

Illinois Anti-Predatory  
Lending Database  
Program

Doc#: 2227725024 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 10/04/2022 10:03 AM Pg: 1 of 41

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 17-17-300-051-0000

**Address:**

**Street:** 625 S Ashland Ave

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60607

**Lender:** Access Point Financial LLC

**Borrower:** WYATR LLC

**Loan / Mortgage Amount:** \$10,860,000.00

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:** 04CBFBFB-4DBD-473B-ABB1-B8C3CCF5DF60

**Execution date:** 9/30/2022

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PREPARED BY, AND WHEN RECORDED  
RETURNED TO:

Burr & Forman LLP  
222 2nd Ave S, Suite 2000  
Nashville, TN 37201  
Attn: Lindsey Arnold, Esq.  
(615) 724-3253

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Space above this line for Recorder's use

**THIS MORTGAGE COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY ("MORTGAGEE" HEREIN) AND THE DEBTOR ("MORTGAGOR" HEREIN) ARE WITHIN.**

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

(Commercial Property)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Security Instrument") is made as of September 30, 2022 by **WYATR LLC**, a Delaware limited liability company ("Mortgagor"), whose address is c/o AJ Capital Partners, 429 Chestnut St. Nashville, TN 37203, in favor of **ACCESS POINT FINANCIAL LLC**, a Delaware limited liability company, and its successors and assigns ("Mortgagee"), whose address is One Ravinia Drive, Suite 900 Atlanta, GA 30346.

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## WITNESSETH

WHEREAS, Borrower is justly indebted to Lender for borrowed money in the principal sum of TEN MILLION EIGHT HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$10,860,000.00) (the "Loan"), which Loan is evidenced by that certain Promissory Note of even date herewith made by the Borrower payable to Lender in installments with interest thereon (said Promissory Note, as the same hereafter may be renewed extended or modified, being herein called the "Note"), which Note has a final stated maturity of September 30, 2025 (provided that the maturity date may be extended, at the option of Borrower, to a date that is not later than September 30, 2027) and that certain Loan Agreement of even date herewith by and between Mortgagor, as borrower, and Mortgagee, as Lender (said Loan Agreement, as the same hereafter may be renewed extended or modified, being herein called the "Loan Agreement"). Capitalized terms used in this Security Instrument without definition have the meanings given to them in the Loan Agreement; and

WHEREAS, as a condition to making the Loan, Lender has required that Borrower mortgage, pledge, assign, and convey to it the real estate and interests more particularly described herein.

### 1. GRANT AND SECURED OBLIGATIONS.

1.1 Grant. NOW, THEREFORE, in consideration of the above-referenced indebtedness and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Mortgagor hereby irrevocably and unconditionally **BARGAIN, SELL, CONVEY, ALIEN, REMISE, RELEASE, ASSIGN, TRANSFER, MORTGAGE, HYPOTHECATE, PLEDGE, DELIVER, SET OVER, WARRANT AND CONFIRM WITH MORTGAGE COVENANTS**, all estate, right, title and interest that Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

1.1.1 The real property located in the county of Cook, State of Illinois, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (the "Premises");

1.1.2 All buildings, structures, and improvements now located or later to be constructed on the Premises (the "Improvements" and, together with the Premises, the "Project");

1.1.3 All existing and future appurtenances, privileges, easements, franchises, and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances that may be in, under or produced from any part of the Premises (collectively, "Mineral Rights"), all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant), and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed;

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1.1.4 Subject to, and without in any way limiting the absolute assignment in Section 2 hereof, all existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions and other agreements affecting the use, enjoyment or occupancy of all or any portion of the Premises or Improvements heretofore or hereafter entered into (including, without limitation, any and all security interests, contractual liens and security deposits) whether before or after the filing by or against Mortgagor 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 guarantees, extensions, renewals, replacements of modifications thereof and all other agreements relating to or made in connection therewith, and any agreement (written or oral) between Mortgagor or its agents, and any tenant, lessee, occupant, licensee, guest or invitee pursuant to which Mortgagor, or its agent, agrees to permit such tenant, lessee, occupant, licensee, guest or invitee to park in or at the Project (individually, a “Lease,” collectively, the “Leases”); provided, however the “Leases” shall not include (a) any Borrower Lease, (b) any rental or occupancy agreements entered into in the ordinary course of business having a rental or occupancy term not exceeding twelve (12) months, and (c) any service contracts for the operation of the Project in the ordinary course of business; income, rents (including, without limitation, room rents, revenues, accounts and receivables derived from the use or occupancy of all or any portion of the Improvements or any guestroom thereon), rent equivalents, deposits, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises or the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms, parking facilities, and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales (including mini-bar revenues), service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Secured Obligations;

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Project;

1.1.6 All machinery, equipment, goods, inventory, consumer goods, furnishings, fixtures (including but not limited to all heating, air conditioning, plumbing, inventory, lighting, communications and elevator fixtures), building materials, work in progress and other personal property of every kind and nature, whether tangible or intangible,

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whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, whether located upon Project or appurtenant thereto or elsewhere, and usable in connection with the present or future use, maintenance, enjoyment, operation and occupancy of the Project or otherwise, including without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, mini-bars, liquor and other drink dispensers, icemakers, kitchen equipment, radios, television sets, cable t.v. equipment, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, reservation systems and related computer software, first aid equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, plants apparatus, stoves, ranges, refrigerators, cutlery and dishes, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, washers and dryers, other customary hotel equipment, and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Project or appurtenant thereto or located elsewhere, or usable in connection with the present or future operation, enjoyment and occupancy of the Project or otherwise and the right, title and interest of Mortgagor in and to any of the Mortgagor's personal property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Project is located (the "Uniform Commercial Code"), and all proceeds and products of the above and manufacturer's warranties with respect thereto;

1.1.7 All of Mortgagor's interest in and to all Accounts (as defined in the Loan Agreement), operating accounts, reserves, escrows, the Loan funds, whether disbursed or not, all reserve accounts, impound accounts, and any other bank accounts of Mortgagor relating to the Project or the operation thereof or otherwise;

1.1.8 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), claims, representations, warranties and general intangibles (as one or more of the foregoing terms may be defined in the Uniform Commercial Code), that arise from or relate to the operation or leasing of the Project or otherwise, or to any business now or later to be conducted on it, or to the Project generally;

1.1.9 All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits, other credits (including development credits), waivers and payments, whether in cash or in kind, allocated to the Premises, the Improvements, or Mortgagor, or due and payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district or (ii) any insurance or utility company relating to any or all of the Premises or Improvements or arising out of the satisfaction of any conditions imposed upon

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or the obtaining of any approvals for the development or rehabilitation of the Premises or Improvements;

1.1.10 All insurance policies and the proceeds thereof pertaining to the Premises, the Improvements, or any other property described in this Section 1.1, and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any property described in this Section 1.1 into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding or any settlement in lieu thereof, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described in this Section 1.1, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

1.1.11 All of Mortgagor's right, title, and interest in and to any and all declarant rights, development rights, and any other rights relating to the Premises or the Improvements or otherwise, whether now existing or subsequently arising, under any and all covenants, conditions, and restrictions, development agreements, or other agreements or declarations now existing or later executed relating to the Premises or Improvements, and all applicable laws now existing or later enacted relating to the Premises or Improvements, and all rights of Mortgagor in connection with any owner's association, architectural control committee, or similar association or committee, established in connection with the Project, including Mortgagor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

1.1.12 All of Mortgagor's right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements, (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (hereinafter defined); (iv) approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms, and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any,



