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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



Doc# 2117447007 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 06/23/2021 11:03 AM PG: 1 OF 41

The property identified as: PIN: 19-28-202-019-0000

Address:

Street: 7524 State Road

Street line 2:

City: Bedford Park

State: IL

ZIP Code: 60638

Lender: JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, CITI REAL ESTATE FUNDING INC., DEUTSCHE BANK AG, NEW YORK BRANCH

Borrower: ESA P PORTFOLIO L.L.C. AND ESA P PORTFOLIO OPERATING LESSEE LLC

Loan / Mortgage Amount: \$4,650,000,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

21134775

Certificate number: AAFFC38A-294C-4E94-8BEC-AC14E57128E0

Execution date: 6/16/2021

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## FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

**THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this “**Security Instrument**”) is made as of this 16<sup>th</sup> day of June, 2021, by **ESA P PORTFOLIO L.L.C.**, a Delaware limited liability company (“**Individual Borrower**”), and **ESA P PORTFOLIO OPERATING LESSEE LLC**, a Delaware limited liability company (“**Operator**”; together with Individual Borrower, collectively, “**Mortgagor**”), each having its principal place of business at 11525 N. Community House Road, Suite 100, Charlotte, North Carolina 28277, collectively, as mortgagor, to **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 (together with its successors and assigns, “**JPM**”), **CITI REAL ESTATE FUNDING INC.**, a New York corporation, having an address at 388-390 Greenwich Street, New York, New York 10013 (together with its successors and assigns, “**Citi**”) and **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, 10<sup>th</sup> Floor, New York, New York 10005 (together with its alternate branches, successors and assigns, “**DB**”; DB, together with JPM and Citi, collectively, “**Lender**”), as mortgagee.

### 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, among Individual Borrower, the other entities which are signatories thereto as borrowers (collectively, “**Other Borrowers**”; and together with Individual Borrower, collectively, “**Borrower**”), Operator, the other entities which are signatories thereto as operating lessees (collectively, “**Other Operators**”) and Lender (as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by the Note (as defined in the Loan Agreement);

**WHEREAS**, Operator is an Affiliate (as defined in the Loan Agreement) of Borrower and operates a hotel located on the Land and Improvements (as each such term is defined below) under and pursuant to the Pledged Lease (as defined below), and Operator will directly benefit from the making of the Loan by Lender to Borrower. Furthermore, pursuant to the terms of the Pledged Lease, Operator has agreed to grant Lender the security interests described herein;

**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 herein defined) and Operator desires to secure the payment of the Debt by Borrower as its direct Affiliate; and

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**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its respective 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 intended to be, and are hereby, secured by this Security Instrument (the Loan Agreement, the Note, this Security Instrument and all other documents evidencing or securing the Debt or executed or delivered in connection therewith, are hereinafter referred to collectively as the **“Loan Documents”**).

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

## ARTICLE 1 - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged**. Individual Borrower and Operator each do hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns all of Individual Borrower's and Operator's right, title and interest in and to the following property, rights, interests and estates, whether now owned or hereafter acquired by Individual Borrower and Operator, as the case may be (collectively, the **“Property”**):

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

(b) [Reserved];

(c) Additional Land. All additional lands, estates and development rights (to the extent assignable), in each instance, hereafter acquired by Individual Borrower or Operator for use in connection with the Land and the development thereof 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;

(d) 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”**);

(e) Pledged Lease. All of Operator's estate, right, title and interest in, to and under that certain lease described on Schedule I (as amended, modified and in effect from time to time, the **“Pledged Lease”**) and the leasehold estate created thereby in, inter alia, the Land and Improvements, together with all appurtenances thereto and any and all (i) extensions, renewals, modifications and option rights under the Pledged Lease, (ii) credits to and deposits of Operator under the Pledged Lease and all other options, privileges and rights granted and demised to Operator under the Pledged Lease, (iii) rights or privileges of Operator to terminate, cancel, surrender or merge the Pledged Lease, and (iv) rights of Operator in connection with any rejection by the lessor or its bankruptcy trustee of the Pledged Lease under Section 365 of the Bankruptcy Code (as defined below) to (A) possession of any statutory term of years derived

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from or incident to the operation of Section 365(h)(1) of the Bankruptcy Code or (B) elect under Section 365(h)(1) to terminate or treat the Pledged Lease as terminated;

(f) 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 (to the extent assignable), 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 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, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Individual Borrower or Operator of, in and to the Land and the Improvements, and every part and parcel thereof, with the appurtenances thereto;

(g) Equipment. All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Individual Borrower or Operator, 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, computers and electronic data-processing and other office equipment now owned or hereafter acquired by Individual Borrower or Operator 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) or guests or invitees at the Property except to the extent that Individual Borrower or Operator shall have any right or interest therein;

(h) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Individual Borrower or Operator 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 Equipment 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, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, 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 or Operator’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**”; the Land, the Improvements and the Fixtures are collectively

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referred to as the “**Real Property**”). 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 or Operator shall have any right or interest therein;

(i) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), food and beverages, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other customary hotel equipment and personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Individual Borrower and/or Operator 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 and/or Operator 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. Notwithstanding the foregoing, “**Personal Property**” shall not include any personal property belonging to Tenants under Leases or guests or invitees at the Property except to the extent that Mortgagor shall have any right or interest therein;

