

**PREPARED BY,
RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:**

**Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: William P. McInerney, Esq.**



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GUARDIAN NORTHWEST TITLE CO.

105323-4

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

Document title: **Deed of Trust, Assignment of Leases and Rents, Security Agreement
and Fixture Filing (Washington)**

Grantor: ART MORTGAGE BORROWER PROPCO 2013 LLC

Grantees: 1) Beneficiary: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
2) Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Abbreviated Legal Description:

LOTS 4 THROUGH 10, BLOCK 105, "AMENDED PLAT OF BURLINGTON,
SKAGIT COUNTY, WASH.

Full legal description is on Exhibit A, Pages A-1 through A-4 attached hereto.

Assessor's Property Tax Parcel or Account Number(s): 4076-105-011-0005 (P71994), 4076-
111-008-0008 (P72012), 4076-110-017-0009 (P72010), 4076-111-008-0100 (P85137), 4076-
112-020-0000 (P72013), 4076-114-010-0008 (P72025) and 4076-115-026-0007 (P72033)

**THIS DEED OF TRUST SECURES PROTECTIVE ADVANCES WHICH MAY PROVIDE FOR
A VARIABLE INTEREST RATE.**

ATTENTION: COUNTY RECORDER: This Deed of Trust covers goods which are or are to become
affixed to or fixtures on the land described in Exhibit A hereto and is to be filed for record in the records
where deeds of trust on real estate are recorded. Additionally, this instrument should be appropriately
indexed, not only as a deed of trust, but also as a Financing Statement covering goods that are or are to
become fixtures on the real property described herein. The mailing addresses of the Borrower (Debtor)
and Lender (Secured Party) are set forth in the Preamble of this Deed of Trust.

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DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING (WASHINGTON)

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (WASHINGTON), is dated as of May 1, 2013 (together with all amendments and supplements, this "**Security Instrument**"), and made by **ART MORTGAGE BORROWER PROPCO 2013 LLC**, a Delaware limited liability company, as borrower (together with its successors and assigns, "**Borrower**"), having an office at 10 Glenlake Parkway, South Tower, Suite 800, Atlanta, Georgia 30328, to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a California corporation, having an address at 818 Stewart Street, Suite 800, Seattle, Washington 98101, as trustee ("**Trustee**"), for the benefit of **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a national banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, as lender (together with its successors and assigns, "**Lender**").

RECITALS

WHEREAS, Borrower is the owner of those certain parcels of real property more particularly described in Exhibit A attached hereto and made a part hereof and the improvements thereon and commonly known as 301 South Walnut, Burlington, Washington 98233, together with all buildings, structures, foundations, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and/or improvements now or hereafter being a part thereof (the "**Fee Property**");

WHEREAS, this Security Instrument is given to secure the loan (the "**Loan**") advanced pursuant to that certain Loan and Security Agreement, dated as of the date hereof, among Borrower, the other entity signatory thereto as borrower (together with its successors and/or assigns, "**Co-Borrower**") and Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Loan Agreement**") in the principal sum of TWO HUNDRED TWENTY MILLION AND NO/100 DOLLARS (\$220,000,000.00), which shall be secured by this Security Instrument and evidenced by that certain Promissory Note A-1 of even date herewith in the principal amount of ONE HUNDRED TEN MILLION AND NO/100 DOLLARS (\$110,000,000.00) made by Borrower and Co-Borrower, as maker, in favor of Lender, as payee (as the same may be amended, extended, renewed, supplemented or otherwise modified from time to time, "**Note A-1**") and that certain Promissory Note A-2 of even date herewith in the principal amount of ONE HUNDRED TEN MILLION AND NO/100 DOLLARS (\$110,000,000.00) made by Borrower and Co-Borrower, as maker, in favor of Lender, as payee (as the same may be amended, extended, renewed, supplemented or otherwise modified from time to time, "**Note A-2**"; Note A-2 together with Note A-1 are hereinafter collectively referred to as, the "**Note**");

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

WHEREAS, this Security Instrument is given to secure the Note pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower and Co-Borrower of their obligations thereunder and under the other Loan Documents, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents and Security Deposits (Washington), dated as of the date hereof, made by Borrower in favor of Lender with respect to the Fee Property, delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "Assignment of Leases"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Indebtedness (including all additional mortgages, deeds of trust, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

SECURED INDEBTEDNESS

NOW, THEREFORE, in consideration of the Loan to Borrower and Co-Borrower evidenced by the Note and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

TO SECURE:

(a) payment and performance of all covenants, conditions, liabilities and obligations of Borrower to Lender contained in the Loan Agreement and each of the other Loan Documents; and

(b) payment of the Indebtedness evidenced by the Note plus all interest and all fees payable thereunder; and

(c) payment and performance of all covenants, conditions, liabilities and obligations contained in this Security Instrument and any extensions, renewals or modifications hereof; and

(d) payment and performance of all covenants, conditions, liabilities and obligations of Borrower contained in the Assignment of Leases; and

(e) without limiting the foregoing, payment of all other indebtedness, liabilities, and amounts from time to time incurred by Lender pursuant to the Note, this Security

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Instrument, the Loan Agreement or the other Loan Documents, even if the aggregate amount of the monetary obligation outstanding at any one time exceeds the face amount of the Note (all of the foregoing indebtedness, monetary liabilities and obligations set forth in clauses (a) through (d) above and this clause (e), collectively, the **"Other Obligations"**); and

(f) payment of the Indebtedness together with the payment and performance of the Other Obligations, collectively, the **"Obligations"**.

GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that Borrower, in consideration of the premises, the Indebtedness evidenced by the Note, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged (a) has conveyed, warranted, granted, bargained, sold, alienated, released, confirmed, conveyed, pledged and assigned, and (b) by these presents does hereby irrevocably grant and create a first priority Lien on and security interest in, subject to the Permitted Encumbrances and the provisions hereof and of the other Loan Documents, and does hereby irrevocably, BARGAIN, CONVEY, WARRANT, TRANSFER, ASSIGN AND GRANT A SECURITY INTEREST AND PLEDGE to Trustee in trust, with the power of sale, for the benefit of Lender as beneficiary, all of Borrower's estate, right, title and interest now owned or hereafter acquired in, to and under any and all of the property (collectively, the **"Property"**) described in the following Granting Clauses:

- (1) the Fee Property;
- (2) all additional lands, estates and development rights hereafter acquired by Borrower for use and development of the Fee Property and all additional lands and estates therein which may, from time to time, by supplemental deed or otherwise, be expressly made subject to the lien of this Security Instrument;
- (3) all buildings, structures, foundations, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and/or improvements now or hereafter erected, located or being a part of the Fee Property (collectively, the **"Improvements"**);
- (4) all of Borrower's right, title and interest in and to (A) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Fee Property, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (B) all air, light, lateral support, development, drainage, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Fee Property and/or the Improvements; (C) all and singular, the tenements, hereditaments, rights-of-way or use, easements, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, appendages and appurtenances and property now or hereafter

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belonging or in any way appertaining to the Fee Property and/or the Improvements; and (D) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Fee Property and/or the Improvements (collectively, the "Appurtenances");

(5) all "equipment," as such term is defined in Article 9A of the Uniform Commercial Code, now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Fee Property or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment and any and all additions, substitutions and replacements of any of the foregoing, in each case, now owned or hereafter acquired by Borrower), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants or other occupants under leases or other agreements except to the extent that Borrower shall have any right or interest therein;

(6) all Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Fee Property and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Fee Property, including, but not limited to, refrigeration, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, but, if owned jointly, only to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants or other occupants are entitled to remove pursuant to leases or other agreements except to the extent that Borrower shall have any right or interest therein;

(7) all of Borrower's right, title and interest as lessor, licensor or concessionor or, as the case may be, in, to and under all leases, subleases, lettings, underlettings, concession agreements, licenses and other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Fee Property and/or the Improvements, and every modification, amendment or other agreement

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relating to such leases, subleases, lettings, underlettings, concession agreements, licenses or other agreements entered into in connection with such leases, subleases or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. Section 101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**"), and all right, title and interest of Borrower, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (excluding all oil and gas or other mineral royalties and bonuses), income, fees, royalties, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Fee Property and/or the Improvements (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 Indebtedness and the performance of the obligations hereby secured;

(8) all of Borrower's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments hereafter made to Borrower for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Fee Property and/or the Improvements, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Fee Property and/or the Improvements, whether direct or consequential, which awards and payments are hereby assigned to Trustee for the benefit of Lender, who is hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Indebtedness in such order as Lender may determine in accordance with the provisions of this Security Instrument without regard to the adequacy of Trustee's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Lender or Trustee in connection with the collection of such awards or payments; and Borrower hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Trustee or Lender, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than the Permitted Encumbrances;

(9) all of Borrower's right, title and interest in and to all unearned premiums paid under insurance policies now or hereafter obtained by Borrower to the extent the same insure the Property and any other insurance policies required to be maintained pursuant to Section 6.1 of the Loan Agreement to the extent the same insure the Property, including, without limitation, liability insurance policies and Borrower's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty

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insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);

(10) all property tax or other assessment refunds, rebates or credits payable with respect to the Fee Property and/or the Improvements;

(11) all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Fee Property and/or the Improvements, hereafter acquired by or released to Borrower or constructed, assembled or placed by Borrower on the Fee Property and/or the Improvements, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by law, without any further conveyance, assignment or other act by Borrower, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Borrower and specifically described herein;

(12) all of Borrower's right, title and interest in, to and under, to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof, (A) all contracts and agreements relating to the Fee Property and/or the Improvements (other than the Leases) and other documents, books and records related to the ownership and operation of the Fee Property and/or the Improvements; (B) to the extent permitted by law, all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property as cold and/or dry storage warehouse facilities (including, to the extent permitted by law, any licenses held by Borrower the transfer and/or assignment of which is permitted by law without filing or other qualification), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Fee Property and/or the Improvements; (C) all plans and specifications for the construction of the Improvements, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Improvements; (D) all such other contracts and agreements (other than the Leases) from time to time executed by Borrower relating to the ownership, leasing, construction, maintenance, operation, occupancy or sale of the Fee Property and/or the Improvements, together with all rights of Borrower to compel performance of the terms of such contracts and agreements, including, without limitation, all construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certifications and entitlements; and (E) subject to the terms of the Loan Agreement, the Cash Management Account (as defined in the Loan Agreement) and any funds in such Cash Management Account from time to time (it being understood that at such time any amounts are disbursed from the Cash Management Account in accordance with the provisions of the Loan



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Agreement and the Cash Management Agreement, the same shall cease to constitute part of the Property);

(13) to the extent assignable, all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Fee Property;

(14) to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof and to the extent permitted by law, all of Borrower's right, title and interest in, to and under (A) documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the State in which the Property is located (the "UCC"), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Property, and (B) all contract rights, franchises, books, records, plans, specifications, Licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the property described in the foregoing paragraphs (7), (8), (9), (12) and this paragraph (14), the "Intangibles");

(15) all refunds, rebates or credits in connection with reduction in taxes or Other Charges charged against the Fee Property;

(16) all racking and refrigeration equipment now owned or hereafter acquired by Borrower, which is used at or in connection with the Fee Property or is located thereon or therein;

(17) all Borrower's right, title and interest in the Warehouse Agreements;

(18) all proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(19) To the extent assignable, any and all other rights of Borrower in and to the items set forth in paragraphs (1) through (18) above.

UPON CONDITION that, until the occurrence and during the continuance of an Event of Default, Borrower shall be permitted to possess and use the Property, and to use the rents, issues, profits, revenues and other income of the Property as provided in this Security Instrument, the Loan Agreement and the other Loan Documents.

