

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2207515028\*

Doc# 2207515028 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/16/2022 02:25 PM PG: 1 OF 37

The property identified as: **PIN:** 12-19-100-089-0000

**Address:**

**Street:** 1010-1050 SESAME STREET

**Street line 2:**

**City:** BENSENVILLE

**State:** IL

**ZIP Code:** 60131

**Lender:** APEXUS SESAME STREET L.P.

**Borrower:** FIRST-CITIZENS BANK AND TRUST COMPANY

**Loan / Mortgage Amount:** \$29,923,000.00

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

**Certificate number:** 59F200D9-A615-4147-AAB0-A4169E25034F

**Execution date:** 3/10/2022

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

made by

APEXUS SESAME STREET L.P., a Delaware limited partnership,  
as Borrower

for the benefit of

FIRST-CITIZENS BANK & TRUST COMPANY,  
as Administrative Agent

Dated: March 10, 2022

Location: 1010-1050 Sesame Street, Bensenville, IL 60131

This Security Instrument was prepared by and after recording should be returned to:

Riemer & Braunstein LLP  
71 South Wacker Drive, Suite 3515  
Chicago, IL 60601  
Attention: Matthew R. Nash, Esq.

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Security Instrument") is made as of the 10<sup>th</sup> day of March, 2022, by Apexus Sesame Street L.P., a Delaware limited partnership, as Borrower ("Borrower"), having an address at c/o Aminim Properties, 10101 Fondren Road, Suite 250F, Houston, TX 77096, in favor of First-Citizens Bank & Trust Company, and any successors appointed pursuant to this Security Instrument ("Administrative Agent"), having an address at 11 West 42nd Street, New York, New York 10036.

## WITNESSETH:

WHEREAS, Borrower, Apexus Franklin Park L.P., a Delaware limited partnership (the "Franklin Park Borrower"), and Apexus South Central Avenue L.P., a Delaware limited partnership (the "South Central Avenue Borrower"); together with the Franklin Park Borrower shall be referred to individually and collectively as the "Co-Borrower"), the lenders party thereto (each a "Lender" and collectively, the "Lenders") and Administrative Agent have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "Loan Agreement"), pursuant to which the Lenders are making a secured loan to Borrower and the Co-Borrower in the principal amount of up to Twenty-Nine Million Nine Hundred Twenty-Three Thousand and 00/100 Dollars (\$29,923,000.00) (the "Loan"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. The Loan is evidenced by one or more Promissory Notes, dated as of the date hereof made by Borrower and Co-Borrower to the respective order of the Lenders in the aggregate principal amount of Twenty-Nine Million Nine Hundred Twenty-Three Thousand and 00/100 Dollars (\$29,923,000.00) (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, extended, or supplemented from time to time, individually or collectively as the context requires, the "Note").

## NOW THEREFORE, FOR THE PURPOSES OF SECURING:

1. The Obligations;
2. The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein, in the Loan Agreement and in any other agreements, documents or instruments now or hereafter evidencing, guaranteeing, securing or otherwise relating to the Obligations, whether executed or delivered by Borrower or Co-Borrower or jointly and severally (the Loan Agreement, the Note, this Security Instrument, the mortgages and assignments of leases and rents executed by the Co-Borrower in connection with the Loan (collectively, the "Other Mortgages"), and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") (excluding only the obligations pursuant to that certain Hazardous Substances Indemnity Agreement executed by Borrower, the Co-Borrower and Guarantor, jointly and severally, for the benefit of Administrative Agent (for the benefit of the Lenders) and that certain Guaranty by Guarantor for the benefit of Administrative Agent (for the benefit of the Lenders)), and the payment of all other sums covenanted in the Loan Documents to be paid;

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3. Any and all additional advances made by Administrative Agent and the Lenders to protect or preserve the Property or any of the Other Properties (each as hereinafter defined) or the lien or security interest created (i) hereby on the Property, and (ii) under the Other Mortgages on the Other Properties, or for taxes, assessments or insurance premiums or for performance of any of Borrower's or any Co-Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances), pursuant to the terms of this Security Instrument, the Loan Agreement or the other Loan Documents, together with interest on each such advance, cost or expense (which interest shall accrue at the Default Rate from the date such amounts are advanced or paid by Administrative Agent and/or the Lenders until the date repaid by Borrower and Co-Borrower);

4. Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Administrative Agent and the Lenders in connection with the Loan, the Loan Documents and/or the Property, including, without limitation, all prepayment fees, breakage costs, commitment, deferred commitment and exit fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof;

(All of the sums referred to in the foregoing Paragraphs (1) through (4) are herein sometimes referred to collectively as the "Obligations"; provided, however, that in no event shall the Obligations hereunder include any "Excluded Hedge Obligations" (as such term is defined in the Loan Agreement);

and for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, BORROWER HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO ADMINISTRATIVE AGENT ON BEHALF OF THE LENDERS, AND THEIR SUCCESSORS AND ASSIGNS, with power of sale, in all of Borrower's estate, right, title and interest in, to and under (and specifically excluding personal property owned by Tenants and any property manager, except for a property manager that is Borrower's Affiliate) any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property");

A. All that certain real property referenced on the cover page of this Security Instrument and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B. All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

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C. All furniture, furnishings, fixtures, goods, equipment, inventory or personal property now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by Tenants (as hereinafter defined) of space in the Improvements);

D. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, air rights and other development rights now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, claims, privileges, franchises, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Land and/or Improvements or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

E. All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

F. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

G. All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Administrative Agent pursuant to the Loan Agreement or any other of the Loan Documents, including, without limitation, all funds now or hereafter on deposit in the Accounts and all Account Collateral;

H. All leases (including, without limitation, oil, gas and mineral leases), subleases, licenses, concessions and occupancy agreements of all or any part of the Land or the Improvements now or hereafter entered into and any guaranty thereof (each a "Lease" and collectively, the "Leases"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and all rents, royalties, issues, profits, revenue, income, claims, judgments, awards, settlements and other benefits whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents and Profits") of the Land or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees, subtenants, sublessees or licensees, as applicable (each a

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“Tenant” and collectively, the “Tenants”), of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