(j) **Leases and Rents.** All leases, operating leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, including, without limitation, the Pledged Lease, together with all credits, deposits, options, privileges, right, title and interest of Individual Borrower and/ or Operator and their respective successors and assigns under any of the aforesaid agreements (collectively, the “**Leases**”) whether before or after the filing by or against Individual Borrower or Operator of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time



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(the “**Bankruptcy Code**”), and all right, title and interest of Individual Borrower and Operator, and their respective 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 arising from the Leases and any extension, renewal or replacement thereof, together with all rents, rent equivalents, income, fees, receivables, receipts, accounts, deposits, profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Individual Borrower, Operator or their respective agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Property, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, room service, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising from or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Individual Borrower, Operator or any other operator or manager of the hotel or any commercial space located in the Improvements or acquired from others by Individual Borrower, Operator or any other operator or manager of the hotel (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease, sub-sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, movie rentals, telephone service, in any, from business interruption or other loss of income insurance from the Land and the Improvements whether paid or accrued before or after the filing by or against Individual Borrower or Operator of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds, to the extent assignable, from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt. Notwithstanding the foregoing, “Rents” shall not include (i) Custodial Funds or gratuities collected by or for the benefit of employees at the Property or (ii) Hotel Taxes or any other federal, state and municipal excise, sales, hotel, use and similar taxes collected directly from patrons or guests of the Property as a part of or based on the sales price of any goods, services or other items, such as room, admission and cabaret or similar taxes. This assignment of present and future Leases shall be effective without further or supplemental assignment;

(k) Condemnation Awards. All Awards 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;

(l) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(m) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari or any appeals, applications or proceedings for reduction thereof;

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(n) 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;

(o) Rights. The right, in the name and on behalf of Individual Borrower and Operator, 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;

(p) 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 in each case 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 any business or activity conducted on the Land and any part thereof and all right, title and interest of Individual Borrower and Operator therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuation of an Event of Default under the Loan Agreement, to receive and collect any sums payable to Individual Borrower and Operator thereunder, provided that, unless an Event of Default has occurred and is continuing, Individual Borrower and Operator 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;

(q) Trademarks. To the extent assignable, all tradenames, patents, trademarks, servicemarks, logos, copyrights, goodwill, licenses, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(r) Accounts. All reserves, escrows and deposit accounts maintained by Individual Borrower or Operator with respect to the Property, including, without limitation, all accounts established or maintained pursuant to (i) the Cash Management Agreement, (ii) the Concentration Account and (iii) the Lockbox Agreement; 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;

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

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

(u) Other Rights. Any and all other rights of Individual Borrower and Operator 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 and Operator each expressly grants to Lender, as secured party, a security interest in the portion of the Property owned by Individual

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Borrower, or Operator, as applicable, 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 appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

**Section 1.2 Assignment of Rents.** Individual Borrower and Operator each hereby absolutely and unconditionally assigns (to the extent permitted by applicable law) to Lender all of Individual Borrower's and Operator's right, title and interest in and to all current and future Leases and Rents; it being intended by Individual Borrower and Operator that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Cash Management Agreement and Section 7.1(h) of this Security Instrument, Lender grants to Individual Borrower and Operator a revocable license to (and Individual Borrower and Operator shall have the express right to): (a) collect, receive, use and enjoy the Rents and Individual Borrower and Operator shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt and for use in accordance with the terms of the other Loan Documents and (b) otherwise deal with and enjoy the rights of lessor or lessee, as applicable, under the Leases.

**Section 1.3 Security Agreement.** This Security Instrument is both a real property 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 Mortgagor in the Property. By executing and delivering this Security Instrument, Individual Borrower and Operator each hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures (including in any event all "fixtures" (as defined in Article 9 of the Uniform Commercial Code) located on the Land), the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, 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"). 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 and Operator each 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 and Operator shall pay to Lender within ten (10) Business Days after written demand therefor any and all out of pocket expenses, including reasonable third party legal expenses and attorneys' fees of outside counsel, 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 Mortgagor 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



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commercially reasonable notice to Mortgagor. 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 and Operator (each, as 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, 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 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.

Mortgagor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property for purposes of evidencing the security interests granted to Lender hereunder. For purposes of such filings, Mortgagor agrees to furnish any information requested by Lender promptly upon request by Lender. Mortgagor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements. Mortgagor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor’s own name to, upon the occurrence and during the continuation of an Event of Default, execute in Mortgagor’s name any documents and otherwise to carry out the purposes of this Section 1.4, to the extent that Mortgagor’s authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

**Section 1.5 Pledges of Monies Held.** Mortgagor hereby pledges to Lender all of its respective right, title and interest in and to 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 Lockbox Account, the Concentration Account, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied or distributed as provided in this Security Instrument.

