PREPARED BY AND RECORD AND RETURN TO:

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020-1089
Attention: Gary A. Goodman, Esq.

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

made by

G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company,
as Borrower

for the benefit of

CANADIAN IMPERIAL BANK OF COMMERCE,
acting through its New York Branch,
as Administrative Agent

Property Address: **8470 & 8520 Allison Pointe Blvd., Indianapolis, Indiana**

County: **Marion**

Tax Parcel No.: 49-02-21-125-033.000-800 (8060881) and 49-02-21-125-027.000-800 (8060882)

Dated as of November 5, 2018

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is dated as of the 5th day of November, 2018, by G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company, as mortgagor ("**Borrower**"), whose address is c/o DRA Advisors, LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017, in favor of CANADIAN IMPERIAL BANK OF COMMERCE, acting through its New York Branch, as Administrative Agent to the Lenders (as hereinafter defined) (together with its successors and assigns in such capacity, "**Administrative Agent**"), whose address is 200 West Madison Street, Suite 2610, Chicago, Illinois 60606, Attn: Real Estate Group.

W I T N E S S E T H:

WHEREAS, Borrower, the lenders that are a party thereto (each a "**Lender**" and collectively, the "**Lenders**") and Administrative Agent have entered into a Loan Agreement, dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "**Loan Agreement**"), pursuant to which the Lenders are making a secured loan to Borrower in the principal amount of up to **THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS ($13,815,000.00)** (the "**Loan**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. The Loan is evidenced by one or more Promissory Notes, dated as of the date hereof, made by Borrower to the respective order of each Lender in the aggregate principal amount of **THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS ($13,815,000.00)** with an initial maturity of **________**, 2021 (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, extended, or supplemented from time to time, individually or collectively as the context requires, the "**Note**").

NOW THEREFORE, FOR THE PURPOSES OF SECURING:

1. The Loan (including, without limitation, the Initial Advance and any and all Additional Advances) evidenced by the Note, together with interest thereon;

2. The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein, in the Loan Agreement and in any other agreements, documents or instruments now or hereafter evidencing, guarantying, securing or otherwise relating to the indebtedness evidenced by the Note, whether executed or delivered by Borrower or by any indemnitor or guarantor with respect to any obligation of Borrower under the Loan Documents (each, hereinafter, a "**Guarantor**") or jointly and severally (the Loan Agreement, Note, this Mortgage, and such other agreements, documents and instruments executed and/or delivered in connection with the Loan, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "**Loan Documents**"), excluding only the obligations pursuant to that certain Hazardous Substances Indemnity Agreement, dated as of the date hereof, by Borrower and Guarantor, jointly and severally, for the benefit of Administrative Agent (for the benefit of the Lenders), and that certain Recourse Carve-Out Guaranty, dated as of the date hereof, by Guarantor, for the benefit of Administrative Agent (for the benefit of the Lenders), and the payment of all other sums covenanted in the Loan Documents to be paid;

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

4. Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Administrative Agent or any or all the Lenders in connection with the Loan, the Loan Documents and/or the Property, including, without limitation, all prepayment fees, breakage costs, and commitment, deferred commitment and exit fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof; and any Additional Interest (including any "additional interest" (i) that may be payable under any Agent Interest Rate Protection Agreement and (ii) such as Breakage Costs, accrued but unpaid interest at the LIBOR Rate and/or the Default Rate, as applicable, and other similar costs and charges, incurred by Administrative Agent or its Affiliate in connection with an Agent Interest Rate Protection Agreement) and other amounts now payable or which may hereafter be payable by Borrower to Administrative Agent, any Lender or any Affiliate thereof in connection with an Interest Rate Protection Agreement entered into between Borrower and such Person in accordance with the Loan Agreement; and

(All of the sums referred to in the foregoing Paragraphs (1) through (4) are herein sometimes referred to collectively as the "**Debt**".)

and for and in consideration of the sum of Ten and no/100 Dollars ($10.00), and other valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, intending to be legally bound, BORROWER HEREBY IRREVOCABLY MORTGAGES AND WARRANTS, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO ADMINISTRATIVE AGENT ON BEHALF OF THE LENDERS, AND THEIR SUCCESSORS AND ASSIGNS, with power of sale, in all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, rights and interests, whether now owned or hereafter acquired (collectively, the "**Property**"):

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

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

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

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

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

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

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

H. All leases (including, without limitation, oil, gas and mineral leases), subleases, licenses, concessions and occupancy agreements of all or any part of the Real Estate or the Improvements now or hereafter entered into and any guaranty thereof (each a "**Lease**" and collectively, the "**Leases**") and all rents (including, without limitation, all "Rents" as defined in the Act, as defined in **Section 5.26(a)** below), royalties, issues, profits, revenue, income, claims, judgments, awards, settlements and other benefits (collectively, the "**Rents and Profits**") of the

Real Estate or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees, subtenants, sublessees or licensees, as applicable (each a "**Tenant**" and collectively, the "**Tenants**"), of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