HABENDUM

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, subject only to the

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Permitted Encumbrances and the terms hereof, unto Trustee for benefit of Lender, its successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of this Security Instrument and the other Loan Documents all as herein set forth.

IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Obligations at the time and in the manner provided for its payment in the Note and in this Security Instrument.

Section 1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

The words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument, and section, schedule and exhibit references are to this Security Instrument unless otherwise specified. The words "includes" and "including" are not limiting and mean "including without limitation." The words "not to be unreasonably withheld" mean "not to be unreasonably withheld, conditioned or delayed." In any instance under this Security Instrument or the other Loan Documents where Borrower is obligated to pay Lender's attorneys' fees, such obligations shall be deemed to refer to reasonable attorneys' fees. Each Recital to this Security Instrument is by this reference incorporated in this Security Instrument.

In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto executed in writing by all of the parties thereto and, if Lender's consent was required for the original of any such document, consented to by Lender. All references in this Security Instrument to the plural of any document described herein shall mean all of such documents collectively.

References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation.

The captions and headings of this Security Instrument are for convenience of reference only and shall not affect the construction of this Security Instrument.

Section 2. Warranty. Borrower represents and warrants to, and covenants and agrees with, Lender as follows:

(a) Title. (1) Borrower owns good, marketable and insurable fee title to the Property, (2) Borrower owns an indefeasible fee simple estate in the Improvements, and (3) Borrower owns good title to the balance of the Property, subject only to the Permitted

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Encumbrances. This Security Instrument, upon its proper recordation, is and will remain a valid and enforceable (and, with respect to all personalty and/or intangibles as to which security interests are governed by the UCC, upon proper recordation and the filing of a financing statement) perfected first Lien on and security interest on Borrower's right, title and interest in and to the Property and the Improvements (to the extent a security interest may be created therein) subject only to the Permitted Encumbrances, and perfected security interests in and to, or perfected collateral assignments of, all personalty (including the Leases) in respect of which such interests and assignments are capable of perfection by recordation of this Security Instrument and/or filing of Uniform Commercial Code financing statements, all in accordance with the terms hereof, in each case subject only to the Permitted Encumbrances.

(b) All Property. The Property constitutes all of the real property, personal property, equipment and fixtures currently owned or, to the extent a lien may be granted therein, leased by Borrower and used in the operation of the business located on the Property, other than items owned or leased by Manager or any Tenants or any contractor performing repair, maintenance or other services in or to the Property.

(c) Enforceability of Security Instrument. This Security Instrument is the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 3. Affirmative Covenants.

(a) Payment of Obligations. Borrower shall promptly pay when due the principal of and interest on the Indebtedness and all other payment Obligations, all in lawful money of the United States of America in accordance with the Note, and shall further perform fully and in a timely manner all Obligations of Borrower. All sums payable by Borrower hereunder shall be paid without demand, counterclaim (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Security Instrument and cannot be maintained in a separate action), offset or deduction (except as required by law). Borrower waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Security Instrument and cannot be maintained in a separate action), setoff or deduction.

(b) Performance and Observance of Loan Agreement Covenants. Borrower will duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Borrower, and all of the other terms and conditions applicable to Borrower, under the terms of the Loan Agreement and any other Loan Document, as if each such covenant, agreement, obligation, term and condition were expressly set forth herein in full. Without limiting the generality of the foregoing, Borrower will maintain the Property, pay Impositions and Other Charges, obtain, pay

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and maintain insurance, keep the Property free of Liens (other than Permitted Encumbrances), pay the utility charges for the Property, perform alterations and repairs in respect of the Property, cause the Property to comply with all Legal Requirements, fund the Cash Management Account as required by the Loan Agreement, restore the Property upon any casualty or Taking to the extent required by the Loan Agreement, and lease the Property as permitted by the Loan Agreement, all in accordance with and subject to all of the applicable terms and conditions of this Security Instrument, the Loan Agreement and the other Loan Documents.

(c) Insurance. Borrower shall, at its sole cost and expense, continuously keep and maintain insurance in respect of the Property and Borrower's operations thereat, of the type and in the form and with insurers, all as provided in Section 6.1 of the Loan Agreement. All Proceeds to which Borrower may be entitled resulting from damage to or destruction of the Property or any part hereof by a casualty or a Taking shall be distributed and applied towards restoration of the Property or repayment of the Obligations in accordance with the provisions of Section 6.2 of the Loan Agreement.

(d) Maintenance of Validity and Recording. (i) Borrower covenants that it will forthwith after the execution and delivery of this Security Instrument and thereafter as necessary from time to time cause this Security Instrument and the other Loan Documents and any continuation statement or similar instrument relating to any property subject thereto or to any property intended to be encumbered, granted, conveyed, transferred and assigned by this Security Instrument to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Lender therein. Borrower covenants that it has paid or will pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other charges arising out of or in connection with the execution and delivery of such instruments.

(ii) Borrower shall maintain the validity, perfection, priority and effectiveness of this Security Instrument and the other Loan Documents. Unless otherwise permitted in this Security Instrument or the other Loan Documents, Borrower will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Borrower give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Encumbrances, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Borrower from, or reduce any of Borrower's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents or have a Material Adverse Effect, without Lender's consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.



(iii) Borrower, at its reasonable expense, will execute, acknowledge and deliver all such instruments and take all such actions as Lender from time to time reasonably may request or as may be reasonably necessary or proper for the better assuring to Lender of the properties and rights now or hereafter subject to the Lien hereof or intended so to be; provided that, Borrower shall not be required to execute, acknowledge and deliver any instrument or take any action that has the effect of materially increasing its liabilities or obligations hereunder or under any of the other Loan Documents.