**Section 1.6 Assignment of Contracts.** Mortgagor hereby absolutely and unconditionally assigns to Lender all of Mortgagor’s right, title and interest in and to the Contracts (defined below), to the extent assignable, it being intended that this assignment be an absolute assignment from Mortgagor to Lender and not merely the granting of a security interest. Mortgagor may retain, use and enjoy the benefits of the Contracts; provided that upon the occurrence and during the continuance of an Event of Default (other than the Event of Defaults described in Section 8.1(a)(vi) and Section 8.1(a)(vii) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license described in the preceding sentence shall, upon Lender’s election, be automatically revoked, and Lender may elect to exercise any and all of Lender’s

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rights and remedies hereunder. After such a revocation, Lender shall provide Mortgagor with notice of same. As used herein, “**Contracts**” means, collectively, (a) all contracts between Individual Borrower and/or Operator and third parties in connection with the management, construction, repair, renovation, use, operation or maintenance of the Property, including without limitation, any franchise agreements, any agreements regarding parking facilities for the Property, any architect’s agreements, construction contracts, licensing agreements, subcontracts, service and supply agreements, any other agreements with design professionals, all agreements, allocations, and rights with all utility services serving the Property and all development agreements, reservation agreements, agreements of sale, options to purchase, rights of first refusal or any other preferential right and permits, which have heretofore been or will hereafter be executed by or on behalf of Individual Borrower, Operator or Manager with respect to the Property, or which have been or will hereafter be assigned to or acquired by Individual Borrower and/or Operator with respect to the Property, in each case as the same may thereafter from time to time be supplemented, amended, modified or extended by one or more written agreements supplemental thereto applicable to the Property, but expressly excluding the Management Agreement (the counterparties to such agreements (other than Borrower, Operator or Manager) are hereinafter collectively referred to as the “**Contractors**”); and (b) all warranties, guarantees, and other rights of Individual Borrower, Operator or Manager, direct and indirect, against manufacturers, dealers, suppliers, Contractors, and others in connection with the work done or to be done and the materials supplied or to be supplied to or for the Property.

## CONDITIONS TO GRANT

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

**PROVIDED, HOWEVER**, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, and Individual Borrower, Other Borrowers and Operator shall perform the Other Obligations (hereinafter defined) as set forth in this Security Instrument and shall 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; and Lender will provide, at Mortgagor’s sole cost and expense, a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Mortgagor; provided, however, that Mortgagor’s obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release except as set forth in the last sentence of Section 9.5.

## 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.

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**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 by Individual Borrower and Operator of their respective obligations contained herein;
- (b) the performance by each of Individual Borrower, Operator and the Other Borrowers of their respective obligations contained in the Loan Agreement and any other Loan Document; and
- (c) the performance by each of Individual Borrower, Operator and the Other Borrowers of each of their respective obligations 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.** Individual Borrower’s and the Other Borrowers’ obligations for the payment of the Debt and the performance by each of Individual Borrower, Operator and the Other Borrowers of the Other Obligations that it is obligated to perform shall be referred to collectively herein as the “**Obligations.**”

## ARTICLE 3 - INDIVIDUAL BORROWER AND OPERATOR COVENANTS

Each of Individual Borrower and Operator, each with respect to themselves as applicable, covenants and agrees that:

**Section 3.1 Payment of Debt.** Individual Borrower will pay, or 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.

**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, Operator and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Individual Borrower and Operator shall cause the Property to be maintained in good working order and repair, in all material respects, normal wear and tear excepted. Except as otherwise provided in 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 as otherwise permitted pursuant to the Loan Agreement. Subject to and in accordance with the terms and conditions of the Loan Agreement, Individual Borrower shall (a)

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promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated and (b) complete and pay for any structure at any time in the process of construction or repair on the Land; in the case of each of (a) and (b) hereof as, and to the extent, provided for and governed by the provisions of the Loan Agreement.

**Section 3.5 Waste.** Neither Individual Borrower nor Operator shall commit or suffer any material 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 reasonably might be expected to in any way materially impair the security of this Security Instrument. Neither Individual Borrower nor Operator will, 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) Except as otherwise provided in the Loan Agreement and subject to Section 3.6(b) hereof, Individual Borrower or Operator will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest (except for the Permitted Encumbrances), even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Mortgagor, 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) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) except with respect to a Permitted Encumbrance or Permitted Debt, such proceeding shall suspend the collection of the Labor and Material Costs from Mortgagor and from the Property or Mortgagor shall have paid all of the Labor and Material Costs under protest or Mortgagor shall have furnished security as provided in clause (vi) below, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) except with respect to a Permitted Encumbrance or Permitted Debt, Mortgagor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender and 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 and Operator each shall observe and perform each and every term, covenant and provision to be

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observed or performed by Individual Borrower or Operator, as applicable, pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

## **Section 3.8 Intentionally Omitted.**

**Section 3.9 Title.** Individual Borrower has good and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Operator has good, marketable and insurable leasehold interest to the real property comprising part of the Property and good title to or a leasehold interest in the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith (when filed), will create (a) a valid, perfected first priority Lien on the Property, subject only to Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents, to the extent a security interest may be perfected therein by the recording of this Security Instrument or the filing of a financing statement under the Uniform Commercial Code and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. To Individual Borrower's and Operator's knowledge, except as otherwise disclosed in the schedules to the Loan Agreement or the Title Insurance Policy, there are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of the Loan Agreement or this Security Instrument.

**Section 3.10 Letter of Credit Rights.** If during the continuance of an Event of Default, Individual Borrower or Operator is at any time a beneficiary under a letter of credit relating to any lease or any of the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Individual Borrower or Operator, then Individual Borrower or Operator, as applicable, shall promptly notify Lender thereof and, at the request and option of Lender, Individual Borrower or Operator shall use commercially reasonable efforts to, pursuant to an agreement in form and substance reasonably satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.