I. All contracts, licenses, permits, approvals, warranties and agreements now or hereafter entered into relating to the ownership or operation or management of the Land or the Improvements or any portion of them (each a “Contract” and collectively, the “Contracts”) and all revenue, income and other benefits thereof, including, without limitation, management agreements, franchise agreements, co-tenancy agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements and any and all warranties and guaranties relating to the Land or the Improvements or any fixtures, equipment or personal property owned by Borrower and located on and/or used in connection with the Property together with all revenue, income and other benefits thereof and all claims, judgments, awards and settlements arising thereunder;

J. All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

K. All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the “General Intangibles”);

L. All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

M. All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

N. Any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

O. All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation

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awards and proceeds of refunds of any Taxes or Other Charges with respect to any period from and after the date hereof until the Loan is indefeasibly paid or defeased in full;

P. All right, title, interest and claim of Borrower in, to, under or pursuant to the Hedge Agreement and any replacements, amendments or supplements thereto, and all income and proceeds thereof, and all claims of Borrower for breach by the counterparty thereunder of any covenant, agreement, representation or warranty contained in the Hedge Agreement together with the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Administrative Agent in the Property;

Q. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) related to the Land for tenant deposits; and

R. All other or greater rights and interests of every nature in the Land or the Improvements or any of the other items set forth in clause (A through Q) above and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

TO HAVE AND TO HOLD the Property unto Administrative Agent, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Administrative Agent against every Person whomsoever lawfully claiming or to claim the same or any part thereof.

## ARTICLE I COVENANTS OF BORROWER

For the purpose of further securing the Obligations and for the protection of the security of this Security Instrument, for so long as the Obligations or any part thereof remains unpaid, Borrower covenants and agrees as follows:

1.1 Covenants, Representations and Warranties of Borrower Concerning the Property. Borrower covenants, represents and warrants to Administrative Agent as follows: subject only to the Permitted Exceptions, Borrower has and shall have good and indefeasible fee simple title to the Land; Borrower has good right, full power and lawful authority to grant, bargain, mortgage, sell and convey the Property; Borrower will warrant and forever defend said title to the Property; this Security Instrument when duly recorded in the appropriate public records creates a valid and enforceable lien upon the Property, subject only to the Permitted Exceptions, and, as of the date hereof, there are no defenses or offsets to this Security Instrument or to any of the Obligations; and each and every warranty and representation of Borrower contained in any of the Loan Documents is true, complete and correct in all material respects, and does not omit any material fact necessary to make such warranty or representation not misleading. The warranties contained in this Section 1.1 shall survive foreclosure of this Security Instrument.

1.2 Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens. Borrower shall in accordance with the provisions of the Loan Agreement, including Section 6.11 thereof, (i) repair, restore or rebuild any buildings or improvements now or hereafter on the Land which may become damaged or be destroyed, and keep the Property in good condition and

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repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly permitted hereunder; (ii) unless contested in good faith in accordance and in compliance with all of the provisions of Section 4.8 of the Loan Agreement, pay when due any claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Land or Improvements and immediately discharge any liens against the Property arising from any such claims and demands; (iii) comply in all material respects with all applicable Laws with respect to the Property and the operation or use thereof; (iv) initiate or acquiesce in no zoning variation or reclassification without Administrative Agent's prior written consent; (v) pay each item of the Obligations when due according to the terms hereof or of the Note and the Loan Agreement; (vi) suffer or permit no change in the nature or use of the Property without Administrative Agent's prior written consent, except as may be expressly permitted by the Loan Documents; and (vii) make no material alterations to or demolish any portion of the Property except as required by Law and as contemplated and permitted by the Loan Agreement.

1.3 Payment of Taxes. Borrower covenants and agrees to pay all Taxes and Other Charges, in accordance with Sections 4.4, 6.6, 6.8 of the Loan Agreement.

1.4 Tax Deposits. Borrower covenants and agrees to make monthly deposits with respect to Taxes and Other Charges when and as required by Section 4.4 of the Loan Agreement.

1.5 Insurance. Borrower shall comply with Administrative Agent's requirements for, and maintain casualty, liability and other policies of insurance relating to the Property, as required by Sections 4.5 and 6.10 of the Loan Agreement.

1.6 Administrative Agent's Interest in and Use of Deposits. If an Event of Default (as hereinafter defined) has occurred, then in addition to any and all other rights set forth herein, in the Loan Documents, or otherwise available to Administrative Agent, Administrative Agent may, at its option, without being required to do so, apply any moneys at the time on deposit (including, without limitation, any reserves) pursuant to any provision of this Security Instrument, the Loan Agreement or any other Loan Documents, as any one or more of the same may be applicable, to any of the Obligations, in such order and manner as Administrative Agent may elect. Such deposits are hereby pledged as additional security for the Obligations and shall be held to be irrevocably applied by the depository for the purposes for which made under the Loan Agreement and shall not be subject to the direction or control of Borrower; provided, however, that neither Administrative Agent nor said depository shall be liable for any failure to apply to the payment of Taxes and Other Charges any amount so deposited unless such failure shall have occurred after Borrower, while no Default exists, shall have requested said depository in writing to make application of such funds to the payment of the particular Taxes and Other Charges for payment of which they were deposited, accompanied by the bills for such Taxes and Other Charges and otherwise strictly complied with the conditions for any such application of such deposits provided in the Loan Agreement, and after the expiration of all time periods therefor.

1.7 Administrative Agent's Right to Apply Condemnation or Insurance Proceeds on Indebtedness. The rights of Administrative Agent to apply condemnation or insurance proceeds to the Obligations, and any rights of Borrower to apply condemnation or insurance proceeds to the restoration of the Improvements, shall be governed by Section 6.11 of the Loan Agreement.



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1.8 Borrower's Obligation to Rebuild and Use of Proceeds Therefor. Borrower's obligation to rebuild in the event of any fire or other casualty to the Improvements or any condemnation of all or any part of the Property, and the use of condemnation or insurance proceeds therefor, shall be governed by Section 6.11 of the Loan Agreement, notwithstanding any contrary provision of any applicable Laws, whether now existing or hereinafter enacted.