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

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

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

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

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

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

O. All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and proceeds of refunds of any Taxes or Other Charges with respect to any period from and after the date hereof until the Loan is indefeasibly paid or defeased in full;

P. All right, title, interest and claim of Borrower in, to, under or pursuant to any Interest Rate Protection Agreement and any replacements, amendments or supplements thereto, and all income and proceeds thereof, and all claims of Borrower for breach by the counterparty thereunder of any covenant, agreement, representation or warranty contained in any Interest Rate Protection Agreement; and

Q. All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

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

ARTICLE I

COVENANTS OF BORROWER

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

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

Section 1.2 Maintenance, Repair and Restoration of Improvements; Payment of Prior Liens. Borrower shall (a) in accordance with the provisions of

Section 4.7 of the Loan Agreement, repair, restore or rebuild any buildings or improvements now or hereafter on the Real Estate which may become damaged or be destroyed; (b) keep the Property in good condition and repair, subject to casualty, condemnation and normal wear and tear, without waste, and free from mechanics' liens or other liens or claims for lien not expressly permitted hereunder; (c) unless contested in good faith in accordance and in compliance with all of the provisions of **Section 4.8** of the Loan Agreement, pay when due any claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or Improvements and immediately discharge any liens against the Property arising from any such claims and demands; (d) comply in all material respects with all requirements of Applicable Laws with respect to the Property and the operation or use thereof; (e) initiate or acquiesce in no zoning variation or reclassification without Administrative Agent's prior written consent; (f) pay each item of the Debt when due according to the terms hereof or of the Note and the Loan Agreement; (g) suffer or permit no change in the nature or use of the Property without Administrative Agent's prior written consent, except as may be expressly permitted by the Loan Documents; and (h) make no material alterations to or demolish any portion of the Property except as required by Applicable Law and as contemplated and permitted by the Loan Agreement.

Section 1.3 Payment of Taxes. Borrower covenants and agrees to pay all Taxes and Other Charges, in accordance with **Section 4.5** of the Loan Agreement.

Section 1.4 Tax Deposits. Borrower covenants and agrees to make monthly deposits with respect to Taxes and Other Charges when and as required by **Section 4.6** of the Loan Agreement.

Section 1.5 Insurance. Borrower shall comply with Administrative Agent's requirements for, and maintain casualty, liability and other policies of insurance relating to the Property, as required by **Section 4.4** of the Loan Agreement.

Section 1.6 Administrative Agent's Interest in and Use of Deposits. If an Event of Default (as hereinafter defined) has occurred and is continuing, then in addition to any and all other rights set forth herein, in the Loan Documents, or otherwise available to Administrative Agent and the Lenders, Administrative Agent may, at its option, without being required to do so, apply any moneys at the time on deposit (including, without limitation, the Reserves) pursuant to any provision of this Mortgage, the Loan Agreement or any other Loan Documents, as any one or more of the same may be applicable, to any of the Debt, in such order and manner as Administrative Agent may elect. Such deposits are hereby pledged as additional security for the Debt and shall be held to be irrevocably applied by the depositary for the purposes for which made under the Loan Agreement and shall not be subject to the direction or control of Borrower; provided, however, that neither Administrative Agent, nor said depositary shall be liable for any failure to apply to the payment of Taxes and Other Charges any amount so deposited unless such failure shall have occurred after Borrower, while not in default hereunder, shall have requested said depositary in writing to make application of such funds to the payment of the particular Taxes and Other Charges for payment of which they were deposited, accompanied by the bills for such Taxes and Other Charges and otherwise strictly complied with the conditions for any such application of such deposits provided in the Loan Agreement, and after the expiration of all time periods therefor.

Section 1.7 <u>Administrative Agent's Right to Apply Condemnation or Insurance Proceeds to Indebtedness</u>. The rights of Administrative Agent to apply condemnation or insurance proceeds to the Debt, and any rights of Borrower to apply condemnation or insurance proceeds to the restoration of the Improvements, shall be governed by **<u>Section 4.7</u>** of the Loan Agreement.

Section 1.8 <u>Borrower's Obligation to Rebuild and Use of Proceeds Therefor</u>. Borrower's obligation to rebuild in the event of any fire or other casualty to the Improvements or any condemnation of all or any part of the Property, and the use of condemnation or insurance proceeds therefor, shall be governed by **<u>Section 4.7</u>** of the Loan Agreement, notwithstanding any contrary provision of any Applicable Law, whether now existing or hereinafter enacted.

Section 1.9 <u>Stamp Tax</u>. If, by the law of the United States of America, or of any state or political subdivision having jurisdiction over Borrower or the Property, any tax (other than income, franchise or similar tax) is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Borrower covenants and agrees to pay such tax in the manner required and to the extent permitted by any such law. BORROWER FURTHER COVENANTS TO HOLD HARMLESS AND AGREES TO INDEMNIFY ADMINISTRATIVE AGENT, THE LENDERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS AGAINST ANY LIABILITY INCURRED BY REASON OF THE IMPOSITION OF ANY TAX ON THE ISSUANCE OF THE NOTE, OR RECORDING OF THIS MORTGAGE.