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from business interruption or other loss of income insurance, or arising from the sale of any portion of the Project or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon, (v) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clauses (i) through (iv) of this Section 1.1.12; and (vi) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (v) of this Section 1.1.12 (collectively, the "Contracts");

1.1.13 Subject to the terms of the Franchise Agreement, all of Mortgagor's right, title, and interest in and to all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements;

1.1.14 To the fullest extent not prohibited by applicable laws, all of Mortgagor's rights in all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements (to the extent assignable, the "Project Licenses");

1.1.15 All books, records, and data pertaining to any and all of the property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data ("Books and Records"); and

1.1.16 All products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns, forever.

## 1.2 Secured Obligations.

1.2.1 Mortgagor makes the grant, conveyance, assignment, and mortgage set forth above, and grants the security interests and liens set forth below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

- (a) Payment of indebtedness in the original principal amount of the Loan, as evidenced by the Note;
- (b) Payment and performance of all obligations of Mortgagor under this Security Instrument;
- (c) Payment and performance of all obligations of Mortgagor under the Loan Agreement, including without limitation the "Obligations" as defined therein;

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(d) Payment and performance of any obligations of Mortgagor under any Loan Documents that are executed by Mortgagor;

(e) Payment and performance of all other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform for the benefit of Mortgagee;

(f) Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the foregoing Secured Obligations; and

(g) Payment and performance of all future advances with respect to any of the foregoing Secured Obligations.

1.2.2 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement that permit borrowing, repayment and re-borrowing, or that provide for a change in the interest rate of any Secured Obligation.

1.2.3 This Security Instrument shall not secure any obligations of guarantors or other third parties under any guaranties of the Secured Obligations.

## 2. ABSOLUTE ASSIGNMENT OF LEASES AND RENTS.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently, and unconditionally transfers, assigns, and conveys to Mortgagee all of the right, title and interest of Mortgagor in and to (a) the Leases; and (b) Rents, including all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Mortgagor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant (hereinafter defined) under the Leases; together with any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Mortgagor may have against any tenant, resident, occupant, lessee, or licensee under the Leases (each a "Tenant," and collectively, "Tenants") or against any other occupant of the Premises or Improvements. This is a present and absolute assignment of the Leases and Rents, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license (the "License") to retain possession of the Leases and collect and retain the Rents as they become due and payable, unless or until the occurrence and continuance of an Event of Default (hereinafter defined). Upon the occurrence and during the continuance of an Event of Default, the License shall automatically terminate without notice to Mortgagor, and without prejudice to Mortgagee; provided, however, such License will be reinstated upon the acceptance by Mortgagee of the cure of any such Event of Default or upon any such Event of Default being waived in writing by



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Mortgagee. Mortgagee may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Mortgagee and Mortgagor agree that the mere recordation of this Security Instrument entitles Mortgagee immediately to collect and receive Rents upon the occurrence and during the continuance of an Event of Default without first taking any enforcement action under applicable laws, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

2.3 No Encumbrance. Mortgagor shall not otherwise assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in any of the Leases or Rents.

## 2.4 Collection and Application of Rents

2.4.1 Right to Collect; Attorney-in-Fact. Subject to the License granted to Mortgagor above, and subject to the cash management provisions of Section 2.7 of the Loan Agreement, from and after the occurrence and during the continuance of an Event of Default, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, at such times as Mortgagee in its sole discretion may so choose, (a) to demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (b) to give receipts, releases and satisfactions for any and all Rents; (c) to sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents; (d) to perform any obligation, covenant or agreement of Mortgagor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys' fees; (e) to delegate any and all rights and powers given to Mortgagee by the assignment of Leases and Rents provided for herein; (f) to appear in any bankruptcy, insolvency or reorganization proceeding involving any Tenant under the Leases and to collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (g) to use such measures, legal or equitable, in its discretion to carry out and effectuate the terms and intent of the assignment of Leases and Rents provided for herein. All such actions shall be taken at the expense of Mortgagor, who agrees to reimburse Mortgagee, upon demand, for all amounts expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at Default Rate, and the obligation to perform such actions shall be secured by this Security Instrument. Notwithstanding any other provision of this Security Instrument, all awards or payments received by Mortgagee shall be applied to the Secured Obligations in such order as Mortgagee may elect in its sole discretion.

2.4.2 Mortgagor as Trustee. From and after the occurrence and continuance of an Event of Default, Mortgagor shall be the agent of Mortgagee in collection of the Rents, and any Rents so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee, and subject to the provisions of Section 2.7(b) of the Loan Agreement, Mortgagor shall, within one (1) Business Day after receipt of any Rents, pay the same to Mortgagee to be applied by Mortgagee as set forth in Section 2.10 hereof.

2.4.3 Possession of Property Not Required. Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property. In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking

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possession of the Property. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Security Instrument, Mortgagee and any receiver appointed for all or any portion of the Property shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Security Instrument and at law and in equity.

2.5 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and, subject to applicable laws, shall not be deemed to be:

2.5.1 Responsible for the control, care, management or repair of the Property;

2.5.2 A “mortgagee in possession” for any purpose;

2.5.3 Responsible for performing any of the obligations of the lessor under any Lease;

2.5.4 Responsible for any waste committed by Tenants or other occupants of the Property or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property, except to the extent resulting from the gross negligence or willful misconduct of Lender, its agents or employees;

2.5.5 Responsible for any loss sustained by Mortgagor resulting from Mortgagee’s failure to lease the Premises or Improvements or from any other act or omission of Mortgagee in managing the Property or administering the Leases, except to the extent resulting from Lender’s the gross negligence or willful misconduct of Lender, its agents or employees; or

2.5.6 Liable in any manner for the Property or the use, occupancy, enjoyment, or operation of all or any part of it, except to the extent resulting from Lender’s the gross negligence or willful misconduct of Lender, its agents or employees.

2.6 Consent to Payment of Rents Directly to Mortgagee. At any time after the occurrence and during the continuance of an Event of Default, Mortgagee may, at its option, notify any Tenant or other parties of the existence of the assignment of Leases and Rents provided for herein. Mortgagor hereby specifically authorizes, instructs and directs each and every present and future Tenant of all or any part of the Premises or Improvements and all credit card companies, credit card processors, and other revenue sources, including, without limitation, travel agencies, which pay Rents, to pay all unpaid and future Rents directly to Mortgagee upon receipt of demand from Mortgagee to so pay the same, and Mortgagor hereby agrees that each such present and future Tenant may rely upon such written demand from Mortgagee to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Mortgagee is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. Mortgagor hereby waives any right, claim or demand that Mortgagor may now or hereafter have against any present or future Tenant by reason of such payment of

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Rents to Mortgagee, and any such payment shall discharge such Tenant's obligation to make such payment to Mortgagor.

2.7 Leasing. Mortgagor shall comply at all times with Section 4.2 of the Loan Agreement.

2.8 Further Actions. Mortgagor shall punctually observe, perform, and discharge all obligations, terms, covenants, conditions, and warranties to be performed by Mortgagor pursuant to the Leases. Mortgagor agrees to execute and deliver, at its sole cost and expense, upon Mortgagee's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Mortgagee's judgment to carry out the purposes of the assignment of Leases and Rents provided for herein, including any consents to such assignment of Leases and Rents. In addition, Mortgagor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any Tenant thereunder, and shall pay on demand all out-of-pocket costs and expenses, including third party attorneys' fees that Mortgagee may incur in connection with Mortgagee's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Mortgagee until repaid by Mortgagor.