1.9 Stamp Tax. If, by the law of the United States of America, or of any state or political subdivision having jurisdiction over Borrower or the Property, any tax (other than income, franchise or similar tax) is due or becomes due in respect of the issuance of the Note, or recording of this Security Instrument, Borrower covenants and agrees to pay such tax in the manner required and to the extent permitted by any such law. Borrower further covenants to hold harmless and agrees to indemnify Administrative Agent, the Lenders and their respective officers, directors, employees, representatives, agents, successors and assigns against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Security Instrument.

1.10 Effect of Extensions of Time. If the payment of the Obligations or any part thereof be extended or varied or if any part of the security be released, all Persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such Persons being expressly reserved by Administrative Agent and the Lenders, notwithstanding such extension, variation or release. Borrower acknowledges that this Security Instrument shall secure all extensions and renewals of any of the Obligations. Any Person taking a junior mortgage or other lien upon the Property or any interest therein, shall take said lien subject to the rights of Administrative Agent and the Lenders herein to amend, modify and supplement this Security Instrument, the Loan Agreement, the Note, and any other Loan Documents and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Obligations, and to grant partial releases of the lien of this Security Instrument, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Security Instrument losing its priority over the rights of any such junior lien. Nothing contained in this Section 1.10 shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Property, or any portion thereof, is sold, conveyed or encumbered unless expressly permitted by the Loan Agreement.

1.11 Administrative Agent's Performance of Defaulted Acts; Subrogation. Upon the occurrence of an Event of Default, Administrative Agent may, but need not, make any payment or perform any act herein or therein required of Borrower, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and make payments of any rents due or to become due and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Property from any tax sale or forfeiture affecting the Property or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Administrative Agent or the Lenders to protect the Property and the lien hereof, shall be, except as otherwise provided herein or in the Loan Agreement, so much additional indebtedness secured

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hereby, and shall become immediately due and payable within ten (10) Business Days of demand and with interest thereon from the date so advanced at the Default Rate. Inaction of Administrative Agent or any Lender shall never be considered as a waiver of any right accruing to it on account of any Default. Should any advance, or any amount paid out or advanced hereunder by Administrative Agent or the Lenders, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Administrative Agent and the Lenders shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Administrative Agent and any Person designated by Administrative Agent shall have the right, and is hereby granted the right, to enter upon the Property for the foregoing purposes.

1.12 Performance of Obligations. Borrower shall pay when due the principal of and the interest on and other amounts evidenced by the Note. Borrower shall also pay and perform all of the Obligations as and when due. Further, Borrower shall promptly perform and comply with all covenants, conditions, obligations and prohibitions required of Borrower in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Security Instrument, except as expressly prohibited by the Loan Documents.

1.13 Assignment of Leases and Rents and Profits. As additional collateral and security for the payment and performance of the Obligations and cumulative of any and all rights and remedies herein provided for, Borrower hereby absolutely and presently assigns to Administrative Agent (for the benefit of the Lenders) all existing and future Leases, and all existing and future Rents and Profits. Borrower hereby grants to Administrative Agent the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Borrower does hereby irrevocably make, constitute and appoint Administrative Agent its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any of the Obligations are outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Administrative Agent and the Lenders shall be without liability for any loss that may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default, Borrower shall have a license to operate, administer, govern and enforce the Leases and to collect and receive the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to due date thereof. Upon the occurrence of an Event of Default, Borrower's license shall automatically terminate without notice to Borrower and Administrative Agent may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Borrower shall be the agent of Administrative Agent and the Lenders in collection of the Rents and Profits and all of the Rents and Profits so collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Administrative Agent and the Lenders and Borrower shall, within five (5) Business

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Days after receipt of any Rents and Profits, pay the same to Administrative Agent to be applied by Administrative Agent as hereinafter set forth. Borrower hereby irrevocably agrees that any Tenant paying Rents and Profits as directed by Administrative Agent shall be deemed to have paid such amount in satisfaction of its obligation under such Tenant's Lease, and each Tenant may rely on such agreement by Borrower. Neither the demand for or collection of Rents and Profits by Administrative Agent, nor the exercise of Administrative Agent's rights as assignee of the Leases, shall constitute any assumption by Administrative Agent or any Lender of any obligations under any Lease or other agreement relating thereto. Administrative Agent is obligated to account only for such Rents and Profits as are actually collected or received by Administrative Agent. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Administrative Agent of an Event of Default, pay said Rents and Profits to Administrative Agent without liability to determine the actual existence of any Event of Default claimed by Administrative Agent. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Administrative Agent, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents and Profits collected or received by Administrative Agent shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the Obligations, in whatever order or priority as to any of the items so mentioned as Administrative Agent directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Administrative Agent of any rights under this Section 1.13 nor the application of any Rents and Profits to the Obligations shall cure or be deemed a waiver of any Default or Event of Default. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

1.14 Leasing Limitations. All Leases entered into by Borrower with respect to the Property, and all of Borrower's rights with respect to such Leases, and Borrower's actions in exercising (or not exercising) such rights, in each case shall conform with the requirements of the Loan Agreement.

1.15 Alienation and Further Encumbrances.

(a) Borrower acknowledges that (i) Administrative Agent and the Lenders have examined and relied on the creditworthiness and experience of the principals of Borrower in owning and operating properties such as the Property in agreeing to make the Loan, (ii) Administrative Agent and the Lenders will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the Obligations, and (iii) Administrative Agent and the Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Obligations, Administrative Agent and the Lenders can recover the Obligations by a sale of the Property. Borrower shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise Transfer the Property or any direct or indirect interest therein, or any part thereof, or suffer or permit any Transfer to occur, other than a Transfer which is expressly permitted under the Loan Agreement.

(b) Neither Administrative Agent nor any Lender shall be required to demonstrate any actual impairment of Administrative Agent's or the Lenders' security or any

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increased risk of default under the Loan Documents in order to declare the Obligations immediately due and payable upon any Transfer in violation of this Section 1.15. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Section 1.15 shall be null and void and of no force and effect. Borrower agrees to bear and shall pay or reimburse Administrative Agent on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Administrative Agent in connection with the review, approval and documentation of any Transfer permitted under the Loan Agreement.

