement, impose additional requirements upon Individual Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 **Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, other than Section 11.22 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Individual Borrower or any other Borrower contained in Sections 8.2 and 8.3 herein 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, exercise of a power of sale, or acceptance of a deed in lieu of foreclosure or otherwise, and upon the occurrence and during the continuation of an Event of Default, in the event Lender commences a foreclosure action against the Property, subject to Section 11.22 of the Loan Agreement, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Individual Borrower (but not any partner, member, shareholder, officer, director or agent of Individual Borrower) or any other Borrower. The provisions of Sections 8.2 and 8.3 herein are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Individual Borrower and any other Borrower are fully and personally liable for their respective obligations pursuant to Sections 8.2 and 8.3 herein. The liability of Individual Borrower or any other Borrower with respect to the Loan pursuant to Sections 8.2 and 8.3 herein is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing, or exercising a power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Individual Borrower pursuant to Sections 8.2 and 8.3 herein, whether or not action is brought against any other Borrower or other Person or whether or not any other Borrower or 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 Article 8 herein.

UNOFFICIAL COPY

Section 7.11 **Right of Entry.** Subject to rights of Tenants under their respective Leases and subject to the express terms of the Loan Agreement, upon reasonable prior notice to Individual Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 7.12 **Lender's Right to Perform Individual Borrower's Obligations.** Individual Borrower agrees that, if any Borrower fails to perform any act or to pay any money which Individual Borrower is required to perform or pay under the Loan Documents, then, during the continuance of an Event of Default, Lender may make the payment or perform the act at the cost and expense of Individual Borrower and in Individual Borrower's name or in its own name. Any money paid by Lender under this Section 7.12 shall be reimbursed to Lender in accordance with Section 10.3 of the Loan Agreement.

Section 7.13 **Lender's Remedies against Multiple Parcels.** The Debt and the Obligations hereby secured are also secured by other properties, lots and parcels (each an "Other Property" and collectively, the "Other Properties") covered by other mortgages and deeds of trust (the "Other Mortgages") within and/or outside the state where the Property is located. If this Security Instrument or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations secured hereby, or if Lender exercises its power of sale (if applicable under the laws of the state in which the Property is located), execution may be made upon or Lender may exercise its remedies (including any power of sale (if applicable under the laws of the state in which the applicable Other Property is located)) against any one or more of the Other Properties and not upon the other Other Properties, or upon all of such Other Properties, either together or separately, and at different times or at the same time, and the exercise of such remedies, execution sales or sales under the power of sale herein granted (if applicable under the laws of the state in which the Property is located) may likewise be conducted separately or concurrently, in each case at Lender's election. No event of enforcement taking place against any Other Property, and no failure to prosecute any such other enforcement, shall in any way stay, preclude or bar enforcement of this Security Instrument, and Lender may pursue any or all of Lender's rights and remedies under this Security Instrument until the Debt and the Obligations are paid and discharged in full.

ARTICLE 8 - INDEMNIFICATION

Section 8.1 **General Indemnification.** Individual Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "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 Debt, and the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents to the extent requested by Individual Borrower or any other Borrower; (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

UNOFFICIAL COPY

any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Individual Borrower, any other Borrower, 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 Individual Borrower 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-S, Proceeds from Real Estate 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 8; (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 contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Individual Borrower or any other Borrower which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Individual Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 8.1 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. Notwithstanding the provisions of this Section 8.1, Individual Borrower shall have no liability to any Indemnified Party for any Losses caused solely by the gross negligence or willful misconduct of any Indemnified Party. For purposes of this Article 8, the term “**Indemnified Parties**” means 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, investors or prospective investors in the Securities, as well as 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).

Section 8.2 Mortgage and/or Intangible Tax. Individual Borrower 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

UNOFFICIAL COPY

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 8.3 **ERISA Indemnification**. Individual Borrower 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, out of pocket 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 reasonable discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 3.1.8 or 4.2.11 of the Loan Agreement.

Section 8.4 **Duty to Defend; Attorneys' Fees and Other Fees and Expenses**. In connection with any indemnified obligations of Individual Borrower hereunder, upon written request by any Indemnified Party, Individual Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include Individual Borrower, any other Borrower and any Indemnified Party and Individual Borrower, any such other Borrower 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 Individual Borrower or any other Borrower, 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. Upon demand, Individual Borrower 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.

ARTICLE 9 - WAIVERS

Section 9.1 **Waiver of Counterclaim**. To the extent permitted by applicable law, Individual Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations (provided, however, that the foregoing shall not be deemed a waiver of Individual Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 9.2 **Marshalling and Other Matters**. To the extent permitted by applicable law, Individual Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Individual Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Individual Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to

UNOFFICIAL COPY

the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 9.3 **Waiver of Notice**. To the extent permitted by applicable law, Individual Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or any other Loan Document and expressly provides for the giving of notice by Lender to Individual Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Individual Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or any other Loan Document does not specifically and expressly provide for the giving of notice by Lender to Individual Borrower.

Section 9.4 **Waiver of Statute of Limitations**. To the extent permitted by applicable law, Individual Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 9.5 **Survival**. The indemnifications made pursuant to Section 8.3 herein, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction, release or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument 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 Individual Borrower 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 Individual Borrower from the obligations pursuant hereto.