Section 1.10 <u>Effect of Extensions of Time</u>. If the payment of the Debt or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Administrative Agent and the Lenders, notwithstanding such extension, variation or release. Borrower acknowledges that this Mortgage shall secure all extensions and renewals of any of the Debt. Any Person taking a junior mortgage or other lien upon the Property or any interest therein, shall take said lien subject to the rights of Administrative Agent (for the benefit of the Lenders) herein to amend, modify and supplement this Mortgage, the Loan Agreement, the Note, and any other Loan Documents and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Debt, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing contained in this **<u>Section 1.10</u>** shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Property, or any portion thereof, is sold, conveyed or encumbered unless expressly permitted by the Loan Agreement. It is agreed that any future advances made by Borrower for the benefit of Administrative Agent from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Borrower and/or Administrative Agent, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Debt over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law. Under no circumstances, however, shall the total indebtedness secured hereby exceed Seventeen Million Two Hundred Sixty Eight Thousand Seven Hundred Fifty and No/100 Dollars ($17,268,750.00).

Section 1.11 **Administrative Agent's Performance of Defaulted Acts; Subrogation**. In case Borrower fails to perform any of its covenants and agreements herein or in the Note, the Loan Agreement, or any other Loan Documents, after Administrative Agent has provided Borrower with notice and an opportunity to cure such failure within the applicable notice and/or grace periods, if any, provided herein or in the Note or the Loan Agreement, Administrative Agent may, but need not, make any payment or perform any act herein or therein required of Borrower, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and make payments of any rents due or to become due and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Property from any tax sale or forfeiture affecting the Property or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by Administrative Agent or any of the Lenders to protect the Property and the lien hereof, shall be, except as otherwise provided herein or in the Loan Agreement, so much additional indebtedness secured hereby, and shall become immediately due and payable within ten (10) Business Days of demand (accompanied by invoices or other evidence thereof) and with interest thereon from the date so advanced at the Default Rate. Inaction of Administrative Agent or any of the Lenders shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower. Should any advance, or any amount paid out or advanced hereunder by Administrative Agent or any of the Lenders, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Administrative Agent and the Lenders shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Administrative Agent and any person designated by Administrative Agent shall have the right, and is hereby granted the right, to enter upon the Property for the foregoing purposes.