1.16 Use of Rents and Profits. Except to the extent provided to the contrary in the Loan Documents, all Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Security Instrument and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower, distributed to the equity owners of Borrower or utilized for any other purposes, in each case unless all expenses attributable to the ownership and operation of the Property then due and payable have been fully paid and satisfied. Without limiting the foregoing, (a) Borrower shall pay when due all utility charges (e.g., for gas, electricity, water and sewer services and similar charges) which are incurred by Borrower or its agents, and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Land and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon and (b) Borrower shall not use any portion of the Rents and Profits for any action in contravention of the Loan Agreement or any other Loan Document.

1.17 Access Privileges and Inspections. Except to the extent provided to the contrary in the Loan Documents, Administrative Agent and the agents, representatives and employees of Administrative Agent shall, subject to the rights of Tenants, have full and free access to the Land and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend commercially reasonable assistance to all such agents, representatives and employees of Administrative Agent.

1.18 Further Documentation. Borrower shall, on the request of Administrative Agent and at the expense of Borrower, promptly: (a) correct any material defect, error or omission which may be discovered in the contents of this Security Instrument or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Security Instrument and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property;

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(c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Administrative Agent to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) furnish to Administrative Agent, upon Administrative Agent's request, a duly acknowledged written statement and estoppel certificate in commercially reasonable form addressed to such party or parties as directed by Administrative Agent and in form and substance supplied by Administrative Agent, setting forth all amounts due under the Note and the other Loan Documents, stating whether any Default or Event of Default exists, stating whether any offsets or defenses exist against the Obligations, affirming that the Loan Documents are the legal, valid and binding obligations of Borrower, and containing such other matters as Administrative Agent may reasonably require.

1.19 Security Interest and Security Agreement. This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Property which, under any applicable Law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, including, without limitation, the Accounts, all Account Collateral, and all products and cash and non-cash proceeds thereof (collectively, the "UCC Collateral"). Borrower hereby grants to Administrative Agent (for the benefit of the Lenders) a security interest in the UCC Collateral. Borrower hereby authorizes Administrative Agent to file and/or record such financing statements, continuation statements and amendments, in such form as Administrative Agent may require, in order to perfect or continue the perfection of this security interest (and Borrower hereby agrees to execute and/or deliver to Administrative Agent any such financing statements, continuation statements and amendments if requested by Administrative Agent). Borrower shall pay all costs of preparing and filing such statements, and all costs and expenses of any record searches for financing statements that Administrative Agent may require. Without the prior written consent of Administrative Agent, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.

1.20 Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Land or the Improvements without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, provided, however, that Administrative Agent shall consent to general utility and other easements with governmental entities which do not have a Material Adverse Effect on the Property. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Security Instrument and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Administrative Agent consents to the grant of an easement or right-of-way, Administrative Agent agrees to grant such consent provided that Administrative Agent is paid a reasonable review fee together with all other expenses, including, without limitation, reasonable attorneys' fees, incurred by Administrative Agent in the review of Borrower's request and in the preparation of documents effecting the subordination. Borrower shall at all times comply with all easement agreements, reciprocal easement agreements, declarations, restrictive covenants and any other similar types of agreements now or hereafter affecting the Property, and Borrower shall not amend, modify or terminate any such easement agreements, reciprocal easement agreements, declarations, restrictive covenants or any other similar types of agreements without Administrative Agent's prior written consent.

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1.21 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Administrative Agent or any Lender the payment of the whole or any part of the Taxes or Other Charges herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of Administrative Agent or secured party in the property covered thereby, or the manner of collection of such Taxes or Other Charges, so as to adversely affect this Security Instrument or the Obligations of Administrative Agent or the Lenders, then, and in any such event, Borrower, upon demand by Administrative Agent, shall pay such Taxes or Other Charges, or reimburse Administrative Agent therefor; provided, however, that if in the opinion of counsel for Administrative Agent (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Law, then and in either such event, Administrative Agent may elect, by notice in writing given to Borrower, to declare all of the Obligations to be and become due and payable in full one hundred eighty (180) days from the giving of such notice.

1.22 Borrower's Waivers. To the full extent permitted by Law, Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Obligations prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all Persons ever claiming any interest in the Property, to the full extent permitted by Law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Obligations (except such notices as are specifically provided for in the Loan Agreement); (b) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under Law. To the full extent permitted by Law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Administrative Agent or the Lenders under the terms of this Security Instrument to a sale of the Property, for the collection of the Obligations without any prior or different resort for collection, or the right of Administrative Agent and the Lenders under the terms of this Security Instrument to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatever. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether

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statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent or any Lender to enforce any rights of Administrative Agent or such Lender against any Guarantor of the Obligations or any other Person liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

1.23 Hazardous Waste and Other Substances. Borrower hereby covenants to comply with all of Borrower's obligations concerning Environmental Laws (as defined in the Hazardous Substances Indemnity Agreement) and Hazardous Substances (as defined in the Hazardous Substances Indemnity Agreement) as required by the Loan Agreement.

## ARTICLE II EVENTS OF DEFAULT

2.1 Events of Default. The occurrence of an Event of Default under the Loan Agreement or a default hereunder or under any other Loan Document that shall not have been cured within the applicable notice and/or grace period provided therefor (if any) shall be deemed an event of default ("Event of Default") under this Security Instrument. The grace period and notice provisions set forth in the Loan Agreement shall be applicable to any default under this Security Instrument.

## ARTICLE III REMEDIES

3.1 Remedies Available. If there shall occur an Event of Default, then the Property shall be subject to sale and this Security Instrument shall be subject to foreclosure, all as provided by applicable Law, and Administrative Agent may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by Law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Obligations to be immediately due and payable without any presentment, demand, protest, notice, or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note, the Loan Agreement or any other Loan Document shall then be immediately due and payable.