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## ARTICLE 4 - OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Mortgagor and Lender.** The relationship between Mortgagor (or any Other Borrower) and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Mortgagor (or any Other Borrower), and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor (or any Other 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 or Operator is a trust) beneficial owners and Affiliates of Individual Borrower and Operator are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Neither Individual Borrower nor Operator 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(j) and (p) 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 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.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 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 Section 4.1 of the Loan Agreement.

## ARTICLE 5 - FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, etc.** Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be

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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 reasonable out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall from time to time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Lender the Property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, on written 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 Mortgagor to the extent Lender may lawfully do so (or in the case of financing statements, without the signature of Mortgagor), one or more financing statements to evidence more effectively the security interest of Lender in the Property. Such financing statements may describe the collateral in the same manner as described in this Security Instrument or may contain an indication or description of collateral that describes such property in any other manner, including, without limitation, all assets of the Mortgagor, as the Lender may determine, in its sole discretion, is necessary or prudent to ensure the perfection of the security interest in the collateral granted to the Lender in connection herewith. Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity upon the occurrence and during the continuance of an Event of Default, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Lender shall not execute any documents as attorney-in-fact for Mortgagor unless (a) Mortgagor 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 in Lender's good faith determination it 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 all or any portion of 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

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Property, Individual Borrower will pay the tax, with interest and penalties thereon, if any (provided that nothing hereunder shall require Individual Borrower to pay any income tax imposed on Lender by reason of its interest in the Property). If Lender is advised in writing by counsel chosen by it that the payment of tax by Individual Borrower and/or 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 one hundred eighty (180) days to declare the Debt immediately due and payable, provided, however, no Spread Maintenance Premium or penalty shall be due or payable in connection therewith and, provided further, that Lender shall not exercise such option if, within one hundred eighty (180) days of receipt by Individual Borrower of such written notice, Individual Borrower shall prepay the outstanding principal balance of the Loan in an amount equal to the Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.6 of the Loan Agreement (provided that Section 2.6.1(a)(v) shall not be applicable). No Spread Maintenance Premium or penalty shall be due or payable in connection with the foregoing prepayment, but if such prepayment of the Loan occurs on a day that is not a Payment Date then (solely to the extent that the Loan Agreement requires such an amount to be included in connection with voluntary prepayments of the Debt), the Debt shall include all amounts of interest which would have accrued on the amount of the Loan to be paid through and including the last day of the Interest Period related to the Payment Date next occurring following the date of such prepayment of the Loan, or, if such prepayment of the Loan occurs on a Payment Date, the Debt shall include all amounts of accrued and unpaid interest through and including the last day of the Interest Period related to such Payment Date.

(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, 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 one hundred eighty (180) days, to declare the Debt immediately due and payable provided, however, no Spread Maintenance Premium or penalty shall be due or payable in connection therewith and, provided further, that Lender shall not exercise such option if, within one hundred eighty (180) days of receipt by Individual Borrower of such written notice, Individual Borrower shall prepay the outstanding principal balance of the Loan in an amount equal to the Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.6 of the Loan Agreement (provided that Section 2.6.1(a)(v) shall not be applicable). No Spread Maintenance Premium or penalty shall be due or payable in connection with the foregoing prepayment, but if such prepayment of the Loan occurs on a day that is not a Payment Date then (solely to the extent that the Loan Documents require such an amount to be included in connection with voluntary prepayments of the Debt), the Debt shall include all amounts of interest which would have accrued on the amount of the Loan to be paid through and including the last day of the Interest Period related to the Payment Date next occurring following the date of such prepayment of the Loan, or, if such prepayment of the Loan occurs on a Payment Date, the Debt shall include all amounts of accrued and unpaid interest through and including the last day of the Interest Period related to such Payment Date.

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(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, provided that Mortgagor shall have the right to contest such amounts in accordance with the terms and conditions of the Loan Agreement.

**Section 5.4 Severing of Mortgage.** The provisions of Section 8.2(c) of the Loan Agreement are hereby incorporated by reference 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 or Operator, as applicable, 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.** Mortgagor acknowledges that Lender has examined and relied on the experience of Mortgagor and its respective general partners, members, principals and (if Individual Borrower or Operator 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. Mortgagor 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 beyond any applicable notice and cure periods in the Loan Documents, Lender can recover the Debt by a sale of the Property.

**Section 6.2 No Sale/Encumbrance.** Neither Mortgagor nor any Restricted Party shall 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 and in accordance with the terms of the Loan Agreement.

## ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Remedies.** To the extent and in the manner provided by applicable law, upon the occurrence and during the continuance of any Event of Default, Individual Borrower and Operator agree that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

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- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) to the extent permitted by applicable law, institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the 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 for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale (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;
- (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 Mortgagor 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) the license granted to Individual Borrower and Operator under Section 1.2 hereof shall automatically be revoked and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property and, subject to applicable law and the rights of any Tenant under any Lease, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise (except for any damages caused by the gross negligence, willful misconduct, fraud or illegal acts of Lender, its agents, nominees or employees) and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may, 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; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise,



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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; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the 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 of outside counsel) 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 and reasonable compensation for the services of Lender, its counsel, agents and employees to the extent provided for in the Loan Agreement;

(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 (to the extent held to be personal property), the Equipment, 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 Mortgagor 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 the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) subject to any express terms of the Loan Documents including, without limitation, Article VII of the Loan Agreement, apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document (collectively, the "**Escrow Deposit**") 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;
- or
- (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;

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provided that any Escrow Deposits remaining on deposit with Lender following application of the Escrow Deposits by Lender as provided above shall be returned to Mortgagor in accordance with and subject to the terms and provisions of the Loan Agreement and the other Loan Documents;

(k) pursue such other remedies as Lender may have under applicable law; or

(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.** Subject to the terms of the Loan Agreement and applicable law, upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and 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.