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

Section 1.13 Assignment of Leases and Rents and Profits. As additional collateral and security for the payment and performance of the Debt and cumulative of any and all rights and remedies herein provided for, Borrower hereby presently and unconditionally conveys, assigns, transfers, and sets over to Administrative Agent (for the benefit of the Lenders) all existing and future Leases, and all existing and future Rents and Profits. Such assignment is intended by Borrower to create, and shall be construed to create, a present, unconditional and immediately effective assignment to Administrative Agent (for the benefit of the Lenders), subject only to the terms and provisions hereof, as security for payment and performance of the Debt. Borrower hereby grants to Administrative Agent the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits in accordance with the Act, for which purpose Borrower does hereby irrevocably make, constitute and appoint Administrative Agent its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any Debt is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Nevertheless, subject to the terms of the Assignment of Leases (as defined in the Loan Agreement) being executed simultaneously herewith, and this Mortgage, Borrower may collect, receive, use and enjoy the Rents and Profits, and Borrower shall hold all Rents and Profits as a trust fund for the benefit of Administrative Agent (for the benefit of the Lenders) and agrees to apply the Rents and Profits, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums and to the payment of taxes, assessments, water rates, sewer rents, lien claims, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of the Rents and Profits before using the Rents and Profits for any other purpose until Administrative Agent sends a Rent Demand (as defined in **Section 5.26(a)** below) or Notice of Enforcement (as defined in **Section 5.26(a)** below). Upon the occurrence of an Event of Default, and the sending of a Notice of Enforcement and/or Rent Demand, Administrative Agent (for the benefit of the Lenders) shall be entitled to receive the Rents and Profits and apply them to the Debt and to any and all sums due under the Loan Documents in such order and priority as Administrative Agent may determine in its sole and absolute discretion. Upon Administrative Agent's sending of a Notice of Enforcement and Rent Demand, Borrower shall hold all Rents and Profits in trust for the benefit of Administrative Agent (for the benefit of the Lenders) and shall promptly deliver to Administrative Agent all Rents and Profits (for the benefit of the Lenders) or other sums assigned hereunder and then in Borrower's possession, and all other amounts assigned hereunder which are then due or accruing thereafter shall be payable directly to Administrative Agent (for the benefit of the Lenders). Furthermore, from and after such Event of Default and after the sending of such Notice of Enforcement and Rent Demand, Administrative Agent shall have the right and authority, without any additional notice whatsoever to Borrower and without regard to the adequacy of the security therefor, to: (a) make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as particularly set forth in this Mortgage; (b) enter upon and take possession of the Property in person or through its agents; (c) manage and operate the Property, with full power to employ agents to manage the same; (d) demand, collect, receive and sue for the Rents, including those past due and unpaid; and (e) do all acts relating to such management of the Property, including, but not limited to, negotiation of new Leases, making adjustments of existing Leases, contracting and paying for repairs and replacements to the Improvements and to the fixtures, equipment and personal property located in the Improvements or used in any way in the operation, use and occupancy of the Property as in the sole subjective judgment and discretion of Administrative Agent may be necessary to maintain the same in a tenantable condition, purchasing and paying for such additional furniture and equipment as in the sole subjective judgment of Administrative Agent may be necessary to maintain a proper rental income from the Property, employing necessary managers and other employees, purchasing fuel, providing utilities and paying for all other expenses incurred in the operation of the Property, maintaining adequate insurance coverage over hazards customarily insured against and paying the premiums therefor. Administrative Agent shall apply the Rents received by Borrower from the Property under this assignment (notwithstanding anything to the contrary in Section 64.058 of the Act), after deducting the costs of collection thereof, including, without limitation, reasonable attorneys' fees and a management fee for any management agent so employed, against amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Administrative Agent incurs in connection with the operation of the Property and against interest, principal, required escrow deposits and other sums which have or which may become due, from time to time, under the terms of the Loan Documents, in such order or priority as to any of the items so mentioned as Administrative Agent, in its sole subjective discretion, may determine. This assignment of leases, Rents and Profits, revenues, and income shall be irrevocable so long as any portion of the Debt remains outstanding. Administrative Agent shall be under no liability for failure to take possession of the Property or by reason of Administrative Agent's failure or inability to collect any rents, revenues, or income herein assigned except solely if and to the extent such failure or inability results from the gross negligence or willful misconduct of Administrative Agent or its successors, assigns, shareholders, directors, officers, employees and/or agents and not from any actions by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them. This assignment shall apply to all Rents and Profits, revenues, and income hereinafter accruing from present leases and tenants, and from all leases and rentals hereinafter made by the present or any future owners of the Property. The power of entry and the powers incident thereto as in this paragraph provided for may be exercised as often as occasion therefor shall arise, and their exercise shall not suspend or modify any other right or remedy hereunder. Borrower further agrees that upon the occurrence and during the continuance of an Event of Default under this Mortgage or the Note and Loan Agreement secured hereby, or in any other Loan Document, which continues beyond any applicable notice and cure period, that Administrative Agent may cause this assignment to be enforced, without regard to the adequacy of the security or the solvency of the Borrower, by any one or more of the following methods or by any method listed above: (i) the appointment of a receiver, upon ex-parte application, if appropriate; (ii) collecting such monies directly from the parties obligated for payment; and/or (iii) injunction. Administrative Agent's non-enforcement of this assignment shall not be deemed a waiver of default. Borrower hereby irrevocably agrees that any Tenant paying Rents and Profits as directed by Administrative Agent shall be deemed to have paid such amount in satisfaction of its obligation under such Tenant's Lease, and each Tenant may rely on such agreement by Borrower. Neither the demand for or collection of Rents and Profits by Administrative Agent, nor the exercise of Administrative Agent's rights as assignee of the Leases, shall constitute any assumption by Administrative Agent or any of the Lenders of any obligations under any Lease or other agreement relating thereto. Administrative Agent is obligated to account only for such Rents and Profits as are actually collected or received by Administrative Agent. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Administrative Agent of an Event of Default hereunder, pay said Rents and Profits to Administrative Agent without liability to determine the actual existence of any Event of Default claimed by Administrative Agent. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Administrative Agent, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents and Profits collected or received by Administrative Agent upon the occurrence and during the continuance of an Event of Default shall be applied against all reasonable expenses of collection, including, without limitation, reasonable attorneys' fees, against costs of operation and management of the Property and against the Debt, in whatever order or priority as to any of the items so mentioned as Administrative Agent directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Administrative Agent of any rights under this **Section 1.13** nor the application of any Rents and Profits to the Debt shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

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

Section 1.15 Alienation and Further Encumbrances.

(a) Borrower acknowledges that (i) Administrative Agent and the Lenders have examined and relied on the creditworthiness and experience of the principals of Borrower in owning and operating properties such as the Property in agreeing to make the Loan, (ii) Administrative Agent and the Lenders will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the Debt, and (iii) Administrative Agent and the Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt, Administrative Agent can recover the Debt by a sale of the Property. Borrower shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or suffer or permit any Transfer to occur, other than a Transfer which is either expressly permitted or not otherwise restricted under **Section 4.11** of the Loan Agreement.

(b) Neither Administrative Agent nor any of the Lenders shall be required to demonstrate any actual impairment of Administrative Agent's or any of the Lenders' security or any increased risk of default under the Loan Documents in order to declare the Debt immediately due and payable upon any Transfer in violation of this **Section 1.15**. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this **Section 1.15** shall be null and void and of no force and effect. Borrower agrees to bear and shall pay or reimburse Administrative Agent within ten (10) days of written demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Administrative Agent in connection with the review, approval and documentation of any Transfer permitted under the Loan Agreement.