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by Law and without notice or process or with such notice or process as is required by Law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Administrative Agent's judgment to complete any unfinished construction

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on the Land, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Administrative Agent therefor, together with interest thereon at the Default Rate, shall be immediately due and payable to Administrative Agent by Borrower on demand.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior to or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the Obligations or the solvency of Borrower or any Person or Persons liable for the payment of the Obligations, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Administrative Agent, but nothing herein is to be construed to deprive Administrative Agent or the Lenders of any other right, remedy or privilege Administrative Agent or the Lenders may now have under the law to have a receiver appointed; provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Administrative Agent to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 hereof. Such receivership shall, at the option of Administrative Agent, continue until full payment of all of the Obligations or until title to the Property shall have passed by foreclosure sale under this Security Instrument or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Security Instrument or to specifically enforce its provisions or any of the Obligations pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Administrative Agent.

(1) Without limiting any of the rights of Administrative Agent or the Lenders (and the obligations of Borrower) under Section 3.7 hereof, in the event foreclosure proceedings are filed by Administrative Agent, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by



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the Note. The Obligations and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by Law), attorneys' fees and any other amounts due and unpaid to Administrative Agent and the Lenders under the Loan Documents, may be bid by Administrative Agent in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Administrative Agent or its assigns may become the purchaser of the Property or any part thereof.

(2) Administrative Agent may, by following the procedures and satisfying the requirements prescribed by applicable Law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Security Instrument on the remaining portion of the Property foreclosed.

(f) Rights under the Uniform Commercial Code. Exercise any or all of the remedies of a secured party under the Uniform Commercial Code against the UCC Collateral, either separately or together, and in any order, without in any way affecting the availability of Administrative Agent's or the Lenders' other remedies. Furthermore, to the extent permitted by Law, in conjunction with, in addition to or in substitution for the rights and remedies available to Administrative Agent or the Lenders pursuant to any applicable Uniform Commercial Code, (i) in the event of a foreclosure sale with respect to the portions of the Property which are not UCC Collateral, the Property (including the UCC Collateral) may, at the option of Administrative Agent, be sold as a whole or in parts, as determined by Administrative Agent in its sole discretion; and (ii) it shall not be necessary that (A) Administrative Agent take possession of the UCC Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section 3.1 is conducted, or (B) the UCC Collateral, or any part thereof, be present at the location of such sale; and (iii) Administrative Agent may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Administrative Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Administrative Agent.

(g) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by Administrative Agent to enforce the payment of the indebtedness secured hereby or the other obligations of Borrower hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Security Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Administrative Agent with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Administrative Agent.

(h) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity or otherwise.

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3.2 Application of Proceeds. To the fullest extent permitted by Law, the proceeds of any sale under this Security Instrument or of other exercises by Administrative Agent of its remedies shall be applied to the extent funds are so available to the following items in such order as Administrative Agent in its reasonable discretion may determine in good faith:

(a) To payment of the actual and out-of-pocket costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Administrative Agent's or the Lenders' rights and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Administrative Agent and the Lenders under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(c) To payment of the Obligations and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate and, to the extent permitted by Law, any prepayment fee, charge or premium required to be paid under any of the Loan Documents in order to prepay principal, in any order that Administrative Agent chooses in its sole discretion.

The remainder, if any, of such funds shall be disbursed to Borrower or to the Person or Persons legally entitled thereto.

3.3 Right and Authority of Receiver or Administrative Agent in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Administrative Agent's or the receiver's reasonable discretion, at Borrower's expense, Administrative Agent or said receiver, or such other Persons as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Administrative Agent may in its reasonable discretion deem appropriate or desirable to place the Property in such condition as will, in Administrative Agent's reasonable discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Administrative Agent may in its reasonable discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents,

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independent contractors or professionals, as Administrative Agent may in its reasonable discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Administrative Agent as attorney-in-fact and agent of Borrower or in its own name as Administrative Agent, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such Leases, whether of real or personal property, under such terms and conditions as Administrative Agent may in its reasonable discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject Tenants or repossess personal property, as provided by Law, for breaches of the conditions of their Leases; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Administrative Agent; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Administrative Agent by this Security Instrument; and (r) do any acts which Administrative Agent in its reasonable discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Administrative Agent may in its reasonable discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority to any Tenant, lessee, or other Person who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Administrative Agent, at the request of Administrative Agent, to pay all amounts owing under any Lease, contract or other agreement to Administrative Agent without proof of the Event of Default relied upon. Any such Tenant, lessee or other Person is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Administrative Agent for the payment to Administrative Agent of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract or other agreement, or for the performance of any undertakings under any such Lease, contract or other agreement, and shall have no right or duty to inquire whether any Event of Default, or any Default, has actually occurred or is then existing. Borrower hereby constitutes and appoints Administrative Agent, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any of the Obligations are outstanding. Any money advanced by Administrative Agent in connection with any action taken under this Section 3.3, together with interest thereon at the Default Rate from the date of making such advancement by Administrative Agent until actually paid by Borrower, shall be a demand obligation owing by Borrower to Administrative Agent.

3.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other Persons claiming any interest in the Property by, through or under Borrower (except Tenants of space in the Improvements subject to Leases entered into prior to the date thereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by Law, each and all shall, at the option of Administrative Agent or the purchaser at such sale, as the case may be, immediately become the Tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or Tenant, at a

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reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by Law, in the event the Tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Land is located.

3.5 Notice to Account Obligors. Administrative Agent may, at any time after an Event of Default hereunder, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness, to Borrower included in the Property to pay Administrative Agent directly. Borrower shall at any time or from time to time upon the request of Administrative Agent provide to Administrative Agent a current list of all such account debtors and obligors and their addresses.