2.9 Letters of Credit. Mortgagor shall notify Mortgagee in writing prior to becoming the beneficiary under any letter of credit supporting any of the Leases, or otherwise in connection with the Property, and will take all actions, and execute all documents, necessary or appropriate to give Mortgagee control (as defined in the Uniform Commercial Code) of such letter of credit and all letter of credit rights thereunder and, if so required by Mortgagee, to deliver the letter of credit to Mortgagee or constitute Mortgagee the transferee beneficiary of such letter of credit.

2.10 Application of Rents. All Rents collected following an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including third party attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to the Secured Obligations. Mortgagee or the receiver shall be liable to account only for those Rents actually received by Mortgagee or the receiver.

### 3. SECURITY ASSIGNMENT OF CONTRACTS.

3.1 Assignment. To the fullest extent not prohibited by applicable laws, Mortgagor hereby grants, assigns, and pledges to Mortgagee all of Mortgagor's right, title and interest in and to all of the Contracts as security for the Secured Obligations.

3.2 Mortgagee's Remedies upon Default. Upon the occurrence and during the continuance of an Event of Default, Mortgagee, at its sole option, and without any notice whatsoever to Mortgagor, and without assuming any of the obligations of Mortgagor under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any

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default of Mortgagor in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Mortgagor under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Mortgagor or Mortgagee, with such third parties as Mortgagee may in its discretion select, and upon such terms and conditions as Mortgagee in its reasonable discretion may determine; (f) compromise amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Mortgagee by the assignment of Contracts provided for herein; (i) perform any obligation, covenant or agreement of Mortgagor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of the assignment of Contracts provided for herein. All such actions shall be taken at the expense of Mortgagor.

3.3 No Liability of Mortgagee. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of the assignment of Contracts provided for herein. Further, nothing in this Security Instrument shall obligate Mortgagee to assume any obligations under any Contract, unless and until Mortgagee becomes the owner of the Property and affirmatively assumes a particular Contract in writing.

3.4 Instructions to Contracting Parties. Upon a continuing Event of Default, the assignment of Contracts provided for herein constitutes an irrevocable direction to and full authority from Mortgagor to any other party to any Contract to pay directly to Mortgagee, upon Mortgagee's request, all amounts that may be or become due to Mortgagor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Mortgagor to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

3.5 Application of Income. Notwithstanding any other provision of this Security Instrument, upon a continuing Event of Default, the payments, proceeds and income collected by Mortgagee with respect to the Contracts may be applied, in whatever order Mortgagee in its discretion may determine, to the payment of any costs and expenses, to the payment of Taxes, Other Charges, Impositions, and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Mortgagor.

3.6 Interpretation. The terms of any separate assignment of Contracts shall supersede and control over any inconsistent terms of the assignment of Contracts provided for herein.

## 4. SECURITY AGREEMENT AND FINANCING STATEMENT.

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4.1 Security Agreement. The parties intend for this Security Instrument to create a lien on and security interest in the Property, an absolute assignment of the Leases and Rents, and a security assignment of Contracts, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable laws to be personal property or fixtures. To the extent that any Property (including the Leases, Rents, or Contracts), is or may be determined to be personal property or fixtures, Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a lien on and security interest in all such Property to secure payment and performance of the Secured Obligations. This Security Instrument constitutes a security agreement under the Uniform Commercial Code, covering all such Property. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code in force from time to time.

4.2 Financing Statement.

4.2.1 Mortgagor hereby irrevocably authorizes Mortgagee, at any time and from time to time, to prepare and file, in any filing office in any jurisdiction necessary to perfect the security interests granted herein, any financing statements and amendments thereto that (a) indicate the "collateral" (i) as all assets of Mortgagor or words of similar effect, regardless of whether any particular asset included in the collateral falls within the scope of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information for the sufficiency of the filing or acceptance of any financing statement or amendment by the filing office. Mortgagor agrees to furnish any such information to Mortgagee promptly upon Mortgagee's request.

4.2.2 Mortgagor shall pay all out-of-pocket fees and reasonable costs that Mortgagee may incur in filing one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Property and in obtaining such record searches as Mortgagee may reasonably require to confirm the perfection and priority of the security interests granted herein.

4.2.3 Mortgagor shall cooperate with Mortgagee in any way reasonably necessary to perfect and continue the perfection of Mortgagee's security interest in any part of the Property.

4.2.4 If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Security Instrument as a lien on the Property or the rights or obligations of the parties under it.

4.2.5 Mortgagor shall not terminate any financing statement filed to perfect Mortgagee's security interest without Mortgagee's express written consent other than upon written confirmation from Mortgagee that Mortgagor's Obligations have been paid in full and to the extent permitted by applicable law.



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4.3 Fixture Filing. This Security Instrument constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code, covering any Property that now is or later may become fixtures attached to the Premises or Improvements.

## 4.4 Representations, Warranties, and Covenants.

4.4.1 Mortgagor represents and warrants to Mortgagee that (a) Mortgagor's exact legal name is as set forth on the signature page of this Security Instrument, which name is stated to be Mortgagor's name on the public organic record most recently filed with Mortgagor's jurisdiction of organization; (b) Mortgagor is an organization of the type, and is organized in the jurisdiction, set forth on the signature page of this Security Instrument; (c) Mortgagor's address set forth in the preamble of this Security Instrument is its principal place of business and the location of its chief executive offices; and (d) Mortgagor keeps all its Books and Records online and grants the Mortgagee rights thereto pursuant to Section 5.15.

4.4.2 Mortgagor shall not, without prior written notice to Mortgagee: (a) change the location of its principal place of business or chief executive office from that specified in the preamble of this Security Instrument; (b) change its name, identity or corporate structure in a manner that would affect the perfection or priority of Mortgagee's financing statement(s) against all or any portion of the Property without further action by Mortgagee; or (c) change the jurisdiction of its incorporation or organization. In addition, Mortgagor shall keep all Property that is personal property, to the extent not delivered to Mortgagee, at the Property or such other locations as have been disclosed in writing to Mortgagee, and Mortgagor shall not remove the personal property from such locations except in the ordinary course of business without providing written notice to Mortgagee of the new location of such personal property.

4.4.3 Mortgagor will fully and punctually perform any duty required of it under or in connection with any of the Property that is personal property, and will not take any action that would reasonably be expected to impair, damage or destroy Mortgagee's rights to such Property or the value thereof.

4.5 Uniform Commercial Code Remedies. During the continuation of an Event of Default, Mortgagee may exercise and or all of the remedies granted to a secured party under the Uniform Commercial Code.

## 5. RIGHTS AND DUTIES OF THE PARTIES.

5.1 Representations and Warranties. Mortgagor represents, warrants, and covenants that:

5.1.1 Mortgagor lawfully possesses and holds indefeasible fee simple title to all of the Premises and Improvements located thereon, subject only to Permitted Encumbrances;

5.1.2 Mortgagor has good title to all Property other than the Premises and Improvements, free and clear of any security agreements, reservations of title, or



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conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office, except for Permitted Encumbrances;

5.1.3 Mortgagor has the requisite power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts; other than the Loan Documents, there are no outstanding assignments of the Leases, Rents, or Contracts; Mortgagor is the absolute owner of the landlord's interest in the Leases; and Mortgagor has performed no act or executed any other instrument that might reasonably be expected to prevent Mortgagee from enjoying and exercising any of its rights and privileges evidenced by this Security Instrument with respect to the Leases, Rents, and Contracts; and

5.1.4 Upon recording of this Security Instrument in the real estate records of the county where the Premises are located and the filing of a UCC financing statement in the applicable Uniform Commercial Code jurisdiction, this Security Instrument will create a first priority lien on the Property, subject only to the Permitted Encumbrances.