(e) Maintenance of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Equipment and the UCC Collateral shall not be removed, demolished or materially altered (except for normal replacement of the Equipment, Fixtures or the UCC Collateral, tenant finish and refurbishment of the Improvements or as otherwise permitted pursuant to the Loan Agreement) without the consent of Lender or as otherwise permitted pursuant to the Loan Agreement. Borrower shall repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Fee Property, in accordance with the requirements of the Loan Agreement.

(f) Payment for Labor and Materials.

(i) Except when Borrower is contesting such charges in accordance with the provisions of Section 3(f)(ii), Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property that could create a mechanic's, materialmen's or other similar liens or encumbrances and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(ii) Notwithstanding the provisions of clause (i) of this Section 3(f), after prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid or discharged by bond or otherwise all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower



is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such contest, and (vi) Borrower shall have furnished such security (if any) as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

(g) Performance of Other Agreements. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to any agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

(h) Change of Name, Identity or Structure. Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without first (a) notifying Lender of such change in writing at least twenty (20) days prior to the effective date of such change and (b) in the case of a change in Borrower's structure not otherwise expressly permitted by the Loan Documents, without first obtaining the prior written consent of Lender. Additionally, Borrower shall take all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender in the case of such a change in Borrower's name, identity or organizational structure. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 4. Negative Covenants. Except as permitted under the Loan Agreement, Borrower covenants and agrees that, without Lender's prior written consent, Borrower shall not:

- (a) incur, create or assume any Indebtedness or Transfer or lease all or any part of the Property or any interest therein, except as permitted in the Loan Agreement;
- (b) make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Security Instrument or any other Loan Document;
- (c) partition the Property;

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- (d) commingle its assets with the assets of any of its Affiliates;
- (e) guaranty any obligations of any Person (other than Co-Borrower in respect of the Loan);
- (f) Transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted by the Loan Agreement;
- (g) commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any policy of insurance, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument; provided that, except as otherwise provided in the Loan Agreement, Borrower may allow the storage of materials that are customarily stored at cold storage facilities, even where those materials are flammable, so long as such storage and operation are in accordance with all applicable laws and in the ordinary course of Borrower's business. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration from the surface of the Fee Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 5. License to Collect Rents. Borrower hereby absolutely and unconditionally assigns to Lender and Trustee, as security for the payment and performance of the Obligations, all of Borrower's right, title and interest in and to all current and future Leases and Rents. Lender and Borrower hereby confirm that for so long as no Event of Default shall have occurred and is continuing, Lender has granted to Borrower a revocable license to collect and use the Rents as they become due and payable in accordance with the provisions of the Loan Agreement and the Assignment of Leases; provided that the existence of such right shall not operate to subordinate the Assignment of Leases to any subsequent assignment, in whole or in part by Borrower, and any such subsequent assignment shall be subject to Lender's rights under this Security Instrument. Borrower further agrees to execute and deliver such assignments of Leases and Rents as Lender may from time to time reasonably request in order to better assure, transfer and confirm to Lender the rights intended to be granted to Lender with respect thereto. In accordance with the provisions of the Assignment of Leases, upon the occurrence and during the continuance of an Event of Default (a) Borrower agrees that Lender may, but shall not be obligated to, assume the management of the Property, and collect the Rents, applying the same upon the Obligations, and (b) Borrower hereby authorizes and directs all tenants, purchasers or other Persons occupying, utilizing or acquiring any interest in any part of the Property to pay all Rents to Lender upon Lender's request. In the event Lender actually receives such Rents after an Event of Default, any application of the Rents by Lender shall not constitute a misappropriation of the Rents by Borrower pursuant to Section 18.1 of the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, Lender shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with this Security Instrument, the Assignment of Leases, and applicable law.

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Section 6. Security Agreement. This Security Instrument is both a deed of trust of real property, a "fixture filing" and a "security agreement" within the meaning of the Uniform Commercial Code, and constitutes a financing statement and, to the extent required under UCC Section 62A.9A-502(c) because portions of the Property may constitute fixtures, this Security Instrument is to be filed in the office where a deed of trust for the Fee Property would be recorded. Lender also shall be entitled to proceed against all or portions of the Property in accordance with the rights and remedies available under UCC Section 62A.9A-601(d). Borrower is, for the purposes of this Security Instrument, deemed to be the Debtor, and Lender is deemed to be the Secured Party, as those terms are defined and used in the UCC. Borrower agrees that the Indebtedness and Obligations secured by this Security Instrument are further secured by security interests in all of Borrower's right, title and interest in and to fixtures, equipment, and other property covered by the UCC, if any, which are used upon, in, or about the Fee Property (or any part) (the "UCC Collateral"). As security for the payment and performance of the Obligations, Borrower grants to Lender a valid and effective first priority security interest in all of Borrower's right, title and interest in and to the UCC Collateral (but only to the extent permitted in the case of leased personal property), whether now owned or existing or hereafter acquired or arising and regardless of where located, together with all replacements, additions, and proceeds (excluding all UCC Collateral that from time to time is removed and replaced in accordance with the terms and conditions of this Security Instrument and the other Loan Documents (including, without limitation, Section 8.2 of the Loan Agreement) and is no longer used in the operation of the Fee Property. Except for Permitted Encumbrances, Borrower agrees that, without the written consent of Lender, it will not create any other security interest under the provisions of the UCC or enter into any lease with respect to the UCC Collateral, except as otherwise permitted hereunder or under any other Loan Document. Borrower agrees that all property of every nature and description covered by the Lien and charge of this Security Instrument together with all UCC Collateral covered by this security interest are encumbered as a unit, and upon the occurrence and during the continuance of an Event of Default by Borrower, all of the Property, at Lender's option, may be foreclosed upon or sold in the same or different proceedings or at the same or different time, subject to the provisions of applicable law. The filing of any financing statement relating to any such property or rights or interests shall not be construed to diminish or alter any of Lender's rights or priorities under this Security Instrument. If an Event of Default shall occur and be continuing beyond applicable notice and cure periods, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the UCC Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the UCC Collateral and make it available to Lender at a convenient place (at the Fee Property if tangible property) reasonably acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the UCC Collateral sent to Borrower in accordance with the provisions hereof at least twenty (20) days prior to such action, shall, except as otherwise provided by

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applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the UCC Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Indebtedness in such priority and proportions as Lender in its discretion shall deem proper. Borrower's (debtor's) address and principal place of business and the address of Lender (secured party) are as set forth on the first page hereof.