ARTICLE 10 - EXCULPATION

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 11 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

ARTICLE 12 - APPLICABLE LAW

Section 12.1 **GOVERNING LAW**. THIS SECURITY INSTRUMENT SHALL BE GOVERNED IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 11.3 OF THE LOAN AGREEMENT; PROVIDED THAT ARTICLE 15 AND THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION,

UNOFFICIAL COPY

PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED, SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

Section 12.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Individual Borrower, any other Borrower 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 indebtedness of Borrower 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 indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 12.3 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 13 - DEFINITIONS

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

UNOFFICIAL COPY

Section 14.1 **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 Individual Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 **Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Individual Borrower and Lender and their respective successors and assigns forever.

Section 14.3 **Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 14.4 **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 14.5 **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 14.6 **Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Individual Borrower's and each other Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.7 **Entire Agreement.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Individual Borrower (or Borrower, as applicable) and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Individual Borrower (or Borrower, as applicable) and Lender with respect thereto. Individual Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

UNOFFICIAL COPY

Section 14.8 **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, other than as a result of actions of Lender that constitute gross negligence or willful misconduct. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 14.9 **Joint and Several**. If more than one Person has executed this Security Instrument as "individual Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.

Section 14.10 **No Waiver**. No single or partial exercise by Lender, or delay or omission in the exercise by Lender, of any right or remedy under the Loan Documents shall preclude, waive or limit the exercise of any other right or remedy. Lender shall at all times have the right to proceed against any portion of, or interest in, the Property without waiving any other rights or remedies with respect to any other portion of the Property. No right or remedy under any of the Loan Documents is intended to be exclusive of any other right or remedy but shall be cumulative and may be exercised concurrently with or independently from any other right and remedy under any of the Loan Documents or under applicable law.

ARTICLE 15 - STATE-SPECIFIC PROVISIONS

Section 15.1 **Principles Of Construction**. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 15 shall control and be binding. Further, to the extent that Illinois law is determined to govern matters of construction, validity and/or performance of any of the other Loan Documents and there is any inconsistency between the terms and conditions of this Article 15 and the terms and conditions of the other Loan Documents, the terms and conditions of this Article 15 shall control and be binding.

Section 15.2 **Use of Proceeds**. The Borrower represents and agrees that the Debt is exempt from the limitation upon the amount of interest that may be charged under 815 ILCS 205/4 for one or more of the reasons set forth in such statute, and the Debt constitutes a business loan which comes within the purview of 815 ILCS 205/4.

Section 15.3 **Future Advances**. This Security Instrument secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise. The amount of indebtedness secured hereby may increase or decrease from time to time in accordance with the Loan Documents, and the rate or rates of interest payable may vary from time to time in accordance with the Loan Documents.

Section 15.4 **Limitation on Secured Indebtedness**. It is expressly understood and agreed that the Debt will in no event exceed two hundred percent (200%) of (i) the total face

UNOFFICIAL COPY

amount of the Note plus (ii) the total interest which may hereafter accrue under the Note on such face amount.

Section 15.5 **Waiver of Homestead and Redemption.** Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Borrower acknowledges that the Property does not include “agricultural real estate” or “residential real estate” as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b) Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Security Instrument or other rights of redemption which may run to Borrower or any other “Owner of Redemption”, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

Section 15.6 **Illinois Mortgage Foreclosure Law.**

(a) Illinois Mortgage Foreclosure Law.

(i) In the event that any provisions in this Security Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1501 et seq., as the same may be amended from time to time, the “Act”), the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with Act.

(ii) If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

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

(iv) Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

(v) Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently

UNOFFICIAL COPY

existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Borrower Waivers.

(i) Borrower agrees, to the fullest extent that Borrower may lawfully so agree, that Borrower will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Borrower, for Borrower and all who may claim through or under Borrower, so far as Borrower or those claiming through or under Borrower now or hereafter lawfully may, hereby waives the benefit of all such laws. Borrower, to the extent Borrower may lawfully do so, hereby waives any and all right to have the Property marshaled upon any foreclosure of this Security Instrument, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Security Instrument may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Borrower or Borrower's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

(ii) In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Borrower, on behalf of Borrower, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Security Instrument: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Security Instrument; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Security Instrument, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 15.7 **Collateral Protection Act.** Unless Borrower provides Lender with evidence of the insurance required by this Security Instrument or any other Loan Document, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required under by this Security Instrument or any other Loan Document. If Lender purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that

UNOFFICIAL COPY

Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

Section 15.8 No Lien Management Agreements. Borrower shall include a “no lien” provision in any property management agreement hereafter entered into by Borrower with a property manager for the Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such “no lien” provision or a short form thereof shall, at Lender’s request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

[SIGNATURE PAGE TO FOLLOW]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

Lot 1 in E-Z Por Resubdivision of Lot 3 in Skil Industrial Subdivision, being a Subdivision in the Northeast 1/4 of Section 23, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

For information only:

PIN: 03 23 202 025

Property address: 1500 S. Wolf Road, Wheeling Illinois, 60090

Property of Cook County Clerk's Office