5.2 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.3 Use of Property. Unless required by applicable laws or unless otherwise permitted by the Loan Agreement, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Security Instrument was executed. Mortgagor shall not initiate to a change in the zoning classification of the Property without Mortgagee's prior written consent.

5.4 Taxes, Assessments, Liens, Charges and Encumbrances. Mortgagor shall pay, prior to delinquency, all Taxes, Other Charges, Impositions, levies, charges, assessments, water and sewer rates, rents, and insurance premiums, attributable to the Property in accordance with the terms of the Loan Agreement (including, for the avoidance of doubt, any provisions pertaining to the good faith contest thereof).

5.5 Damages and Insurance and Condemnation.

5.5.1 Notice to Lender. In the event of an act or occurrence of any kind or nature which results in damage, loss or destruction to the Property in excess of \$400,000 (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Mortgagor shall promptly notify Mortgagee describing the nature and the extent of the Taking or the Casualty, as the case may be. Mortgagor shall promptly furnish to Mortgagee copies of all notices, pleadings, determinations and other papers received by Mortgagor in any such proceedings or negotiations.

5.5.2 Repair and Replacement. In case of a Casualty, the Mortgagor will promptly restore the Property to the equivalent of its original condition immediately prior to such Casualty, regardless of whether insurance proceeds exist, are made available, or are sufficient. In case of a Taking, the Mortgagor will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Mortgagee. Provided,

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however, upon a Casualty or Taking, if Mortgagee applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Obligations, Mortgagor shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional hotel operating in accordance with the provisions of the Franchise Agreement and Property Management Agreement, insofar as is practicable under the circumstances.

## 5.5.3 Proceeds.

(a) Collection. Mortgagor shall use its commercially reasonable efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Mortgagee may, at its sole option, make proof of loss to the insurer, if not made promptly by Mortgagor. Mortgagor shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds in excess of \$800,000 without Mortgagee's prior written consent.

(b) Assignment to Mortgagee. Mortgagor hereby assigns, sets over and transfers to Mortgagee all Insurance Proceeds and Taking Proceeds and authorizes payments of such Insurance Proceeds and Taking Proceeds to be made directly to Mortgagee; provided, however, that any such Taking Proceeds for temporary taking that are less than \$250,000 and do not necessitate restoration of the Property in accordance with the terms of the Loan Agreement shall be disbursed to the Mortgagor so long as no Event of Default has occurred and is continuing at the time of distribution of such Taking Proceeds. Mortgagee may, in its reasonable discretion, apply such Insurance Proceeds and Taking Proceeds to either of the following, or any combination thereof:

- (i) payment of any indebtedness constituting a Secured Debt, either in whole or in part, in any order determined by Lender in its sole and unfettered discretion; or
- (ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its reasonable discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Obligations shall thereafter be unpaid, Mortgagor shall not be excused from the payment thereof in accordance with the applicable governing Loan Documents.

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5.6 Maintenance and Preservation of Property. Mortgagor shall insure the Property as required by Section 6 hereof, and keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good condition and repair, as provided by the Loan Agreement.

5.6.1 Mortgagor shall not remove or demolish the Property or any part of it, or initiate any change or variance in any zoning or other land use classification that affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

5.6.2 If all or part of the Improvements becomes materially damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Improvements in a good and workmanlike manner in accordance with sound building practices, regardless of whether Insurance Proceeds are available for disbursement pursuant to the terms of this Security Instrument.

5.6.3 Mortgagor shall take all action necessary to keep the Property at all times in compliance with the Loan Agreement. Mortgagor shall not bring or keep any article on the Property or knowingly cause or allow any condition to exist on the Property if doing so could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under Section 6 hereof.

5.6.4 Mortgagor shall not commit material waste or permit impairment or deterioration of the Property.

5.6.5 Mortgagor shall not abandon the Property.

5.6.6 Mortgagor shall give notice in writing to Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Security Instrument or the rights or powers of Mortgagee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee.

5.7 Preservation of Project Licenses.

5.7.1 Mortgagor shall, within twenty (20) days after written demand by Mortgagee, deliver to Mortgagee a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Mortgagee;

5.7.2 Mortgagor shall not take any action or make any omission that would (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License;

5.7.3 Mortgagor shall cause all filings for the renewal of any Project License to be made on a timely basis with the appropriate authority; and

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5.7.4 Mortgagor shall notify Mortgagee immediately of any notice or claim known to Mortgagor alleging a material violation of any Project License or threatening to revoke, withdraw, suspend, cancel or terminate any Project License, and Mortgagor shall take all action reasonably necessary to defend such allegation and, as applicable, reinstate such Project License.

5.8 Releases, Extensions, Modifications and Additional Security. From time to time, during the continuation of an Event of Default, Mortgagee may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Security Instrument or any other Loan Document:

5.8.1 Release any person liable for payment of any Secured Obligation;

5.8.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation, provided that Mortgagor has consented to such extension;

5.8.3 Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

5.8.4 Alter, substitute or release any property securing the Secured Obligations;

5.8.5 Consent to the making of any plat or map of the Property or any part of it;

5.8.6 Join in granting any easement or creating any restriction affecting the Property;

5.8.7 Join in any subordination or other agreement affecting this Security Instrument or the lien of it;

5.8.8 Apply any other security for the Secured Obligations held by Mortgagee; and

5.8.9 Release the Property or any part of it from the lien created hereby.

5.9 Protection of Mortgagee's Security.

5.9.1 If there occurs a continuing Default or Event of Default under this Security Instrument or the other Loan Documents or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including eminent domain, insolvency, enforcement of local applicable laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Mortgagee, at Mortgagee's option, may cure any breach or default of Mortgagor, make such appearances, disburse such sums, enter upon the Premises and Improvements, and/or take such action as Mortgagee deems necessary, in its sole discretion to protect Mortgagee's security and the first priority lien of this Security Instrument. Such actions may include, without limitation: (a) appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Mortgagee under, this Security Instrument; (b) paying, purchasing,

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contesting, or compromising any encumbrance, tax, assessment, charge, lien or claim of lien that is or, in Mortgagee's reasonable judgment may be, senior in priority to this Security Instrument, such judgment of Mortgagee to be conclusive as among the parties to this Security Instrument; (c) providing utilities; (d) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under Section 6 hereof; (e) otherwise caring for and incurring expenses to protect any and all of the Property; (f) employing counsel, accountants, contractors, and other appropriate persons to assist Mortgagee; and/or (g) such other actions reasonably necessary to protect Mortgagee's security.

5.9.2 Nothing contained in this Security Instrument shall require Mortgagee to incur any expense or take any action hereunder.

5.9.3 The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee to accelerate the maturity of any of the Secured Obligations. Mortgagee's receipt of any Insurance Proceeds or Taking Proceeds shall not operate to cure or waive any Default or Event of Default.

5.10 Release and Reconveyance. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Security Instrument and the other Loan Documents have been received, Mortgagee shall promptly release this Security Instrument by appropriate writing in recordable form and release the lien created hereby, and release all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any out-of-pocket costs of preparation and recordation of such releases.

## 5.11 Compensation, Exculpation, Indemnification.

### 5.11.1 Compensation.

(a) Mortgagor agrees to pay or reimburse Mortgagee for all amounts advanced by Mortgagee in connection with Section 5.9 and Section 5.10 hereof.

(b) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee, when the law provides no maximum limit, for any services that Mortgagee may render in connection with and as expressly set forth and/or contemplated by this Security Instrument, including exercising their rights with respect to the Leases, Rents, and Contracts, providing a statement of the Secured Obligations, or releasing the lien of this Security Instrument. Mortgagor also agrees to pay or reimburse all of Mortgagee's out-of-pocket costs and expenses that may be incurred in rendering any such services, including all out-of-pocket costs of administering the Leases and Contracts.