Section 7. Intentionally Omitted.

Section 8. Protection of Security; Costs and Expenses. Borrower shall appear in and defend any action or proceeding of which it has notice purporting to affect the security hereof or the rights or powers of Lender hereunder and shall pay all reasonable costs and expenses actually incurred by Lender, including, without limitation, cost of evidence of title and reasonable attorneys' fees and disbursements, in any such action or proceeding, and in any suit brought by Lender to foreclose this Security Instrument or to enforce or establish any other rights or remedies of Lender hereunder upon the occurrence and during the continuance of an Event of Default. If an Event of Default occurs and is continuing under this Security Instrument or the Loan Agreement, or if any action or proceeding is commenced in which it becomes necessary to defend or uphold the Lien or priority of this Security Instrument or which adversely affects Lender or Lender's interest in the Property or any part thereof, including, without limitation, eminent domain, enforcement of, or proceedings of any nature whatsoever under any Legal Requirement affecting the Property or involving Borrower's bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Lender, upon reasonable notice to Borrower, may, but without obligation to do so and without releasing Borrower from any obligation hereunder, make such appearances, disburse such reasonable sums and take such action as Lender reasonably deems necessary or appropriate to protect Lender's interest in the Property, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Property to make necessary repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the reasonable judgment of Lender appears to be prior or superior hereto; provided, however, that the foregoing shall be subject to Borrower's rights to contest under Section 7.3 of the Loan Agreement and, provided no Event of Default shall have occurred and is then continuing, Lender shall not compromise, pay or discharge any lien, encumbrance or charge being contested by Borrower in accordance with Section 7.3 of the Loan Agreement.

Section 9. Lender's Right to Perform. Upon the occurrence and during the continuance of an Event of Default with respect to the performance of any of the Obligations contained herein, Lender may, without waiving or releasing Borrower from any Obligation or Default under this Security Instrument, but shall not be obligated to, at any time perform the Obligations giving rise to such Event of Default, and the cost thereof, with interest at the Default Rate from the date of payment by Lender to the date such amount is paid by Borrower, shall immediately be due from Borrower to Lender and the same shall be secured by this Security Instrument and shall be a Lien on the Property prior to any right, title to, interest in or claim upon the Property attaching subsequent to the Lien of this Security Instrument (subject to the provisions of Article VIII of the Loan Agreement). No payment or advance of money by Lender

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under this Section 9 shall be deemed or construed to cure any Event of Default or waive any right or remedy of Lender hereunder.

Section 10. Rights and Remedies upon a Default.

(a) **Remedies.** Subject to applicable law, upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender and/or Trustee, may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(i) declare all or any portion of the unpaid principal balance under the Note, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable;

(ii) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Indebtedness then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Indebtedness not then due, unimpaired and without loss of priority;

(iv) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, as may be required or permitted by law;

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

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

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

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(viii) the license granted to Borrower under Section 5 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Indebtedness, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees, provided that, if all Events of Default have been cured by Borrower and Lender has accepted such cure (without implying any obligation on the part of Lender to do so), the license granted to Borrower under Section 5 hereof shall automatically be reinstated;

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

(x) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security

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Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion:

- (A) Taxes and Other Charges;
 - (B) insurance premiums;
 - (C) interest on the unpaid principal balance of the Note;
 - (D) amortization of the unpaid principal balance of the Note;
 - (E) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;
- (xi) pursue such other remedies as Lender may have under applicable law; or
- (xii) apply the undisbursed balance of any Deficiency deposit, together with interest thereon, to the payment of the Indebtedness in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

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

(b) Phase I Environmental Report. Lender may at its option obtain, in each instance described in paragraph (a) above, at Borrower's reasonable expense, a new phase I environmental report with respect to the Fee Property, and such additional environmental studies as may be recommended in such phase I reports.

(c) Specific Performance. Lender, in its sole and absolute discretion, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(d) Intentionally Omitted.

(e) Actions and Proceedings. Lender or Trustee has the right to appear in and defend any action or proceeding brought that could reasonably be expected to impair its interest with respect to the Property in any way and to bring any action or proceeding, in the name and on behalf of Borrower, that Lender, in its discretion, decides should be brought to protect its interest in the Property.

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(f) Recovery of Sums Required to Be Paid. Subject to applicable law, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

(g) Examination of Books and Records. Subject to the terms of the Loan Agreement, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right at Lender's expense to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right at Lender's expense to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right at Lender's expense to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 10(g) shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing. Notwithstanding the foregoing, after the occurrence of an Event of Default, Borrower shall pay any and all reasonable out-of-pocket costs and expenses incurred by Lender connection with any such examination and copying (or extraction).

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

(ii) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in the value of the Property, for failure to maintain any insurance policies with respect to the Property, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(iii) Subject to applicable law, Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in

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its discretion, may elect. Lender or Trustee may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(i) Right to Release any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

(j) Waiver of Rights. Borrower agrees that, to the fullest extent permitted by law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Loan Document, (2) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Borrower hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Borrower for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien hereof. Notwithstanding any other provision in this Security Instrument, except as provided in the Loan Agreement, Borrower is not waiving the right to benefit from any prior payments made under the Note or to reduce the balance of the Loan.



Section 11. Application of Proceeds.