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

Section 1.17 **<u>Access Privileges and Inspections</u>**. Administrative Agent and the agents, representatives and employees of Administrative Agent shall, subject to the rights of Tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times and upon reasonable prior notice for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to and cooperate with all such agents, representatives and employees of Administrative Agent.

Section 1.18 **<u>Further Documentation</u>**. Borrower shall, on the request of Administrative Agent and at the expense of Borrower, promptly: (a) correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary or desirable in the reasonable judgment of Administrative Agent to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Administrative Agent to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) furnish to

Administrative Agent, but no more than twice per year unless an Event of Default has occurred and is continuing, upon Administrative Agent's written request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Administrative Agent and in form and substance supplied by Administrative Agent and reasonably acceptable to Borrower, setting forth all amounts due under the Note and the other Loan Documents, stating whether any Default or Event of Default exists, stating whether any offsets or defenses exist against the Debt, affirming that the Loan Documents are the legal, valid and binding obligations of Borrower, and containing such other matters as Administrative Agent may reasonably require.

Section 1.19 **Security Interest and Security Agreement**. This Mortgage is also a security agreement under the Uniform Commercial Code for any of the Property which, under Applicable Law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, including, without limitation, the Cash Management Account, the Clearing Account, the Reserves and all products, and cash and non-cash proceeds thereof (collectively, the "**UCC Collateral**"). Borrower hereby grants to Administrative Agent (for the benefit of the Lenders) a security interest in the UCC Collateral. Borrower hereby authorizes Administrative Agent to prepare, file and/or record such financing statements, continuation statements and amendments, in such form as Administrative Agent may require, in order to perfect or continue the perfection of this security interest, which may describe the Property as "all assets" of Borrower. Borrower shall pay all reasonable out-of-pocket costs of preparing and filing such statements, and all reasonable costs and expenses of any record searches for financing statements that Administrative Agent may require. Without the prior written consent of Administrative Agent or as otherwise expressly permitted under the Loan Documents, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. The name and address of Borrower (as debtor under any applicable Uniform Commercial Code) and Administrative Agent (as secured party under any applicable Uniform Commercial Code) are as set forth on Page 1 of this Mortgage.

Section 1.20 **Easements and Rights-of-Way**. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Administrative Agent. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Administrative Agent consents to the grant of an easement or right-of-way, Administrative Agent agrees to grant such consent provided that Administrative Agent is paid all reasonable out-of-pocket expenses, including, without limitation, reasonable attorneys' fees, incurred by Administrative Agent in the review of Borrower's request and in the preparation of documents effecting the subordination. Borrower shall at all times comply in all material respects with all easement agreements, reciprocal easement agreements, declarations, restrictive covenants and any other similar types of agreements now or hereafter affecting the Property, and Borrower shall not amend, modify or terminate any such easement agreements, reciprocal easement agreements, declarations, restrictive covenants or any other similar types of agreements without Administrative Agent's prior written consent.

Section 1.21 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Administrative Agent or any of the Lenders the payment of the whole or any part of the Taxes or Other Charges herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of Administrative Agent or secured party in the property covered thereby, or the manner of collection of such Taxes or Other Charges, so as to adversely affect this Mortgage or the Debt or Administrative Agent or the Lenders, then, and in any such event, Borrower, upon demand by Administrative Agent, shall pay such Taxes or Other Charges, or reimburse Administrative Agent therefor; provided, however, that if in the opinion of counsel for Administrative Agent (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Applicable Law, then and in either such event, Administrative Agent may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full ninety (90) days from the giving of such notice.

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

Section 1.23 Hazardous Waste and Other Substances. Borrower hereby covenants to comply with all of Borrower's requirements concerning Environmental Laws and Hazardous Substances as required by the Loan Agreement.

ARTICLE II

EVENTS OF DEFAULT

Section 2.1 Events of Default. It shall be an "**Event of Default**" hereunder if (i) Borrower fails to punctually perform any covenant, agreement, obligation, term or condition contained herein which requires payment of any money to Administrative Agent or any Lender and such failure continues for five (5) days after such payment becomes due or, if due on demand, is demanded; (ii) Borrower fails to perform any covenant, agreement, obligation, term or condition contained herein other set forth herein other than those described in the foregoing subclause (i) and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Administrative Agent to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Administrative Agent (but in any event within thirty (30) days of such notice), and thereafter continuously and diligently prosecutes the curing of such default, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional ninety (90) days; or (iii) if any Event of Default shall occur under the Loan Agreement or any other Loan Document.

ARTICLE III

REMEDIES

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

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

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by Applicable Law and without notice (other than notices expressly required hereunder or under the Loan Documents (if any)) or process or with such notice or process as is required by Applicable Law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Administrative Agent's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Administrative Agent therefor, together with interest thereon at the Default Rate, shall be due and payable to Administrative Agent by Borrower on demand.