(c) Whether or not any lawsuit is filed, Mortgagor agrees to pay or reimburse Mortgagee, as applicable, for all out-of-pocket costs, expenses, or other advances that may be incurred or made by Mortgagee in any litigation or proceeding affecting this Security Instrument, the Loan Documents, or the Property (including probate, discretionary review, bankruptcy, and on appeal), and any

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efforts to enforce any terms of this Security Instrument, exercise any rights or remedies afforded to Mortgagee hereunder, under the other Loan Documents, or at law or in equity, or defend any action or proceeding arising under or relating to this Security Instrument, including out-of-pocket attorneys' fees, receiver's fees, and any cost of evidence of title.

(d) Mortgagor further agrees to pay all out-of-pocket costs, expenses, and other advances that may be incurred or made by Mortgagee in connection with one or more Foreclosure Sales (hereinafter defined) of the Property.

(e) All such expenditures, advances, costs, and expenses made or incurred by Mortgagee shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Security Instrument.

5.11.2 Exculpation. Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following, and Mortgagor expressly waives and releases all liability of the types described below, and agrees not to assert or impose any such liability against or upon Mortgagee:

(a) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Security Instrument or any of the other Loan Documents;

(b) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Security Instrument, including any of the Leases or Contracts; or

(c) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused solely by the willful misconduct, gross negligence or bad faith of Mortgagee, its agents or employees.

5.11.3 Indemnification. **MORTGAGOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY MORTGAGEE FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, REASONABLE ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES THAT EITHER OF THEM MAY SUFFER OR INCUR.**

(a) In performing any act required or permitted by this Security Instrument or any of the other Loan Documents or by law or in equity;

(b) Arising out of or resulting from the assignment of Leases and Rents as set forth above, including claims or demands for security deposits from Tenants deposited with Mortgagor, and from and against any and all claims and demands



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whatsoever that may be asserted against Mortgagee to satisfy any obligations of the landlord under the Leases;

(c) Arising out of or resulting from the assignment of Contracts as set forth above, including the exercise or enforcement of any of the rights of Mortgagor thereunder;

(d) Because of any failure of Mortgagor to perform any of its obligations;

(e) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents;

(f) By reason of (a) suspension, revocation, cancellation, or termination of any Project License or (b) any alleged obligation or undertaking on the part of Mortgagee to perform or discharge any of the terms of, or any agreements or applicable laws pertaining to, the Project Licenses; or

(g) By reason of Mortgagee's security interest in the Project Licenses;

provided that the foregoing indemnification of Mortgagee shall not be applicable to the extent such damages (i) arise from the gross negligence or willful misconduct of Mortgagee, its agents or employees, or (ii) arise in connection with conditions or occurrences following the date that Mortgagee, its Affiliate or nominee, first acquires title to or control over the Property pursuant to the exercise of its remedies under the Loan Documents; and provided that this Section is not intended to give rise to a right of the Lender to claim payment of the principal and accrued interest with respect to the Loan as a result of a claim for indemnification of Mortgagee hereunder.

Such indemnity shall include all reasonable and documented out-of-pocket costs, expenses and attorneys' fees incurred by Mortgagee in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Mortgagee until repaid by Mortgagor, and shall be immediately due and payable to Mortgagee by Mortgagor upon demand and shall be secured by this Security Instrument. This agreement by Mortgagor to hold harmless, indemnify, and defend Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations, the full or partial release of this Security Instrument, and any foreclosure or other enforcement of this Security Instrument, or transfer by deed in lieu thereof.

5.11.4 Payment by Mortgagor. Mortgagor shall satisfy all obligations to pay money arising under this Security Instrument and the other Loan Documents within ten (10) days of receiving written demand for such payments from Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest at the Interest Rate or Default Rate, as applicable, from the date the obligation arises.

5.12 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of

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the Property, and the security of this Security Instrument and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

5.13 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Mortgagee in accordance with this Security Instrument or with the proceeds of any loan secured by this Security Instrument.

5.14 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right at any reasonable time and upon prior written notice to Mortgagor or its designee (which notice may be given via email) to enter and visit the Property (subject to the rights of any Tenant) for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property, including Phase I environmental assessments. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives except to the extent of their gross negligence or willful misconduct. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Hazardous Material (as defined in the Environmental Indemnity Agreement, as defined in the Loan Agreement) is or is not present in, on or under the Property, or that there has been or shall be compliance with any applicable laws pertaining to Hazardous Material or any other Environmental Laws. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, nor its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Prior to a continuing Event of Default, Mortgagee shall give Mortgagor reasonable notice before entering the Property, and Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section. Mortgagee shall bear all out-of-pocket expense of any site visit, observation or testing.

5.15 Books and Records. Mortgagor agrees to maintain (or cause Property Manager to maintain) full and accurate records and books of account prepared in a manner reasonably acceptable to Mortgagee covering any of the Property and to deliver, upon request, to Mortgagee such of the books as relate to the Property, including all invoices, shipping documents, contracts, orders, order acknowledgments, correspondence and other instruments and papers in Mortgagor's possession. Mortgagee shall at all reasonable times have free access to Mortgagor's ledgers, books of account and other written records evidencing or relating to the Property and the right to make and retain copies or memoranda of the same.

6. INSURANCE. Mortgagor, at its sole cost, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain, or cause to be obtained and maintained during the term of this Security Instrument the following policies of insurance:

6.1 Property Insurance. Property insurance insuring the Property against loss or damage customarily included under so called "all risk" or "special form" policies including fire,

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lightning, flood (if applicable), earthquake (if applicable), vandalism, wind/hail and named storm, malicious mischief, boiler and machinery, if available, and the “certified” (as defined in the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (collectively, “TIRA”)) acts of terrorists (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the Project in nature, use, location, height, and type of construction. Such insurance policy shall also insure Ordinance & Law, coverage for loss as to the undamaged portion of the building, costs of demolition and increased cost of construction (which insurance for demolition and increased cost of construction may contain a sub-limit satisfactory to Mortgagee). Each such insurance policy shall (i) be in an amount equal to the greater of (A) one hundred percent (100%) of the then replacement cost of the Project based on a current appraisal or derived from a 3<sup>rd</sup> party valuation method without deduction for physical depreciation, and (B) such amount as is necessary so that the insurer would not deem Mortgagor a co-insurer under such policies, (ii) have deductibles no greater than \$250,000.00 per occurrence, and (iii) contains no coinsurance, or if coinsurance applies, shall contain an agreed amount, and (iv) contains a replacement cost endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Mortgagor is required to insure pursuant to any Lease on a replacement cost basis. If the insurance required under this subparagraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements and such tenant improvements in an amount to be subject to the consent of Mortgagee, which consent shall not be unreasonably withheld, but in all events, not less than would be required to restore the Project following a Casualty. Should the property insurance policy and/or the collateral involve more than one (1) building at any one location or more than one (1) location covered under the same policy, then blanket limits must be provided with no margin clause. Lender shall be named Lender Loss Payee and Mortgagee on a Lender’s Loss Payable endorsement and on a Standard Mortgagee Endorsement.

6.2 Flood Insurance. Flood insurance if any part of the Improvements of the Project are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, in an amount at least equal to the lesser of: (i) the greater of (A) the then full replacement cost of the Project without deduction for physical depreciation and (B) the unpaid principal amount of the Secured Obligations and (ii) the maximum limit of coverage available under the National Flood Insurance Plan with respect to the Project; provided, however, that Mortgagee shall be entitled to require flood insurance in amounts greater than the foregoing, in its discretion. Flood insurance deductibles shall be no greater than \$25,000.00 on the primary layer of coverage.