(a) Sale Proceeds. The proceeds of any sale or foreclosure of the Property or any portion thereof shall be applied to the following in the following order of priority: (1) the payment of the costs and expenses of the foreclosure proceedings with respect to such Property (including reasonable counsel fees and disbursements actually incurred and advertising costs and expenses), liabilities and advances made or incurred under this Security Instrument or any Loan Document, and reasonable receivers' and trustees' fees and commissions and fees and expenses incurred by Lender, together with interest at the Default Rate to the extent payable; (2) payment of any other sums advanced by Lender (or any advancing agent on its behalf) in accordance with the terms hereof and not repaid to it by Borrower, together with interest at the Default Rate to the extent payable; (3) payment of all sums due under the Note and the Loan Documents in such order and priority as Lender shall elect in its sole and absolute discretion; (4) payment of any remaining Obligations; and (5) any surplus to Borrower or other party legally entitled thereto.

(b) Other Proceeds. All other proceeds or other amounts collected by Lender following the occurrence and during the continuance of an Event of Default shall be applied (1) *first*, to reimburse any reasonable expenses related to such collection, and (2) *thereafter*, as provided in Section 11(a) above. If no Event of Default shall exist and be continuing, any amount available to make payments or applied in lieu of such payments thereon shall be applied (A) *first*, to interest due or overdue on the Note, (B) *then*, any amounts applied to pay or applied in lieu of paying principal on the Note then due shall be applied to pay or applied in lieu of paying the Note in order of priority, and (C) *thereafter*, to Borrower.

Section 12. Waivers.

(a) Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby expressly and unconditionally waives any and every right it may have to (i) interpose any counterclaim in connection with any suit, action or proceeding brought by Lender on this Security Instrument (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Security Instrument and cannot be maintained in a separate action) and (ii) have any suit, action or proceeding brought by Lender on this Security Instrument consolidated with any other or separate suit, action or proceeding.

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

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

(d) Waiver of Statute of Limitations. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of its Other Obligations.

(e) Survival. The indemnifications made pursuant to Section 13 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction, release or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Section 13. Indemnification.

(a) General Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) ownership of the Property or any interest therein or receipt of any Rents to the extent arising out of or otherwise relating to any action or omission occurring prior to the date Lender acquires title to the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers

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the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (ii) any amendment to, or restructuring of, the Indebtedness, and the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents requested by Borrower, arising out of a default by Borrower or otherwise expressly permitted pursuant to the Loan Documents; (iii) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (iv) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways to the extent arising out of or otherwise relating to any action or omission occurring prior to the date Lender acquires title to the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (v) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways to the extent arising out of or otherwise relating to any action or omission occurring prior to the date Lender acquires title to the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (vi) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof to the extent arising out of or otherwise relating to any action or omission occurring prior to the date Lender acquires title to the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (viii) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (ix) any failure of the Property to be in compliance with any Legal Requirements to the extent such failure occurs prior to the date Lender acquires title to the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (x) the enforcement by any Indemnified Party of the provisions of this Section 13; (xi) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease to the extent arising out of or otherwise relating to any action or omission occurring prior to the date Lender acquires title to

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the applicable portion of the Property, takes possession of the applicable portion of Property, appoints a receiver to take possession of the applicable portion of Property or transfers the applicable portion of Property at a foreclosure sale in accordance with the Loan Documents; (xii) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower (except to the extent such a claim arises due to the use by Lender of a broker in connection with the Loan) which may be payable in connection with the funding of the Loan; or (xiii) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. For purposes of this Security Instrument, "Losses" shall not include any amounts attributable to the criminal conduct, bad faith, willful misconduct or gross negligence of Lender or any Indemnified Parties. Any amounts payable to Lender by reason of the application of this Section 13(a) shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Section 13, the term "Indemnified Parties" means Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

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

Section 14. Miscellaneous.

(a) Recourse; Exculpation. Notwithstanding anything herein that may be construed to the contrary, the terms of Section 18.1 of the Loan Agreement are incorporated herein by reference as if fully set forth herein. No negative inference regarding the application of said Section 18.1 to all of the terms of this Security Instrument is to be drawn by the reference to this Section 14 or said Section 18.1 in only certain provisions.

(b) Notices. Except as otherwise required by applicable law, any notice, election, request, demand, report or statement which by any provision of this Security Instrument

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is required or permitted to be given or served hereunder shall be in writing and shall be given or served in the manner and to the Persons required by Section 19.6 of the Loan Agreement.

(c) No Oral Modification. This Security Instrument may not be waived, altered, amended, modified, changed, discharged or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

(d) Partial Invalidity. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

(e) Successors and Assigns. All covenants of Borrower contained in this Security Instrument are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so. All such covenants of Borrower shall run with the land and bind Borrower, the successors and assigns of Borrower (and each of them) and all subsequent owners, encumbrancers and Tenants of the Property, and shall inure to the benefit of Lender, its successors and assigns.

(f) Governing Law. THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY AND FIXTURES (OTHER THAN THAT DESCRIBED IN SUBPARAGRAPH II BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY AND FIXTURES ARE LOCATED, (II) THE UCC AS ADOPTED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA SHALL

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GOVERN THE CREATION OF SECURITY INTERESTS BY THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS IN PROPERTY (INCLUDING, WITHOUT LIMITATION, THE ACCOUNTS) IN RESPECT OF WHICH THE CREATION OF SECURITY INTERESTS IS COVERED BY ARTICLE 9 OF THE UCC AS ADOPTED IN NEW YORK, EXCLUDING FIXTURES, AND (III) WITH RESPECT TO THE PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (INCLUDING, WITHOUT LIMITATION, THE ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK SHALL GOVERN. TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET FORTH ABOVE, BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. EXCEPT AS PROVIDED ABOVE, BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, AND BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER CONSENT TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER AND LENDER IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THE LOAN AGREEMENT. BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER HEREBY WAIVE ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(g) Trial by Jury. BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER BORROWER OR LENDER HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS SECURITY INSTRUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS SECURITY INSTRUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED

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HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER HEREBY AGREE AND CONSENT THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER AND (BY ACCEPTING THIS SECURITY INSTRUMENT) LENDER ACKNOWLEDGE THAT THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGE THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(h) No Waiver. No failure by Lender to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Security Instrument, which shall continue in full force and effect, or shall affect or alter the rights of Lender with respect to any other then existing or subsequent breach.