3.6 Cumulative Remedies. All remedies contained in this Security Instrument or in any other Loan Document are cumulative and Administrative Agent and the Lenders shall also have all other remedies provided at law, in equity or otherwise. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Administrative Agent and may be exercised in any order and as often as occasion therefor shall arise. No act of Administrative Agent or any Lender shall be construed as an election to proceed under any particular provisions of this Security Instrument to the exclusion of any other provision of this Security Instrument or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Administrative Agent or the Lenders. No delay or failure by Administrative Agent to exercise any right or remedy under this Security Instrument shall be construed to be a waiver of that right or remedy or of any Event of Default. Administrative Agent may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7 Payment of Expenses. Borrower shall pay on demand all of Administrative Agent's and the Lenders' actual out-of-pocket expenses incurred in any efforts to enforce any terms of this Security Instrument, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Administrative Agent or the applicable Lender until actually paid by Borrower at the Default Rate. Furthermore, Borrower shall, and does hereby, indemnify Administrative Agent and the Lenders for, and hold Administrative Agent and the Lenders harmless from, any and all actual out-of-pocket losses, costs, expenses, claims, actions, demands, liabilities, loss or damage which may or might be incurred by Administrative Agent and the Lenders under this Security Instrument or by the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Administrative Agent or any Lender by reason of any alleged obligations or undertakings on Administrative Agent's or the Lenders' part with respect to the Property except as expressly set forth in the Loan Documents, other than those finally determined to have resulted solely from the gross negligence, violation of law or willful misconduct of Administrative Agent or any Lender, in which case the party to whom the gross negligence, violation of law or willful misconduct is attributable (but not any other party) shall not be entitled to the indemnification provided for hereunder to the extent of such gross negligence, violation of law or willful misconduct. Should Administrative Agent or such Lender incur any such liability, the amount thereof, including,

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without limitation, actual out-of-pocket costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date incurred by Administrative Agent or such Lender until actually paid by Borrower, shall be immediately due and payable to Administrative Agent from Borrower on demand.

## ARTICLE IV INTENTIONALLY OMITTED

## ARTICLE V MISCELLANEOUS TERMS AND CONDITIONS

5.1 Time of Essence. Time is of the essence with respect to all provisions of the Loan Documents.

5.2 Release of Security Instrument. If all of the Obligations be paid and performed (or as otherwise provided in the Loan Documents), then and in that event only, upon delivery and recordation of a written satisfaction of this Security Instrument, all rights under this Security Instrument shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Administrative Agent in due form at Borrower's cost. No release of this Security Instrument or the lien hereof shall be valid unless executed by Administrative Agent.

5.3 Certain Rights of Administrative Agent. Without affecting Borrower's liability for the payment of any of the Obligations, Administrative Agent may (with the consent of the Lenders or the Required Lenders to the extent required under the Loan Agreement) from time to time and without notice to Borrower: (a) release any Person liable for the payment of the Obligations; (b) extend or modify the terms of payment of the Obligations; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Obligations; (d) consent in writing to the making of any subdivision map or plat thereof; (e) join in granting any easement therein; or (f) join in any extension agreement of this Security Instrument or any agreement subordinating the lien hereof.

5.4 Waiver of Certain Defenses. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note or any of the other Loan Documents.

5.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be sent in the manner required by Section 10.4 of the Loan Agreement.

5.6 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Administrative Agent, the Lenders and their respective successors and assigns, and shall constitute covenants running with the land. All indemnities in this Security Instrument for the benefit of Administrative Agent and/or the Lenders shall inure to the benefit

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of Administrative Agent and the Lenders and each of their respective directors, officers, shareholders, partners, members, managers, employees and agents (including, without limitation, any servicers retained by Administrative Agent with respect to the Loan), and pledgees and participants of the Obligations, and their respective successors and assigns. All references in this Security Instrument to Borrower or Administrative Agent shall be deemed to include each such party's successors and assigns. If Borrower consists of more than one Person, each will be jointly and severally liable to perform the obligations of Borrower.

5.7 Severability. A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Security Instrument to any Person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other Persons or circumstances.

5.8 Interpretation. Within this Security Instrument, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires. The headings of the sections and paragraphs of this Security Instrument are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of this Security Instrument shall be controlling, except for the Loan Agreement, it being understood that the provisions of the Loan Agreement shall control over any inconsistent provision in any other Loan Document.

5.9 Waiver: Discontinuance of Proceedings. Administrative Agent may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Administrative Agent may remedy any Event of Default without waiving the Event of Default remedied. Neither the failure by Administrative Agent to exercise, nor the delay by Administrative Agent in exercising, any right, power or remedy upon any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Administrative Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Administrative Agent of any payment in an amount less than the amount then due on any of the Obligations shall be deemed an acceptance on account only and shall not in any way affect the existence of a Default or an Event of Default. In case Administrative Agent shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Administrative Agent shall have the unqualified right to do so and, in such an event, Borrower and Administrative Agent shall be restored to their former positions with respect to the Obligations, the Loan Documents, the

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Property and otherwise, and the rights, remedies, recourses and powers of Administrative Agent shall continue as if the same had never been invoked.

5.10 Governing Law. This Security Instrument will be governed by and construed in accordance with the laws of the Law of the State of New York applicable to contracts made and performed in such State pursuant to Section 5-1401 of the New York General Obligations Law and any applicable Law of the United States of America. The laws of the State of Illinois shall govern all issues concerning matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument. All other provisions of this Security Instrument shall be governed by and construed in accordance with the Law of the State of New York applicable to contracts made and performed in such State pursuant to Section 5-1401 of the New York General Obligations Law and any applicable Law of the United States of America, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

5.11 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located, the period shall be deemed to end on the next succeeding Business Day.

5.12 Relationship of the Parties. The relationship between Borrower and the Lenders is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

5.13 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by the Lenders at Borrower's request and the Lenders shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

5.14 Unsecured Portion of Indebtedness. If any part of the Obligations cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

5.15 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by Law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Property is located), bear interest at the Default Rate.

5.16 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, as

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determined by Administrative Agent, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

5.17 No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Administrative Agent acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Administrative Agent as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

5.18 Rights With Respect to Junior Liens. Any Person purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Administrative Agent to amend, modify, increase, vary, alter or supplement this Security Instrument, the Note or any of the other Loan Documents and to extend the maturity date of the Obligations and to increase the amount of the Obligations and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Obligations, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Security Instrument losing its priority over the rights of any such junior lien.

5.19 Fixture Filing. To the extent permitted by Law, this Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. This Security Instrument shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county in which the Property is located. The mailing address of Borrower, as debtor and the address of Administrative Agent, as secured party, from which information concerning the security interests may be obtained are set forth above.