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

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

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

(1) Without limiting any of the rights of Administrative Agent or the Lenders (and the obligations of Borrower) under **Section 3.7** hereof, in the event foreclosure proceedings are filed by Administrative Agent, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by Applicable Law), attorneys' fees and any other amounts due and unpaid to Administrative Agent and the Lenders under the Loan Documents, may be bid by Administrative Agent in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Administrative Agent or its assigns may become the purchaser of the Property or any part thereof.

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

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

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

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

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

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

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

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

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

Section 3.3 Right and Authority of Receiver or Administrative Agent in the Event of Default; Power of Attorney. Upon the occurrence and during the continuance of an Event of Default hereunder, and entry upon the Property pursuant to **Section 3.1(b)** hereof or appointment of a receiver pursuant to **Section 3.1(d)** hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Administrative Agent's or the receiver's reasonable discretion, all at Borrower's expense, Administrative Agent or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property to maintain the Property in accordance **Section 1.2** of this Mortgage; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Administrative Agent may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Administrative Agent's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Administrative Agent may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Administrative Agent may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Administrative Agent as attorney-in-fact and agent of Borrower or in its own name as Administrative Agent, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such Leases, whether of real or personal property, under such terms and conditions as Administrative Agent may in its sole discretion deem appropriate; (l) collect and receive the Rents and Profits from the Property; (m) eject Tenants or repossess personal property, as provided by Applicable Law, for breaches of the conditions of their Leases; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Administrative Agent; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Administrative Agent by this Mortgage; and (r) do any acts which Administrative Agent in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Administrative Agent may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any Tenant, lessee, or other Person who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Administrative Agent, at the request of Administrative Agent, to pay all amounts owing under any Lease, contract or other agreement to Administrative Agent without proof of the Event of Default relied upon. Any such Tenant, lessee or other Person is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Administrative Agent for the payment to Administrative Agent of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract or other agreement, or for the performance of any undertakings under any such Lease, contract or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage, or any default under any of the other Loan Documents, has actually occurred or is then existing. Borrower hereby constitutes and appoints Administrative Agent, its assignees, successors, transferees and nominees, upon the occurrence and during the continuance of an Event of Default, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any Debt is outstanding. Any money advanced by Administrative Agent or any Lender in connection with any action taken under this **Section 3.3**, together with interest thereon at the Default Rate from the date of making such advancement by Administrative Agent until actually paid by Borrower, shall be a demand obligation owing by Borrower to Administrative Agent.

Section 3.4 **Occupancy After Foreclosure**. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except Tenants of space in the Improvements subject to Leases entered into prior to the date hereof or entered into after the date hereof in accordance with the Loan Documents, which shall be governed by the terms of the subject Leases, any Subordination Non-Disturbance and Attornment Agreements executed in connection therewith and Applicable Laws), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by Applicable Law, each and all shall, at the option of Administrative Agent or the purchaser at such sale, as the case may be, immediately become the Tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or Tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by Applicable Law, in the event the Tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

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

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

Section 3.7 **Payment of Expenses**. Borrower shall pay on demand all of Administrative Agent's and the Lenders' reasonable expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Administrative Agent or the applicable Lenders until actually paid by Borrower at the Default Rate. FURTHERMORE, BORROWER SHALL, AND DOES HEREBY, INDEMNIFY ADMINISTRATIVE AGENT AND THE LENDERS FOR, AND

HOLD ADMINISTRATIVE AGENT AND THE LENDERS HARMLESS FROM, ANY AND ALL LOSSES, COSTS, EXPENSES, CLAIMS (EXCLUDING ANY CLAIMS FOR ACTUAL DIMINUTION IN VALUE, EXCEPT TO THE EXTENT SUCH DIMINUTION IN VALUE WOULD RESULT IN ADMINISTRATIVE AGENT'S FAILURE TO RECOVER ANY AMOUNT OF THE ENTIRE OUTSTANDING DEBT), ACTIONS, DEMANDS LIABILITIES, LOSS OR DAMAGE (EXCLUDING ANY PUNITIVE OR SPECIAL DAMAGES, EXCEPT TO THE EXTENT ANY SUCH PUNITIVE OR SPECIAL DAMAGES ARE ASSERTED AGAINST ADMINISTRATIVE AGENT OR ANY LENDER BY BORROWER, GUARANTOR, PROPERTY MANAGER, THEIR RESPECTIVE AFFILIATES, SUCCESSORS, ASSIGNS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, OR ANY PERSON ACTING AT THE DIRECTION OF ANY OF THEM, OR ANY THIRD-PARTY) WHICH MAY OR MIGHT BE INCURRED BY ADMINISTRATIVE AGENT OR ANY OF THE LENDERS UNDER THIS MORTGAGE OR BY THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST ADMINISTRATIVE AGENT OR ANY OF THE LENDERS BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ADMINISTRATIVE AGENT'S OR ANY OF THE LENDERS' PART WITH RESPECT TO THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH IN THE LOAN DOCUMENTS, EXCEPT SOLELY IF AND TO THE EXTENT ANY SUCH CLAIM OR DEMAND IS FINALLY DETERMINED TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ADMINISTRATIVE AGENT OR ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND NOT FROM ANY ACTIONS BY BORROWER, GUARANTOR, PROPERTY MANAGER, THEIR RESPECTIVE AFFILIATES, SUCCESSORS, ASSIGNS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, OR ANY PERSON ACTING AT THE DIRECTION OF ANY OF THEM. BORROWER'S OBLIGATION PURSUANT TO THE PREVIOUS SENTENCE SHALL INCLUDE, WITHOUT LIMITATION, PAYMENT TO (OR REIMBURSEMENT OF) ANY COMPENSATION PAYABLE BY THE HOLDER OF THE LOAN TO ANY SERVICING AGENT UNDER A SECONDARY MARKET TRANSACTION (AS DEFINED IN THE LOAN AGREEMENT) PURSUANT TO THE SECURITIZATION DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT) IF SUCH PAYMENT BECOMES DUE SOLELY BY REASON OF THE EXISTENCE AND CONTINUANCE OF ANY EVENT OF DEFAULT. Should Administrative Agent or any of the Lenders incur any such liability, the amount thereof, including, without limitation, reasonable costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date incurred by Administrative Agent or any such Lenders until actually paid by Borrower, shall be due and payable to Administrative Agent and any such Lenders from Borrower on demand.