6.3 Liability Insurance. Commercial liability insurance, including terrorism and including (i) “Commercial General Liability Insurance” with no deductible or retention unless otherwise approved by Lender; (ii) “Owned”, “Hired” and “Non Owned Auto Liability”; and (iii) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than \$5,000,000 per occurrence and in the annual aggregate on per location basis, if aggregate limits are shared with other locations the amount of umbrella liability insurance to be provided shall be not less than \$20,000,000. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, “Contractual Liability” (covering, to the maximum extent permitted by

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law, Mortgagor's obligation to indemnify Mortgagee as required under the Loan Agreement, this Security Instrument, and the other Loan Documents), "Products" and "Completed Operations Liability" coverage.

6.4 Business Interruption Insurance. Rental loss and/or business interruption insurance including terrorism (i) with Mortgagee being named as "Lender Loss Payee", (ii) in an amount equal to one hundred percent (100%) of the projected Rents from the Property during the period of restoration; and (iii) containing an extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is repaired, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the term of this Security Instrument as and when the estimated or actual Rents increase.

6.5 Machinery Insurance. To the extent such equipment is located at the Project, comprehensive boiler and machinery insurance covering all mechanical and equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Mortgagor is required to insure pursuant to the lease on a replacement cost basis and in the minimum amount of the replacement cost of such property, and the rental loss/business interruption required per Section 6.4, above.

6.6 Workers Compensation Insurance. Worker's compensation and disability insurance with respect to any employees of Mortgagor, if any, as required by any Legal Requirement.

6.7 Builder's Risk Insurance. During any period of construction, repair or restoration, builder's "all-risk" insurance in an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Mortgagee may request, in form and substance acceptable to Mortgagee, and coverage to compensate for the cost of demolition and the increased cost of construction in an amount satisfactory to Mortgagee.

6.8 Other Insurance. Such other insurance (including environmental liability insurance, earthquake insurance) and such higher limits as may from time to time be reasonably required by Mortgagee in order to protect its interests. When earthquake coverage is required, amount of coverage should be equal to 1.5 times the scenario expected loss plus not less than 18 months of business interruption with max deductible of 5%.

6.9 Policies. All policies of insurance (the "Policies") required pursuant to these insurance requirements shall (i) be issued by companies approved by Mortgagee and licensed to do business in the state where the Premises is located, with a claims paying ability rating of "A" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:X or better by AM Best Report, unless otherwise approved by Lender in advance and in writing; (ii) name Mortgagee and its successors and/or assigns as their interests may appear as the mortgagee (in the case of property, business personal property and rent loss or business interruption insurance) or an additional insured (in the case of liability insurance) and an additional insured (In the case of liability insurance); (iii) contain (in the case of property insurance) a Non-Contributory Standard

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Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the Person to which all payments made by such insurance company shall be paid; (iv) provisions permitting Mortgagor to waive its rights of subrogation against Mortgagee; (v) be assigned and the originals thereof delivered to Mortgagee; (vi) contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither Mortgagor, Mortgagee, nor any other party shall be a co-insurer under the Policies, (B) that Mortgagee shall receive at least thirty (30) days' prior written notice of any cancellation of any of the property Policies with at least ten (10) days' notice of cancellation for non-payment of premiums, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Lender, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Mortgagee is permitted to make payments to effect the continuation of such Policy upon notice of cancellation due to non-payment of premiums; (vii) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Mortgagee, such insurance policy shall not be invalidated by and shall insure Mortgagee regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Mortgagee pursuant to any provision of the Loan Documents; and (viii) be satisfactory in form and substance to Mortgagee and approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and furnish to Mortgagee evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Mortgagee as permitted under the terms of the Loan Agreement or this Security Instrument) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Mortgagee. If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Mortgagor shall reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Mortgagor shall deliver to Mortgagee a certified copy of each Policy within thirty (30) days after its effective date. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

## 7. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

### 7.1 Accelerating Transfers.

7.1.1 "Accelerating Transfer" means any Prohibited Transfer, as defined in the Loan Agreement.

7.1.2 Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor;



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thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall comply with the transfer restrictions set forth in Section 6.3 of the Loan Agreement. If any Accelerating Transfer occurs, Mortgagee, in its sole discretion, may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by this Security Instrument and any of the other Loan Documents.

7.2 Events of Default. Mortgagor will be in default under this Security Instrument upon the occurrence of any one or more of the following events (each an "Event of Default" and some or all, collectively, "Events of Default").

7.2.1 An "Event of Default" occurs under the Loan Agreement or any of the other Loan Documents.

7.2.2 Any material default by Mortgagor under any Permitted Encumbrance that could be reasonably expected to result in a Material Adverse Effect and is not cured within any applicable cure period therefor.

7.2.3 Borrower fails to comply with any of the covenants or provisions of Section 6 hereof.

7.3 Remedies. At any time after a continuing Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee under the Loan Documents, at law, or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

7.3.1 Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

7.3.2 Additional Advances. Mortgagee may terminate any commitment to make any additional advances under the Loan or any other loan secured by this Security Instrument.

7.3.3 Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under, or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then-value of the Property or any other collateral for the Secured Obligations, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable laws, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, the right and power to sell the Property, such rights and powers as Mortgagee would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Mortgagor hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.



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## 7.3.4 Entry; Protection of Security.

(a) Mortgagee, in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, may, subject to applicable laws, do the following: (a) enter, take possession of, manage, and operate all or any part of the Property, including taking possession of the then-owner's Books and Records; (b) terminate Mortgagor's right and license to collect the Rents and administer the Leases, and thereafter collect the Rents, enter into, enforce, modify, or cancel Leases on such terms and conditions as Mortgagee may consider appropriate, evict Tenants, fix and modify Rents, and employ managers and other personnel to administer the Leases; (c) exercise all of Mortgagor's rights with respect to the Contracts, and employ managers and other personnel to administer the Contracts; (d) complete construction on and make repairs, replacement and alterations to the Premises and Improvements and to the fixtures, equipment and personal property located in or on the Premises or Improvements; (e) purchase and pay for such additional furniture and equipment as in the reasonable discretion of Mortgagee may be necessary to maintain a proper rental income from the Property; (f) otherwise care for and incur expenses to protect any and all of the Property; (g) take any action permitted under Section 5.9 hereof; (h) take any other action Mortgagee may, in its reasonable discretion, consider necessary and appropriate to protect the security of this Security Instrument; and (i) employ counsel, accountants, contractors and other appropriate persons to assist Mortgagee in any of the foregoing.

(b) If Mortgagee so requests, Mortgagor shall assemble all of the Property not then located at the Premises and make all of it available to Mortgagee at the site of the Premises.

(c) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) Mortgagee may take any of the actions permitted under this Section either with or without giving notice to any person.

## 7.3.5 Applicable Lawsuits; Foreclosure.

(a) Mortgagee may commence and maintain an action or actions, at law or in equity, in any court of competent jurisdiction, to enforce the payment and/or performance of the Secured Obligations (including to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy).

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(b) Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially (to the extent permitted by applicable law) foreclose the lien hereof upon the Property or any part thereof (each such proceeding, a “Foreclosure Sale”), for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable laws.

(c) In addition to the right to appointment of a receiver upon an Event of Default, Mortgagee may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

(d) If this Security Instrument is foreclosed by judicial action, and the Property sold at a Foreclosure Sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises and to the Improvements as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon at the Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

(e) To the maximum extent permitted by applicable laws and subject to the terms and provisions of the Guaranty of Recourse Obligations of even date herewith, Mortgagee will be entitled to a judgment providing that, if the Foreclosure Sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

7.3.6 Power of Sale. Mortgagee shall have the right to invoke the power of sale to the extent permitted by, and pursuant to, applicable law.