**Section 7.3 Right to Cure Defaults.** To the extent and in the manner provided by applicable law, upon the occurrence and during the continuance of any Event of Default, Lender may remedy such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof, but without any obligation to do so and without notice to or demand on Mortgagor or any Other Borrower, and without releasing Mortgagor from any obligation hereunder. 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 cost and expense thereof (including reasonable attorneys' fees of outside counsel 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 written 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 after written notice from Lender to Mortgagor or any Other Borrower that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon written demand by Lender therefor.

**Section 7.4 Actions and Proceedings.** Subject to the terms of the Loan Agreement, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, provided that, if no Event of Default has occurred and is continuing, Lender shall endeavor to cooperate with Mortgagor and its legal counsel with respect to any defense by Lender of any such action. Subject to the terms of the Loan Agreement, Lender shall

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also have the right to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property, provided that Lender shall notify Mortgagor that it intends to bring such action at least ten (10) Business Days prior to Lender instituting any such action (unless (a) an Event of Default has occurred and is continuing or (b) the provision of such notice by Lender reasonably threatens to materially prejudice Lender's rights or materially adversely affect Lender's interest in the Property or Lender's rights and remedies under the Loan Documents, in either of which events such notice shall not be required), and Lender shall endeavor to provide to Mortgagor and its legal counsel reasonable periodic status updates as to any such action brought by Lender.

**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 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 Mortgagor existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** Subject to the terms of the Loan Agreement, at reasonable times and upon reasonable prior notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect its financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, subject to the terms of the Loan Agreement at reasonable times and upon reasonable prior notice, but no more often than twice in any calendar year (unless there shall occur an Event of Default, in which event the aforementioned limitation shall no longer apply), Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor (or of any Other Borrower) where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**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. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor, 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 upon the occurrence and during the continuance of an Event of Default, (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 except as provided in the Loan Agreement, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for decline in value of the Property, except arising solely as a result of Lender's gross negligence, willful misconduct, fraud or illegal acts, for

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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) During the continuance of an Event of Default, Lender may resort for the payment of the Debt to any other security held by Lender in connection with the Loan in such order and manner as Lender, in its discretion, may elect. During the continuance of an Event of Default, 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.

**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 from the lien of this Security Instrument 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 Intentionally Omitted.**

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement (except as provided in the last sentence of this Section 7.10), Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Individual Borrower, Operator 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 or acceptance of a deed in lieu of foreclosure or otherwise upon the occurrence and during the continuation of an Event of Default, and in the event Lender commences a foreclosure action against the Property, subject to Section 9.2 of the Loan Agreement<sup>1</sup>, 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

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<sup>1</sup> Exculpation will be covered in Section 9.2 in the Loan Agreement.

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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, Operator 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, Operator 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 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 and Operator 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. Notwithstanding anything to the contrary in this Section 7.10, nothing in this Section 7.10 shall supersede the rights of, and limitations on, Borrower and Lender set forth in Section 9.2 of the Loan Agreement.

**Section 7.11 Right of Entry.** Subject to the rights of Tenants and subject to the express terms of the Loan Agreement, upon reasonable prior written notice to Mortgagor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times during the business day.

**Section 7.12 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 (collectively, 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.



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## ARTICLE 8 - INDEMNIFICATION

**Section 8.1 General Indemnification.** The provisions of Section 10.13(b) 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.

**Section 8.2 Mortgage and/or Intangible Tax.** Each of Individual Borrower and Operator shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

**Section 8.3 ERISA Indemnification.** Each of Individual Borrower and Operator shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees of outside counsel and reasonable and documented out-of-pocket costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any non-exempt prohibited transaction and in obtaining any individual non-exempt 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 breach of any of the representations made under Section 4.1.9 of the Loan Agreement.

**Section 8.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** In connection with any indemnification obligations of Mortgagor hereunder, upon written request by any Indemnified Party, each of Individual Borrower and Operator 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 (and attorneys and other professionals selected by Mortgagor's insurance carrier shall be deemed approved by the Indemnified Parties). Notwithstanding the foregoing, if the defendants in any such claim or proceeding include Mortgagor, any Other Borrower and any Indemnified Party, and Mortgagor, any such Other Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Persons or Indemnified Parties that are different from or additional to those available to Mortgagor or any Other Borrower, then such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Upon written demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and out of pocket 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 and Operator each hereby waives the right to assert a counterclaim,

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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 or Operator's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Individual Borrower's or Operator'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 and Operator each hereby waives the benefit of all appraisement, 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 and Operator each 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 or Operator, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

**Section 9.3 Waiver of Notice.** To the extent permitted by applicable law, neither Individual Borrower nor Operator shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provides for the giving of notice by Lender to Individual Borrower and/or Operator, as applicable, and except with respect to matters for which Lender is required by applicable law to give notice, and Individual Borrower and Operator each hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Individual Borrower and/or Operator.