5.20 After-Acquired Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances, as Administrative Agent shall require for accomplishing the purposes of this Security Instrument.

5.21 Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this Security Instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this



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Security Instrument identical in form hereto but having attached to it one or more additional signature pages.

5.22 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Administrative Agent shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Administrative Agent, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of Taxes and Other Charges on the Property.

5.23 Entire Agreement and Modification. This Security Instrument and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Security Instrument and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

5.24 Usury Savings. The provisions of Section 10.10 of the Loan Agreement are incorporated in this Security Instrument by reference as if more fully set forth herein.

5.25 Jurisdiction; Waiver of Venue; Service of Process; Waiver of Jury Trial.

(a) Jurisdiction. Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind against a Lender Party in any way relating to this Security Instrument or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof and of any state court or any United States federal court, sitting in the state in which any of the Property is located. Borrower irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such courts. Borrower agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Security Instrument or in any other Loan Document shall affect any right that a Lender Party may otherwise have to bring any action or proceeding relating to this Security Instrument or any other Loan Document against Borrower or its properties in the courts of any jurisdiction.

(b) Waiver of Venue. Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Security Instrument or any other Loan Document in any court referred to in paragraph (a) of this Section. Borrower hereby irrevocably waives, to the fullest extent permitted by applicable Law, the

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defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) **Service of Process.** Borrower irrevocably consents to service of process in the manner provided for notices in Section 10.4(a) (*Notices Generally*) of the Loan Agreement. Nothing in this Security Instrument will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

(d) **Waiver of Jury Trial.** Borrower, to the maximum extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, relinquishes and forever forgoes the right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to the Obligations of this Security Instrument, or any conduct, act or omission of Administrative Agent, Borrower or any Lender, whether sounding in contract, tort or otherwise.

5.26 **Borrower's Legal Status.** Borrower's exact legal name that is indicated on the signature page hereto, organizational identification number and place of business or, if more than one, its chief executive office, as well as Borrower's mailing address, if different, which were identified by Borrower to Administrative Agent and contained in this Security Instrument, are true, accurate and complete. Borrower (a) will not change its name, its place of business or, if more than one place of business, its chief executive office, or its mailing address or organizational identification number if it has one without giving Administrative Agent at least thirty (30) days prior written notice of such change, (b) if Borrower does not have an organizational identification number and later obtains one, Borrower shall promptly notify Administrative Agent of such organizational identification number and (c) will not change its type of organization, jurisdiction of organization or other legal structure.

5.27 **State-Specific Provisions.** In the event of any inconsistency or disagreement between the terms and provisions set forth in this Section 5.27 and the other terms and provisions of this Security Instrument, the terms and provisions of this Section 5.27 shall govern, control and supersede such other terms and provisions to the extent of such inconsistency or disagreement.

(a) **Collateral Protection Act.** Without limiting any of Administrative Agent's rights under this Security Instrument or any of the Loan Documents, unless Borrower provides Administrative Agent with evidence of the insurance required by this Security Instrument or any other Loan Document, Administrative Agent may purchase insurance at Borrower's expense to protect Administrative Agent's interest in the Property (on behalf of itself and any other Lenders) or any other collateral for the Obligations. This insurance may, but need not, protect Borrower's interests. The coverage Administrative Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the Obligations. Borrower may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrower has obtained insurance as required under this Security Instrument or any other Loan Document. If Administrative Agent purchases insurance for the Property or any other collateral for the Obligations, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Administrative Agent may lawfully impose in connection with

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the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Borrower hereby acknowledges Administrative Agent's right (on behalf of itself and any other Lenders) pursuant to this Section to obtain collateral protection insurance.

(b) Use of Proceeds. Borrower represents and warrants to Administrative Agent (a) that the proceeds of the Note secured by this Security Instrument will be used for the purposes specified in 815 ILCS 205/4(1)(c) (or any substitute, amended or replacement statute), and that the Loan secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), and (b) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

(c) Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Security Instrument secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all Loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Administrative Agent in connection with the Loan, all in accordance with the Loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Fifty-Nine Million Eight Hundred Forty-Six Thousand and No/100 Dollars (\$59,846,000.00). It is agreed that any future advances made by Administrative Agent for the benefit of Borrower from time to time under this Security Instrument or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Administrative Agent, made at any time from and after the date of this Security Instrument, and all interest accruing thereon, shall be equally secured by this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument. This Security Instrument shall be valid and have priority to the extent of the full amount of the Obligations over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

(d) Adjustable Mortgage Loan Provision. The Note which this Security Instrument secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Loan Documents.

(e) Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

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(f) Forbidden Entity. Borrower hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

(g) Rights of Tenants. Upon an Event of Default and in accordance with the Loan Documents, Administrative Agent shall have the right and option to commence a civil action to foreclose this Security Instrument and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of Administrative Agent. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Loan, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption and reinstatement under the IMFL, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Administrative Agent, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMFL or residential real estate as defined in Section 5/15-1219 of the IMFL.

(i) Fixture Financing Statement. From the date of its recording, this Security Instrument shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the collateral securing the Loan and the goods described herein, which goods are or are to become fixtures related to the Property. The addresses of Borrower (Debtor) and Administrative

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Agent (Secured Party) are set forth below. This Security Instrument is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth:

- (i) Name and Address of Debtor:

Apexus Sesame Street L.P.  
c/o Aminim Properties  
10101 Fondren Road  
Suite 250F  
Houston, TX 77096

- (ii) Name and Address of Secured Party:

First-Citizens Bank & Trust Company  
11 West 42nd Street  
New York, New York 10036

- (iii) This document covers goods which are or are to become fixtures.

- (iv) Debtor is the record owner of the Property.

- (v) Debtor's chief executive office is located in the State of Texas.

- (vi) Debtor's state of formation is Delaware.

- (vii) Debtor's exact legal name is as set forth in the first paragraph of this Security Instrument.

- (viii) Debtor's organizational identification number is 6586747.