7.3.7 Other Remedies. In addition to, but not in lieu of, any other rights and remedies hereunder, Mortgagee shall have the right to institute suit and obtain a protective or mandatory injunction against Mortgagor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Mortgagee may exercise all rights and remedies contained in this Security Instrument (including all rights and remedies with respect to the assignments of Leases and Contracts provided for herein) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a Mortgagee under applicable laws, and shall have the benefit of all of the provisions of such applicable laws, including all amendments thereto that may become effective from time to time after the date hereof.

7.3.8 Sale of Personal Property. Mortgagee shall have the discretionary right to cause some or all of the Property that constitutes personal property to be sold or otherwise disposed of in any combination and in any other manner permitted by applicable laws.

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(a) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property in any manner permitted by Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable laws.

(b) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours (subject to the rights of Tenants). Notwithstanding the foregoing, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

## 7.3.9 Single or Multiple Foreclosure Sales.

(a) If the Property consists of more than one lot, parcel or item of property, Mortgagee may (a) designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and (b) elect to dispose of the lots, parcels and/or items through a one Foreclosure Sale or multiple Foreclosure Sales.

(b) If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee, at its option, may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Security Instrument on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

## 7.4 Purchase at Foreclosure Sale.

7.4.1 At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable laws.

7.4.2 To the fullest extent not prohibited by applicable laws, the sales price of any Property sold at a Foreclosure Sale shall include all costs and expenses that may be paid or incurred by or on behalf of Mortgagee in connection with such Foreclosure Sale and enforcement of this Security Instrument and the other Loan Documents, including attorneys' fees, survey charges, appraiser's fees, inspecting engineer's or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by

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Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication and recording costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title. To the fullest extent not prohibited by applicable laws, the foregoing costs and expenses may be estimated as to items to be expended after entry of any sale decree or judgment or recording or publication of any notice of sale.

7.4.3 Instead of paying cash for such Property, Mortgagee may credit the sales price of the Property against the Secured Obligations in such order as Mortgagee in its sole discretion may choose.

7.4.4 Intentionally Omitted.

7.5 Fair Value. To the extent the applicable laws require that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Mortgagor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by applicable laws and the additional factors set forth below, and Mortgagor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

7.5.1 The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the Foreclosure Sale.

7.5.2 An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges that are incurred by the seller of real property.

7.6 Tenants. Mortgagee shall have the right, at its option, to foreclose this Security Instrument subject to the rights of any Tenant of the Property.

7.7 Application of Foreclosure Sale Proceeds. Mortgagee may apply the proceeds of any Foreclosure Sale in any manner and in any order permitted by applicable laws.

## 8. MISCELLANEOUS PROVISIONS.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Security Instrument. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor that apply to this Security Instrument and to the Property.

8.2 No Waiver or Cure.

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8.2.1 Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

8.2.2 If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Security Instrument or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Security Instrument; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Security Instrument; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Security Instrument.

(a) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

(b) Automatic termination of the License to collect Rents and administer the Leases.

(c) Mortgagee exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

(d) Mortgagee exercises any of its rights under the assignment of Contracts provided for herein or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

(e) Mortgagee takes any action to preserve its security hereunder or cure any default of Mortgagor under the Leases or Contracts.

(f) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under this Security Instrument.

(g) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Documents.

(h) Mortgagee receives any sums under this Security Instrument or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

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(i) Mortgagee or any receiver invokes any right or remedy provided under this Security Instrument.

## 8.3 Powers of Mortgagee.

8.3.1 If Mortgagee performs any act that it is empowered or authorized to perform under this Security Instrument, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Security Instrument on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

8.3.2 Mortgagee may take any of the actions permitted under this Security Instrument regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Security Instrument.

8.3.3 From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Security Instrument. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Assignment. All rights of Mortgagee hereunder shall inure to the benefit of its successors and assigns, and all obligations of Mortgagor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Mortgagee in, to and under this Security Instrument shall pass to and may be exercised by any assignee of such rights of Mortgagee. Mortgagor hereby agrees that if Mortgagee gives notice to Mortgagor of an assignment of said rights, upon such notice, the liability of Mortgagor to the assignee of Mortgagee shall be immediate and absolute. Mortgagor will not set up any claim against Mortgagee or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Mortgagee or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents, or Contracts.

8.5 No Offset. Mortgagor's obligation to timely pay and perform all obligations under this Security Instrument and the Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Mortgagor or any guarantor may have or claim against Mortgagee or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Mortgagor or any guarantor may have in damages or otherwise against Mortgagee or any other person or entity if Mortgagor maintains a separate action thereon.



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8.6 Imposition of Mortgage Tax. Mortgagor shall pay the cost of any Mortgage Tax due in connection with this Security Instrument or the indebtedness secured hereby. For purposes of this Section, “Mortgage Tax” means: (a) a specific tax on mortgages or other security instruments or on all or any part of the indebtedness secured by a mortgage or other security instrument; or (b) a specific tax on the owner of the Property covered by a mortgage or security instrument which the taxpayer is authorized or required to deduct from payments on debt secured by the mortgage or security instrument; or (c) a tax on property covered by a mortgage or security instrument chargeable against a lender, beneficiary or trustee or the holder of the note secured by the security instrument; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Secured Obligations or on payments of principal and interest made by a grantor under a security instrument. If any Mortgage Tax is enacted subsequent to the date of this Security Instrument, Mortgagor shall pay the Mortgage Tax (including any tax on the payment made) within thirty (30) days after notice from Mortgagee that the tax law has been enacted.

8.7 Merger. So long as any portion of the Secured Obligations shall remain unpaid, unless Mortgagee shall otherwise consent in writing, the fee title to the Premises and any leasehold estate therein shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, the owner, or in any other person by purchase, operation of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Premises, with or without consideration, at Mortgagee’s election, without waiving or affecting any of its rights hereunder or under the Loan Documents and any such release shall not affect Mortgagee’s rights in connection with the portion of the Premises not so released. So long as any portion of the Secured Obligations remains unpaid, if Borrower shall become the owner and holder of the fee title to the any portion of the Premises constituting a leasehold, the lien of this Security Instrument shall be spread to cover Mortgagor’s fee title to the Premises. Mortgagor agrees to execute any and all documents or instruments necessary to subject its fee title to any portion of the Premises to the lien of this Security Instrument, in form and substance satisfactory to Mortgagee.

8.8 Intentionally Omitted.

8.9 Successors in Interest. The terms, covenants and conditions of this Security Instrument shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

8.10 Interpretation.

8.10.1 Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Security Instrument are for convenience only and do not define or limit any terms or provisions.

8.10.2 The word “include(s)” means “include(s), without limitation,” and the word “including” means “including, but not limited to.”

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8.10.3 The word “or” has the inclusive meaning represented by the phrase “and/or.”

8.10.4 No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Security Instrument. The Exhibits to this Security Instrument are hereby incorporated in this Security Instrument.

8.11 Waiver of Statutory Rights. To the fullest extent not prohibited by applicable laws:

8.11.1 Mortgagor hereby agrees that it will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called “Moratorium Applicable Laws,” now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such laws.

8.11.2 Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

8.11.3 Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Security Instrument on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Security Instrument, and agrees to take any and all further actions as may be necessary to waive the right of redemption.

8.11.4 Mortgagor hereby waives any defense of laches and all statutes of limitations with respect to enforcement of this Security Instrument.