**Section 9.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, each of Individual Borrower and Operator 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 and the waivers made pursuant to Sections 9.1, 9.2, 9.3 and 9.4 herein, shall continue until the Debt is paid in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction 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 Operator 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

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of Individual Borrower from the obligations pursuant hereto. Notwithstanding the provisions of this Security Instrument to the contrary, the liabilities and obligations of Mortgagor shall not apply to the extent such liability and obligations arise after any Indemnified Party or its nominee acquired title to the Property, whether by foreclosure, deed in lieu of foreclosure, exercise of power of sale or otherwise.

## ARTICLE 10 - EXCULPATION

The provisions of Section 9.2 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 10.6 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 10.3 OF THE LOAN AGREEMENT; PROVIDED THAT ARTICLE 16 AND THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION, 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 contained herein, (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 Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, 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 Maximum Legal Rate, 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

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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 be deemed to refer to each and every Person comprising a Borrower from time to time, jointly and severally, and to include the successors and assigns of each such Person, the term “**Other Borrower**” shall mean “each other Borrower and any subsequent maker or makers 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 “**Mortgagor**” shall mean “each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein”, the word “**Note**” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” the word “**Operator**” shall mean “each Operator and any subsequent operator or operators of the Property or any part thereof, in each case, pursuant to an operating lease”, the word “**Property**” shall include any portion of the Property and any interest therein, and the phrases “**attorneys’ fees**”, “**legal fees**” and “**counsel fees**” shall include any and all reasonable attorneys’, paralegal and law clerk fees and disbursements of outside counsel, 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

**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, Operator 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 or by repayment of the Debt in full in accordance with the Loan Agreement.

**Section 14.2 Joint and Several Liability; Limitation on Operator’s Liability.** To the extent the obligations set forth herein are expressly stated to be obligations of the Mortgagor or of both Individual Borrower and Operator, each of Individual Borrower and Operator shall be jointly and severally liable for the performance of such obligations. Notwithstanding anything to the contrary contained in this Security Instrument or any other Loan Document, nothing contained herein shall in any way alter or modify Individual Borrower’s obligations as a joint and several obligor (with Other Borrowers) for the repayment of the Debt and performance of the Obligations. Furthermore, notwithstanding anything to the contrary

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contained in this Security Instrument or any other Loan Document, Lender by its acceptance hereof, and its successors and assigns, agrees that Operator is not the Borrower and shall under no circumstances whatsoever be liable hereunder or under any of the other Loan Documents for the repayment of the principal amount of the Loan or the payment of any interest which may accrue on such amount (at the Interest Rate or Default Rate), any late charges, or any other portion of the Debt, except to the extent otherwise expressly provided in this Security Instrument or in any of the other Loan Documents to which Operator is a party.

**Section 14.3 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors and assigns forever.

**Section 14.4 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 14.5 Headings, etc.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.6 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 14.7 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 Mortgagor'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, except as otherwise agreed to or accepted by Lender.

**Section 14.8 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), Operator 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), Operator and Lender with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or



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written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 14.9 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger, 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 14.10 WAIVER OF TRIAL BY JURY.** INDIVIDUAL BORROWER, AND BY ITS ACCEPTANCE HEREOF, LENDER, EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS SECURITY INSTRUMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

**Section 14.11 Conflict of Terms.** In case of any conflict between the terms of this Security Instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

**Section 14.12 Release or Assignment of Security Instrument.** Notwithstanding anything to the contrary herein, if all of the Debt is indefeasibly paid or as may otherwise be permitted by the terms of the Loan Agreement, then and in that event only, all rights, except those indemnifications made pursuant to Sections 8.1, 8.2, 8.3 and 8.4 hereof, under this Security Instrument shall automatically terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Lender in due form. To the extent requested by Mortgagor, Lender agrees to assign the Note and this Security Instrument to such party as may be designated by Mortgagor upon the repayment (or purchase by another lender designated by Borrower) in full of the Debt or upon release of the Property as may otherwise be permitted under the Loan Agreement and Lender will cooperate in the preparation of all of the necessary documentation to effectuate an assignment of this Security Instrument and the indebtedness secured thereby, including the delivery of originals of the Loan Documents. All reasonable costs incurred by Lender under this paragraph, including, without limitation, reasonable third-party attorney's fees and disbursements, promptly shall be reimbursed by Mortgagor.

**Section 14.13 No Merger of the Estates.** So long as any part of the Debt secured hereby remains unpaid and unperformed or undischarged, the fee and leasehold estates to the Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Lender, any lessee, or any third party purchaser or otherwise.

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## ARTICLE 15 - PLEDGED LEASE COVENANTS AND ESTOPPEL

### Section 15.1 Pledged Lease Covenants.

(a) In the event that Operator shall be or become the owner and holder of the fee title to any portion of the Property while any portion of the Obligations remains unpaid or unsatisfied, the lien of this Security Instrument shall be spread to cover such fee title to such portion of the Property. In such event, Operator agrees, at its sole cost and expense, including any reasonable attorneys' fees and disbursements incurred by Lender in connection therewith, to (i) execute or cause to be executed any and all documents or instruments necessary to subject Operator's fee title to the Property to the lien of this Security Instrument; and (ii) provide a title insurance policy, at Operator's expense, that shall insure that the lien of this Security Instrument is a first lien on Operator's or such Person's fee title to the Property.