(i) Further Assurances. Borrower, at its own expense, will execute, acknowledge and deliver all such reasonable further documents or instruments including, without limitation, (i) security agreements on any building equipment included or to be included in the Property, and (ii) such other documents as Lender from time to time may reasonably request to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Security Instrument or the other Loan Documents; provided that the foregoing shall not impose any additional material liability or obligations on, nor materially reduce the rights or remedies of Borrower, Co-Borrower or Guarantor.

(j) Counterparts. This Security Instrument may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

(k) Merger, Conversion, Consolidation or Succession to Business of Lender. Any Person into which Lender may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which Lender shall be a party, or any Person succeeding to all or substantially all the business of Lender, shall be the successor of Lender hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(l) No Endorsement. Lender shall not become or be considered to be an endorser, co-maker or co-obligor on the Note or on any other Obligation of Borrower secured by this Security Instrument or otherwise.

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(m) Conflicts. In case of any conflict between the terms of this Security Instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

(n) Letter of Credit Rights. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in the Granting Clauses of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11 of this Security Instrument.

(o) Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(i) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Lender's interest in the Property, Borrower will pay the tax (together with any and all taxes payable by Lender in respect of any such payment by Borrower), with interest and penalties thereon, if any. If at any time Borrower refuses for any or no reason to pay such amounts on or prior to the date on which the same are due or asserts that the payment of such amounts by Borrower would be unlawful, then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Indebtedness immediately due and payable.

(ii) Borrower will not claim or demand or be entitled to any credit or credits on account of the Indebtedness for any part of the Impositions or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Indebtedness. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Indebtedness immediately due and payable unless Borrower makes a payment to Lender in an amount equal to any such claim, credit or deduction on or prior to the date on which the same is due.

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



Section 15. Deed of Trust Provisions.

(a) Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence, willful misconduct or bad faith, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

(b) Trustee's Fees. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

(c) Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions in connection with its duties hereunder: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or

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damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

(d) Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

(e) Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

(f) Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

Section 16. State-Specific Provisions.

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 16 and the terms and conditions of this Security Instrument, the terms and conditions of this Section 16 shall control and be binding.

(b) Non-Agricultural Use. The real property included in the Property and conveyed by this Security Instrument is not used principally for agricultural purposes, and Borrower so represents and warrants to Lender and Trustee.

(c) Fixture Filing. This Security Instrument covers goods that are or are to become fixtures related to the real property included in the Property. Borrower is the record owner of the real property included in the Property. This Security Instrument shall be effective, from the date of recording, as a financing statement filed as a fixture filing under the Uniform

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Commercial Code in effect in the State of Washington, as to which Borrower is the debtor and Lender is the secured party. The respective names and mailing addresses for Borrower and Lender are as set forth in the initial paragraph of this Security Instrument. The debtor is an organization, the type of organization for the debtor is a limited liability company, the jurisdiction of organization for the debtor is the State of Delaware, and the organizational identification number for the debtor is 5293971.

(d) Obligations. Interest included in the Obligations secured by this Security Instrument is payable at the rate or rates provided for in the Loan Agreement, the Note and the other Loan Documents, and principal, interest and other amounts included in the Obligations secured by this Security Instrument are evidenced by, and are due and payable at the time or times or on demand, as the case may be, as provided for in, the Loan Agreement, the Note and the other Loan Documents.

(e) Certain Remedies. If any Event of Default has occurred and is continuing, in addition to the other rights and remedies provided for in this Security Instrument, Lender shall have the right to have all or any part of the Property sold by Trustee, pursuant to the power of sale, or to foreclose this Security Instrument judicially as a mortgage, in each case in accordance with the applicable law of the State of Washington.

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**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY,
EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, this Security Instrument has been duly executed and
delivered by Borrower on the date first hereinabove written.

BORROWER:

**ART MORTGAGE BORROWER PROPCO
2013 LLC**, a Delaware limited liability
company

By: _____

Name: Michael J. Delaney
Title: President



ACKNOWLEDGEMENT

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

I certify that I know or have satisfactory evidence that Michael J. Delaney is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of ART Mortgage Borrower Propco 2013 LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 1, 2013.

(Seal or stamp)



G. Elizabeth Magee
(Signature)
G. Elizabeth Magee
(Name legibly printed or stamped)
Notary Public in and for the state of Georgia, residing at Decatur, Georgia
My appointment expires: March 5, 2017

G Elizabeth Magee
Notary Public
DeKalb County, Georgia
My Commission Expires 03/05/2017



EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Burlington, County of Skagit, State of Washington, described as follows:

PARCEL "A":

LOTS 4 THROUGH 10, BLOCK 105, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON;

ALSO, THAT PORTION OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$, SECTION 32, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF WALNUT STREET, 50 FEET SOUTHEASTERLY OF AS MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF THE MAIN TRACT OF THE GREAT NORTHERN RAILWAY COMPANY, AS NOW LOCATED AND CONSTRUCTED; THENCE NORTHEASTERLY PARALLEL WITH SAID CENTERLINE, 61.90 FEET; THENCE NORTH $80^{\circ}27'22''$ WEST 55.25 FEET, MORE OR LESS, TO THE EASTERLY LINE OF WALNUT STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF WALNUT STREET AND SAID EASTERLY LINE EXTENDED SOUTHERLY 27.91 FEET TO THE POINT OF BEGINNING.

ALSO, ALL THAT PORTION OF THE NORTH $\frac{1}{2}$ OF VACATED VERNON AVENUE, LYING BETWEEN THE SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PARCELS AND THE CENTERLINE OF SAID VACATED VERNON AVENUE.

PARCEL "B":

LOT 17, BLOCK 110, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON.