- (ix) Debtor agrees that:

(A) Where collateral securing the Loan is in possession of a third party, Borrower will join with Administrative Agent in notifying the third party of Administrative Agent's interest and obtaining an acknowledgment from the third party that it is holding the collateral securing the Loan for the benefit of Administrative Agent;

(B) Borrower will cooperate with Administrative Agent in obtaining control with respect to collateral securing the Loan consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(C) Until the Obligations are paid in full, Borrower will not change the state where it is located or change its company name without giving Administrative Agent at least thirty (30) days prior written notice in each instance.

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(j) Interest Laws. It being the intention of Administrative Agent and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Security Instrument or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Security Instrument or any of the other Loan Documents, then in such event: (a) the provisions of this Section 5.27(j) shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Administrative Agent may have received hereunder shall, at the option of Administrative Agent, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the interest rate for the Loan set forth in the Loan Agreement shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Security Instrument and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the interest rate for the Loan set forth in the Loan Agreement; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Administrative Agent for any damages whatsoever arising out of the payment or collection of any Excess Interest.

(k) Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Security Instrument shall be inconsistent with any provisions of the IMFL, the provision of the IMFL 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 IMFL.

(b) Borrower and Administrative Agent shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may be repealed, Administrative Agent 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.

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

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(d) All advances, disbursements and expenditures made or incurred by Administrative Agent before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument, the other Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including, without limitation, those provisions of the IMFL herein below referred to:

(A) all advances by Administrative Agent in accordance with the terms of this Security Instrument or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (2) preserve the lien of this Security Instrument or the priority thereof; or (3) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of the IMFL;

(B) payments by Administrative Agent of (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (2) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by this Security Instrument; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMFL;

(C) advances by Administrative Agent in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(D) reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Security Instrument as referred to in Sections 1504(d) and 15-1510 of the IMFL; (2) in connection with any action, suit or proceeding brought by or against Administrative Agent for the enforcement of this Security Instrument or arising from the interest of Administrative Agent hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Security Instrument or the Property;

(E) Administrative Agent's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMFL;

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(F) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMFL;

(G) expenses incurred and expenditures made by Administrative Agent for any one or more of the following: (1) premiums for casualty and liability insurance paid by Administrative Agent whether or not Administrative Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Administrative Agent takes possession of the Property imposed by Subsection 15-1704(c)(1) of the IMFL; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments deemed by Administrative Agent to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property.

All Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

- (1) any determination of the amount of indebtedness secured by this Security Instrument at any time;
- (2) the indebtedness found due and owing to Administrative Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Security Instrument, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMFL;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMFL;



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(5) application of income in the hands of any receiver or Administrative Agent in possession; and

(6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMFL.

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

5.28 Cross-Collateralization. Borrower acknowledges that the obligations secured by this Security Instrument are additionally secured by the Other Mortgages, which encumber the real and personal property more particularly described in the Other Mortgages (such real and personal property, collectively, the "Other Properties"), all as more specifically set forth in the Loan Agreement and the Other Mortgages. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the Other Mortgages whether by court action, power of sale or otherwise, under any applicable Law, and the lien and the security interest created by the Other Mortgages shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the Other Properties are located in one or more states and/or counties, and therefore Administrative Agent shall be permitted to enforce payment and performance of the Obligations and exercise any and all rights and remedies under the Loan Agreement, the Note, this Security Instrument, the other Loan Documents or the Other Mortgages, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Administrative Agent, in its sole discretion, in any one or more of the states or counties in which the Property or any of the Other Properties are located. Neither the acceptance of this Security Instrument, the other Loan Documents or the Other Mortgages nor the enforcement thereof in any one state or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Loan Agreement, the Note, this Security Instrument, the other Loan Documents, or any Other Mortgages through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Administrative Agent or any Lender under the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be applied to the Obligations in such order and priority as Administrative Agent shall determine, in its sole discretion, without regard to any portion of the Loan allocated to any Property or any of the Other Properties or the appraised value of the Property or any of the Other Properties.

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Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
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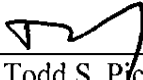
# UNOFFICIAL COPY

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

Borrower's Organizational Identification  
Number: 6586747

APEXUS SESAME STREET L.P.,  
a Delaware limited partnership

By: Apexus I-294 GP LLC, a Delaware  
limited liability company, its General  
Partner

By:   
Name: Todd S. Pickard  
Title: Authorized Signatory

Property of Cook County Clerk's Office

[Acknowledgment to follow on next page]

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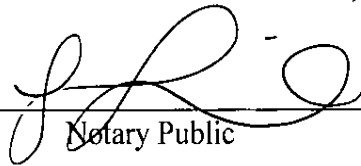
# UNOFFICIAL COPY

## ACKNOWLEDGEMENT

STATE OF New York  
COUNTY OF New York

On the 20 day of Feb. in the year 2022, before me, the undersigned, personally appeared Todd S. Pickard, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of Apexus I-294 GP LLC, a Delaware limited liability company, the General Partner of APEXUS SESAME STREET L.P., a Delaware limited partnership, and that by his signature on the instrument, the individual, or the Person upon behalf of which the individual acted, executed the instrument.

FEIGA SHEINA MILSHEIN  
Notary Public, State of New York  
No. 01MI6056697  
Qualified in Rockland County  
Commission Expires March 26, 2023

  
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

*Notary Public's Office*

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## EXHIBIT A LEGAL DESCRIPTION OF THE LAND

### PARCEL 1: (FEE SIMPLE)

LOT 1 IN HAWTHORNE CENTER FOR INDUSTRY, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 1974 AS DOCUMENT NUMBER 22682660, IN COOK COUNTY, ILLINOIS.

### PARCEL 2: (EASEMENT)

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1, AS CREATED BY MAINTENANCE AGREEMENT AND GRANT OF EASEMENT DATED DECEMBER 21, 1978 RECORDED DECEMBER 26, 1978 AS DOCUMENT NUMBER 24778114, OVER, ACROSS AND UPON LOT 5 IN HAWTHORN CENTER FOR INDUSTRY, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 1974 AS DOCUMENT NUMBER 22682660, ALL IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 1010-1050 SESAME STREET, BENSENVILLE, IL 60131

PARCEL NO.: 12-19-100-089-0000

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