ARTICLE IV

INTENTIONALLY OMITTED

ARTICLE V

MISCELLANEOUS TERMS AND CONDITIONS

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

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

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

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

Section 5.5 **Notices**. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be sent in the manner required by **Section 8.5** of the Loan Agreement.

Section 5.6 **Successors and Assigns**. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Administrative Agent, the Lenders and their respective successors and assigns, and shall constitute covenants running with the land. All indemnities in this Mortgage for the benefit of Administrative Agent and/or the Lenders shall inure to the benefit of Administrative Agent and/or the Lenders, respectively, and each of their respective directors, officers, shareholders, partners, members, managers, employees and agents (including, without limitation, any servicers retained by Administrative Agent with respect to the Loan), and pledgees and participants of the Debt, and their respective successors and assigns. All references in this Mortgage to Borrower or Administrative Agent shall be deemed to include each such party's successors and assigns. If Borrower consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Borrower.

Section 5.7 **Severability**. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

Section 5.8 **Interpretation**. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of this Mortgage shall be controlling, except for the Loan Agreement, it being understood and agreed that the provisions of the Loan Agreement shall control over any inconsistent provision in any other Loan Document, including, without limitation, this Mortgage.

Section 5.9 **Waiver; Discontinuance of Proceedings**. Administrative Agent may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Administrative Agent may remedy any Event of Default by Borrower hereunder without waiving the Event of Default remedied. Neither the failure by Administrative Agent to exercise, nor the delay by Administrative Agent in exercising, any right, power or remedy upon any Event of Default by Borrower hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Administrative Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Administrative Agent of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of a Default or an Event of Default hereunder. In case Administrative Agent shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Administrative Agent shall have the unqualified right to do so and, in such an event, Borrower and Administrative Agent shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Administrative Agent shall continue as if the same had never been invoked.

Section 5.10 **Governing Law**. THE CREATION OF ADMINISTRATIVE AGENT'S RIGHTS AND INTEREST HEREUNDER, THE PERFECTION OF THE LIEN, SECURITY INTEREST AND OTHER RIGHTS AND INTEREST GRANTED OR OTHERWISE ARISING HEREUNDER AND THE EXERCISE OF ADMINISTRATIVE AGENT'S RIGHTS POWERS AND REMEDIES WITH RELATION TO THE PROPERTY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

OTHERWISE, THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, PROVIDED THAT TO THE EXTENT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

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

Section 5.12 Relationship of the Parties. The relationship between Borrower on the one hand and the Lenders and Administrative Agent on the other hand is that of a borrower and lenders and such lenders’ administrative agent, as applicable, only. Except for the agent relationship between Administrative Agent and the Lenders, none of Borrower, the Lenders or Administrative Agent is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

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

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

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

Section 5.16 Construction of this Document. This document may be construed as a mortgage, security deed, Mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, as determined by Administrative Agent, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

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

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

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

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

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

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

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

Section 5.24 **<u>Maximum Interest</u>**. The provisions of **<u>Section 2.2(i)</u>** of the Loan Agreement are incorporated in this Mortgage by reference as if more fully set forth herein.

Section 5.25 **<u>SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL</u>**.

(a) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE REAL ESTATE IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS AND, (iv) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN **<u>SECTION 5.5</u>** HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(b) BORROWER, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE

DEBT OR ANY CONDUCT, ACT OR OMISSION OF BORROWER, ADMINISTRATIVE AGENT OR ANY LENDERS, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH BORROWER, ADMINISTRATIVE AGENT OR ANY LENDERS, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Section 5.26 **State-Specific Provisions**. In the event of any inconsistency or disagreement between the terms and provisions set forth in this **Section 5.26** and the other terms and provisions of this Mortgage, the terms and provisions of this **Section 5.26** shall govern, control and supersede such other terms and provisions to the extent of such inconsistency or disagreement.