TOGETHER WITH THE WEST $\frac{1}{2}$ OF VACATED ALDER STREET ADJOINING.

ALSO, TOGETHER WITH THE NORTH $\frac{1}{2}$ OF VACATED GREENLEAF AVENUE ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

PARCEL "C":

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LOTS 1 THROUGH 6 AND LOTS 8 THROUGH 17, BLOCK 111, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON.

TOGETHER WITH THE SOUTH ½ OF VACATED VERNON STREET ADJOINING.

ALSO, TOGETHER WITH THE EAST ½ OF VACATED ALDER STREET ADJOINING.

AND, ALSO, TOGETHER WITH THE NORTH ½ OF VACATED GREENLEAF AVENUE ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

PARCEL "D":

LOTS 1 THROUGH 20, BLOCK 112, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON;

TOGETHER WITH THE SOUTH ½ OF VACATED VERNON STREET ADJOINING.

ALSO, TOGETHER WITH THE VACATED ALLEY RUNNING EAST AND WEST THROUGH SAID BLOCK 112, WHICH, UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

PARCEL "E":

LOTS 1 THROUGH 10, BLOCK 114, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON.

TOGETHER WITH THE SOUTH ½ OF VACATED GREENLEAF AVENUE ADJOINING.

ALSO, TOGETHER WITH THE EAST ½ OF VACATED ALDER STREET ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

PARCEL "F":

LOTS 1 THROUGH 11 AND LOTS 16 THROUGH 26, BLOCK 115 "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON.

TOGETHER WITH THE SOUTH ½ OF VACATED GREENLEAF AVENUE ADJOINING.

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Exhibit A-2

ALSO, TOGETHER WITH THE WEST ½ OF VACATED ALDER STREET ADJOINING LOT 1.

AND, ALSO, TOGETHER WITH THE VACATED ALLEY ADJOINING LOTS 1 THROUGH 10 AND LOTS 17 THROUGH 26, INCLUSIVE, WHICH, UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

PARCEL "G":

PARCEL "1":

THAT PORTION OF THE 100 FOOT WIDE STRIP OF LAND CONVEYED TO THE SEATTLE & NORTHERN RAILWAY COMPANY (NOW THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY), BY DEED RECORDED JANUARY 10, 1890, IN VOLUME 9 OF DEEDS, PAGE 295, SAID 100 FEET BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 32, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF SAID RAILWAY PARCEL WITH THE WEST LINE OF WALNUT STREET; THENCE NORTH 1 DEGREE 33'28" EAST, 28.01 FEET ALONG SAID WEST LINE TO A POINT ON THE NORTHWESTERLY LINE OF THE SOUTHEASTERLY 25 FEET OF SAID 100 FOOT WIDE RAILWAY PARCEL; THENCE SOUTH 64 DEGREES 44'38" WEST ALONG SAID NORTHWESTERLY LINE 760.05 FEET TO A POINT ON A LINE DRAWN SOUTHEASTERLY AT RIGHT ANGLES THROUGH SURVEY STATION 1047+00 ON THE CENTERLINE OF SAID RAILWAY PARCEL; THENCE SOUTH 25 DEGREES 15'22" EAST, 25.00 FEET ALONG SAID LINE DRAWN SOUTHEASTERLY AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF SAID RAILWAY PARCEL; THENCE NORTH 64 DEGREES 44'38" EAST, 747.41 FEET ALONG SAID SOUTHEASTERLY LINE TO THE POINT OF BEGINNING.

PARCEL "2":

THAT PORTION OF THE 100 FOOT WIDE STRIP OF LAND CONVEYED TO THE SEATTLE & NORTHERN RAILWAY COMPANY (NOW THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY), BY DEED RECORDED JANUARY 10, 1890 IN VOLUME 9 OF DEEDS, PAGE 295, SAID 100 FEET BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 32, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

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Exhibit A-3



BEGINNING AT THE NORTHWEST CORNER OF THE TRIANGULAR SHAPED PORTION OF THE ABOVE REFERENCED SUBDIVISION DESCRIBED ON DEED RECORDED DECEMBER 20, 1966 AS AUDITOR'S FILE NO. 692359 IN VOLUME 360 OF DEEDS, PAGE 484, THENCE SOUTH 88 DEGREES 27'22" EAST, ALONG THE NORTH LINE OF SAID TRIANGULAR PARCEL, 55.25 FEET TO THE SOUTHEASTERLY LINE OF SAID RAILWAY PARCEL; THENCE NORTH 64 DEGREES 44'38" EAST, ALONG SAID SOUTHEASTERLY LINE 157.53 FEET TO A POINT BEING 25.00 FEET SOUTHERLY, AS MEASURED RADIAL FROM SAID RAILWAY COMPANY'S WYE TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, WHOSE RADIUS POINT BEARS SOUTH 6 DEGREES 46'43" EAST, 434.28 FEET; THENCE WESTERLY, PARALLEL WITH AND 25.00 FEET SOUTHERLY OF SAID WYE TRACK CENTERLINE, ALONG THE ARC OF SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10 DEGREES 58'39", AN ARC DISTANCE OF 83.20 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 739.49 FEET; THENCE WESTERLY, PARALLEL WITH AND 25.00 FEET SOUTHERLY OF SAID WYE TRACK CENTERLINE, ALONG THE ARC OF SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 7 DEGREES 30'00", AN ARC DISTANCE OF 96.80 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE SOUTHEASTERLY 25.00 FEET OF SAID RAILWAY PARCEL; THENCE SOUTH 64 DEGREES 44'38" WEST, ALONG SAID NORTHWESTERLY LINE 29.32 FEET TO A POINT ON THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID TRIANGULAR PARCEL; THENCE SOUTH 1 DEGREE 33'28" WEST ALONG SAID NORTHERLY EXTENSION 0.10 FEET TO THE POINT OF BEGINNING.

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Exhibit A-4