(b) Without limiting any other provisions contained herein, Operator hereby agrees that all of its right, title and interest under the Pledged Lease (and otherwise with respect to the Property) is subject and subordinate to the Loan and Lender's security interest in Borrower's right, title and interest in and to the Property. In connection therewith, Operator acknowledges and agrees that in the event Lender shall succeed to the interests of Borrower under the Pledged Lease, Lender shall have the absolute right (without regard to the enforceability or perfection of Lender's security interest in Operator's leasehold estate) to terminate the Pledged Lease and in such event (i) the Pledged Lease and all of Operator's right, title and interest thereunder shall automatically terminate and (ii) Operator shall not in any way oppose, impede, obstruct, challenge, hinder, frustrate, enjoin or otherwise interfere with Lender's exercise of any such termination right. Furthermore, in connection with any termination of the Pledged Lease as referenced in this paragraph or otherwise upon the exercise of Lender's remedies hereunder, Operator shall reasonably cooperate with Lender to transition the operations of the hotel located on the Property to Lender.

## ARTICLE 16 - STATE-SPECIFIC PROVISIONS

**Section 16.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

### Section 16.2 Illinois Mortgage Foreclosure Law.

(a) The law applicable to any foreclosure of this instrument shall be the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15-1101, et seq., as from time to time amended (the "**Act**").

(b) In the event that any provision in this Security Instrument shall be inconsistent with any provision of 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 the Act.

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(c) 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, to the maximum extent permitted by law, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default 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.

(d) Without limiting the generality of the foregoing, all reasonable, out-of-pocket expenses incurred by Lender upon the occurrence and during the continuation of an Event of Default 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.

(e) Mortgagor acknowledges that the transaction of which the Mortgagor 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 upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(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.

## **Section 16.3 Mortgagor Waivers.**

(a) Except to the extent contrary to law, Mortgagor agrees that upon the occurrence and during the continuation of an Event of Default, Mortgagor 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 Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Except to the extent contrary to law, Mortgagor hereby waives upon the occurrence and during the continuation of an Event of Default 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 the parties or their 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, to the extent not prohibited by law.

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(b) In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Mortgagor, on behalf of Mortgagor, 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 16.4 Maximum Amount Secured.** The maximum indebtedness secured by this Security Instrument shall not exceed \$4,650,000,000.00.

**Section 16.5 Business Loan.** Mortgagor covenants and agrees that (i) all of the proceeds of the Loan secured by this Security Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, (ii) the entire principal obligation secured hereby constitutes (A) a "business loan," as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof; and (B) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof, and (iii) the indebtedness secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601, et seq. and has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

**Section 16.6 Variable Rate; Additional Interest.** This Security Instrument secures the full and timely payment of the Obligations, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Loan Agreement.

**Section 16.7 Protective Advances.** Without limiting any of the other terms or provisions of this Security Instrument or any other Loan Documents, all reasonable advances, disbursements and/or expenditures made by Lender from time to time in accordance with the terms of this Security Instrument and/or any other Loan Document(s), or otherwise authorized or contemplated by the Act (or other applicable law), whether made before, during or after a foreclosure of this Security Instrument, before or after judgment of foreclosure therein, before or after any sale of the Property or before, during or after the pendency of any claims, demands, proceedings, causes of action or suits related to any of the foregoing, together with applicable interest thereon (as provided for in and/or contemplated by this Security Instrument, any other Loan Document(s) or applicable law), shall be secured by this Security Instrument (and shall constitute part of the Obligations hereunder) and shall have the benefit of all applicable provisions of the Act (or other applicable law, as the case may be). Without in any way limiting the generality of the foregoing, any reasonable advances, disbursements or expenditures described in Section 15-1302(b) of the Act that are made by Lender from time to time shall have the benefit of the provisions of the Act applicable thereto, and any reasonable advances,

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disbursements or expenditures in the nature of “future advances”, as described or defined in the Act or any other applicable Illinois law, that are made by Lender from time to time shall have the benefit of the provisions of the Act or such other applicable law (as the case may be). Nothing contained in this Section 16.7 shall be deemed or construed to obligate Lender to make any advance, disbursement or expenditure of any kind.

**Section 16.8 Maturity Date.** The Loan shall be due and payable in full on or before July 9, 2023, unless extended pursuant to the terms of the Loan Agreement.

**Section 16.9 Collateral Protection Act.** Unless Mortgagor provides Lender with evidence of the insurance required by this Security Instrument or any other Loan Document, Lender may purchase insurance as is required by the Loan Documents at Mortgagor’s expense to protect Lender’s interest in the Property or any other collateral for the indebtedness secured hereby as is required by the Loan Documents. This insurance may, but need not, protect Mortgagor’s interests. The coverage Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required under this Security Instrument or any other Loan Document. If Lender purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including the insurance premiums, interest and any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

**Section 16.10 Fixture Filing.** This Security Instrument also constitutes a “fixture filing” pursuant to Section 9-502 of the Illinois Uniform Commercial Code, 810 ILCS 5/1-101, *et. seq.* and shall be filed in the real estate records of the applicable county’s real estate records office.

(a) Name of Debtors: ESA P PORTFOLIO L.L.C. and ESA P PORTFOLIO OPERATING LESSEE LLC.

(b) Debtors’ Mailing Address: As set forth in the introductory paragraph of this Security Instrument.

(c) Debtors’ Organizational ID: 3852418; 3852422.

(d) Address of the Property: As set forth on Exhibit A.