8.12 Severability. If any provision of this Security Instrument is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum or has a material adverse effect on Mortgagee’s security for the Secured Obligations, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

8.13 Notices. Any notice, demand, request or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Loan Agreement.

8.14 Mortgagee’s Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Security Instrument secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby.

8.15 Intentionally Omitted.

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8.16 Inconsistencies. In the event of any inconsistency between this Security Instrument and the Loan Agreement, the terms hereof shall be controlling to the extent necessary to create, preserve, and/or maintain a valid security interest upon the Property; otherwise the provisions of the Loan Agreement shall be controlling.

8.17 Applicable Law. The creation, perfection, and enforcement of the lien of this Security Instrument shall be governed by the applicable laws of the state in which the Premises are located. In all other respects, this Security Instrument shall be governed by the substantive applicable laws of the jurisdiction governing the Loan Agreement.

8.18 State-Specific Provisions. The following state-specific terms and conditions shall control over any inconsistent provisions of this Security Instrument:

8.18.1 Fixtures. This Security Instrument constitutes a fixture filing under the Illinois Uniform Commercial Code and any other applicable Uniform Commercial Code, as modified and recodified from time to time, with respect to all fixtures owned by Mortgagor and now or hereafter affixed or attached to, or installed in, or used in connection with, the Premises, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof. Mortgagee shall have all the rights with respect to the fixtures afforded to it by the applicable Uniform Commercial Code, in addition to, but not in limitation of, the other rights afforded Mortgagee by the Loan Documents. The following information is included for purposes of meeting the requirements of a financing statement:

The name of the debtor is:

WYATR LLC

The mailing address of the Debtor is:

429 Chestnut St.  
Nashville, TN 37203

The name of the secured party is:

ACCESS POINT FINANCIAL, LLC

The address of the secured party is:

One Ravinia Drive, Suite 900  
Atlanta, Georgia 30346

8.18.2 Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and that the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render

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unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. With respect to such Act, Mortgagor agrees and covenants that:

- (a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee 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;
- (b) In addition to any provision of this Security Instrument authorizing the Mortgagee to take or be placed in possession of the Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act;
- (c) Mortgagor acknowledges that the Premises does not constitute "agricultural real estate", as said term is defined in Section 15-1201 of the Act or "residential real estate" as defined in Section 15-1219 of the Act;
- (d) Mortgagor hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b) on its own behalf and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof;
- (e) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instruments, shall be added to the indebtedness secured by this Security Instruments or by the judgment of foreclosure;
- (f) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale and, where applicable, after sale (but in no event after transfer of title to the Property to Mortgagee, its Affiliate or nominee in connection with such sale), and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Security Instrument, the Loan Agreement, any other Loan Document or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable

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provisions of the Act, including those provisions of the Act herein below referred to, to the extent permitted by law:

- i. all advances by Mortgagee in accordance with the terms of the Security Instrument, the Loan Agreement or any other Loan Document to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of the Security Instrument or the priority thereof; or (iii) enforce the Security Instrument, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;
- ii. payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Security Instrument; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;
- iii. attorneys' fees and other costs incurred in connection with the foreclosure of the Security Instrument as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act;
- iv. Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;
- v. expenses deductible from proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the Act;
- vi. premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee 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 mortgagee takes possession of the Premises imposed by Section 5/15-1704 (c) (1) of the Act;
- vii. All Protective Advances shall be additional indebtedness secured by this Mortgage, 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 Loan Agreement; and
- viii. This Security Instrument shall be a lien for all Protective Advances from the time this Security Instrument is recorded pursuant to Subsection (b) (5) of Section 5/15-1302 of the Act.

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**8.18.3 True and Correct Copy. MORTGAGOR HEREBY DECLARES THAT MORTGAGOR HAS READ THIS SECURITY INSTRUMENT, HAS RECEIVED A COMPLETELY FILLED-IN COPY OF IT WITHOUT CHARGE THEREFOR, AND HAS SIGNED THIS SECURITY INSTRUMENT AS OF THE DATE AT THE TOP OF THE FIRST PAGE.**

**8.18.4 Waivers.**

(a) Waiver. In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Mortgagor agrees that to the extent permitted by applicable law, Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Notes equal to the difference between the amount owing on the Notes and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale.

(b) **COLLATERAL PROTECTION INSURANCE NOTICE.** (A) MORTGAGOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT MORTGAGEE SPECIFIES HEREIN AND IN THE OTHER LOAN DOCUMENTS; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF ILLINOIS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME MORTGAGEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) MORTGAGOR MUST, IF REQUESTED IN WRITING BY MORTGAGEE, DELIVER TO MORTGAGEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF MORTGAGOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), MORTGAGEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF MORTGAGOR AT MORTGAGOR'S EXPENSE.

(c) WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE, JOINTLY AND SEVERALLY, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SECURITY INSTRUMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE ACCEPTING THIS SECURITY INSTRUMENT FROM MORTGAGOR.

8.19 Counterparts. This Security Instrument may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument with the same effect as if all signatories hereto had signed the same signature



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

**8.20 Notice of Indemnification. MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECURITY INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY MORTGAGOR OF MORTGAGEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MORTGAGEE'S OWN NEGLIGENCE.**

8.21 Incorporation by Reference. The provisions of Article 9 of the Loan Agreement, other than Section 9.17 thereof (Governing Law) are incorporated herein by reference, *mutatis mutandis*.

8.22 Incorporation of Exhibits. The following Exhibits attached to this Security Instrument are incorporated herein and expressly made a part hereof by this reference:

Exhibit A – Legal Description

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE]


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IN WITNESS WHEREOF, Mortgagor has caused this Security Instrument to be signed, sealed and delivered by a duly authorized officer on the day and year first written above.

MORTGAGOR:

**WYATR LLC,**

a Delaware limited liability company


By:   
Name: Benjamin Weprin  
Title: President

STATE OF ILLINOIS  
COUNTY OF COOK

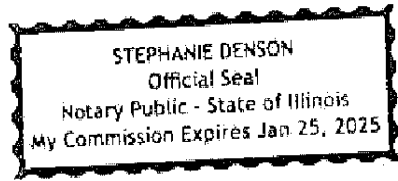
Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Benjamin Weprin with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that s/he executed the within instrument for the purpose therein contained, and further acknowledged that s/he is the President of WYATR LLC, a Delaware limited liability company and is authorized by said corporation to execute the foregoing instrument for said limited liability company for the purposes therein contained.

Witness my hand and seal, at office, this 1 day of September, 2022.

(SEAL)

  
Notary Public

My commission expires: January 25, 2025



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## EXHIBIT A

### PARCEL 1:

LOT 39 IN GARIBALDI SQUARE SUBDIVISION, BEING A SUBDIVISION OF PARTS OF BLOCKS 40 AND 41 OF CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 29, 1987 AS DOCUMENT NUMBER 87-679394 RE-RECORDED FEBRUARY 10, 1988 AS DOCUMENT NUMBER 88-061422, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

RIGHT TO USE THE PARKING SPACES FOR THE PARKING OF MOTOR VEHICLES AND FOR INGRESS AND EGRESS AT CERTAIN ACCESS POINTS, AS PROVIDED IN RECIPROCAL COVENANTS AGREEMENT DATED SEPTEMBER 20, 1996 BY AND BETWEEN RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER AND GH INN, L.L.C., A COPY OF WHICH IS ATTACHED AS AN EXHIBIT TO INSTRUMENT RECORDED JUNE 20, 2003 AS DOCUMENT 0317132120.

PROPERTY ADDRESS: 625 S. Ashland Avenue, Chicago, Illinois 60607

PERMANENT INDEX NUMBER: 17-17-300-051-0090