(e) Name of Secured Party: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, CITI REAL ESTATE FUNDING INC., a New York corporation, and DEUTSCHE BANK AG, NEW YORK BRANCH.

(f) Address of Secured Party: As set forth in the introductory paragraph of this Security Instrument.



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(g) This financing statement covers the Property and/or the Collateral, and any proceeds or products of such Property and/or Collateral.

(h) Some of the above goods are or are to become fixtures on the Real Property described herein. Mortgagor is the record owner of the Real Property described herein upon which the foregoing fixtures and other items and types of property are located set forth on Exhibit A.

**Section 16.11 Receiver.** In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.

**Section 16.12 Illinois Amendments.** Section 7.1(b) is deleted in its entirety and replaced with the following: “(b) institute judicial proceedings for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;”


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, this Security Instrument has been executed by Individual Borrower and Operator as of the day and year first above written.

INDIVIDUAL BORROWER:

ESA P PORTFOLIO L.L.C., a Delaware limited liability company

By: 

Name: Ellis Rinaldi

Title: Senior Managing Director

Property of Cook County Clerk's Office

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STATE OF CONNECTICUT)

 ss.: *Greenman*  
 COUNTY OF FAIRFIELD )

## Multi-State-Acknowledgment:

On June 3, 2021, before me, the undersigned officer, personally appeared Ellis Rinaldi, personally known and acknowledged herself to me (or proved to me on the basis of satisfactory evidence) to be the Senior Managing Director of the foregoing executing entity (hereinafter, the "Entity") and that as such officer, being duly sworn, and being authorized to do so pursuant to its bylaws or a resolution, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by herself in her authorized capacity as such officer as her free and voluntary act and deed and the free and voluntary act and deed of said Entity. \*\*\* Witness my hand and official seal.

## Uniform-Acknowledgment --- Supplemental to the foregoing acknowledgment:

On June 3, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Ellis Rinaldi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.

*Amy Reinhold*

Notary Public --- My commission expires: \_\_\_\_\_

Amy Reinhold  
 Notary Public-Connecticut  
 My Commission Expires  
 September 30, 2023



County Clerk's Office

# UNOFFICIAL COPY

OPERATOR:

ESA P PORTFOLIO OPERATING LESSEE  
LLC, a Delaware limited liability company

By: 

Name: Ellis Rinaldi

Title: Senior Managing Director

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF CONNECTICUT)

ss.: *Brennan*

COUNTY OF FAIRFIELD )

## Multi-State-Acknowledgment:

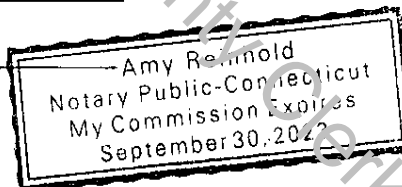
On June 3, 2021, before me, the undersigned officer, personally appeared Ellis Rinaldi, personally known and acknowledged herself to me (or proved to me on the basis of satisfactory evidence) to be the Senior Managing Director of the foregoing executing entity (hereinafter, the "Entity") and that as such officer, being duly sworn, and being authorized to do so pursuant to its bylaws or a resolution, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by herself in her authorized capacity as such officer as her free and voluntary act and deed and the free and voluntary act and deed of said Entity. \*\*\* Witness my hand and official seal.

## Uniform-Acknowledgment --- Supplemental to the foregoing acknowledgment:

On June 3, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Ellis Rinaldi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.

*Amy Reinhold*

Notary Public --- My commission expires:





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## SCHEDULE I

### PLEDGED LEASE

That certain Lease Agreement, dated as of the date hereof, by and between Borrower, as landlord and Operating Lessee, as tenant, as evidenced by that certain Memorandum/Short Form of Lease, dated as of the date hereof, and intended for recording prior hereto.

Property of Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 2 IN COSTCO SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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\*\*\*

## ADDENDUM

Extended-Stay-America

ESA P PORTFOLIO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY:

Successor in interest to:

BRE/ESA P PORTFOLIO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA ACQUISITION PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 BRE/ESA ACQUISITION PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA ALASKA L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA FL PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA MN PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA PA PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA P PORTFOLIO PA PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA P PORTFOLIO TXNC GP L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA P PORTFOLIO TXNC PROPERTIES L.P., A DELAWARE LIMITED PARTNERSHIP;  
 ESA PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 BRE/ESA PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA TXGP L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA TX PROPERTIES L.P., A DELAWARE LIMITED PARTNERSHIP;  
 ESA 2005 PORTFOLIO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA 2005-SAN JOSE L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESA 2005-WALTHAM L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESH/HOMESTEAD PORTFOLIO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 BRE/HOMESTEAD PORTFOLIO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 BRE/HOMESTEAD VILLAGE L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 HOMESTEAD VILLAGE L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 HOMESTEAD ALABAMA INCORPORATED, AN ALABAMA CORPORATION;  
 ESH/HV PROPERTIES L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 BRE/HV Properties LLC, A DELAWARE LIMITED LIABILITY COMPANY;  
 ESH/MSTX GP L.L.C., A DELAWARE LIMITED LIABILITY COMPANY;  
 ESH/MSTX PROPERTY L.P., A DELAWARE LIMITED PARTNERSHIP;  
 ESH/TXGP L.L.C., A DELAWARE LIMITED LIABILITY COMPANY; AND  
 ESH/TX PROPERTIES L.P., A DELAWARE LIMITED PARTNERSHIP