(a) **Conflict with Indiana Laws**. In the event that any provision in this Mortgage shall be found to be inconsistent with any provision of any applicable law of the State of Indiana (collectively "**Indiana Laws**") such conflicting provisions of Indiana Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Indiana Laws. If any provision of this Mortgage shall grant to Administrative Agent any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Administrative Agent under the Indiana Laws in the absence of said provision, Administrative Agent shall be vested with the rights granted by the Indiana Laws to the full extent permitted by law.

(b) **No Waiver**. Anything contained in I.C. 32-29-7-5 to the contrary notwithstanding, no waiver made by Borrower in this Mortgage or in any of the other terms and provisions of the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Administrative Agent or any judgment holder of the indebtedness or secured obligations hereby secured or the right to seek a deficiency judgment against the Borrower or any other person or entity who may be personally liable for the indebtedness or obligations hereby secured, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Administrative Agent for its own behalf and that of its successors and assigns.

(c) **Intentionally Omitted**.

(d) **Consent to Receiver**. Subject to the terms and provisions of this Mortgage, in addition to and the rights of Administrative Agent pursuant to Section 6.3(b), Borrower hereby consents to the appointment of a receiver pursuant to I.C. § 32-30-5-1(4)(C) to the extent permitted under Indiana law, which receiver, when duly appointed, shall have all of the powers and duties of receivers pursuant to Indiana law.

(e) **Maturity Date**. The Loan shall be due and payable in full on or before November 10, 2021, unless extended pursuant to the terms of the Loan Agreement

Section 5.27 Exculpation. The provisions of Section 8.16 of the Loan Agreement are hereby incorporated herein by reference.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

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

BORROWER:

G&I IX MJW LAKE POINTE III & IV LLC,
a Delaware limited liability company

By: G&I IX MJW Lake Pointe JV LLC,
a Delaware limited liability company, its sole member

By: G&I IX Investment Lake Pointe LLC,
a Delaware limited liability company, its managing member

By: ______________________
Name: David Gray
Title: Vice President

ACKNOWLEDGEMENT

STATE OF New York)
) SS:
COUNTY OF New York)

Before me, a Notary Public in and for said County and State, personally appeared David Gray, the Vice President of G&I IX Investment Lake Pointe LLC, a Delaware limited liability company, managing member of G&I IX MJW Lake Pointe JV LLC, a Delaware limited liability company, sole member of G&I IX MJW Lake Pointe III & IV LLC, a Delaware limited liability company ("Company") who, after having been duly sworn, acknowledged the execution of the foregoing Assignment of Leases and Rents for and on behalf of such Company.

WITNESS my hand and Notarial Seal this 26th day of October, 2018.

L. Harkness
Notary Public

My Commission Expires: December 5, 2018

My County of Residence: Queens

LAKEEMA HARKNESS
Notary Public, State of New York
No. 01HA6351565
Qualified in Queens County
Commission Expires December 5, 2020

Administrative Agent certifies that the mailing address of Administrative Agent, acting as mortgagee on behalf of the lenders is:

Canadian Imperial Bank of Commerce,
acting through its New York Branch, as Administrative Agent,
its successors and/or assigns, as their interests may appear
Attn: Real Estate Group
One South Wacker Drive, Suite 3500
Chicago, Illinois 60606

____
Todd Roth, as Authorized Signatory on
behalf of Mortgagee

This instrument prepared by Gary A. Goodman, Attorney-at-Law, Dentons US LLP, 1221 Avenue of the Americas, New York, New York 10020-1089. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

____

Gary A. Goodman, Esq.

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL ESTATE

TRACT 1:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter Section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet; thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by D.O.T. plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument No. 87-105141 in the Office of the Recorder of Marion County, Indiana (the next seven courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of 305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 401.44 feet to a curve having a radius of 100.00 feet, the radius point of which bears South 00 degrees 38 minutes 30 seconds East; (6) thence Southwesterly along said curve, 82.98 feet to a point which bears North 48 degrees 11 minutes 15 seconds West from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears North 48 degrees 11 minutes 15 seconds West; (7) thence Southwesterly along said curve, 82.98 feet to the POINT OF BEGINNING, which point bears South 00 degrees 38 minutes 30 seconds East from said radius point; thence South 00 degrees 38 minutes 30 seconds East 473.16 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 385.13 feet to a point which bears North 89 degrees 11 minutes 38 seconds East 734.61 feet from the Southwest corner of said North Half Quarter Section; thence North 00 degrees 38 minutes 30 seconds West 315.15 feet; thence North 64 degrees 13 minutes 35 seconds East 39.25 feet to a curve having a radius of 81.00 feet, the radius point of which bears North 25 degrees 46 minutes 25 seconds West; thence Northeasterly along said curve, 91.71 feet to a point which bears North 89 degrees 21 minutes 30 seconds East from said radius point; thence North 00 degrees 38 minutes 30 seconds West 144.11 feet; thence North 89 degrees 21 minutes 30 seconds East 206.18 feet to a point on the Westerly right-of-way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 74 degrees 52 minutes 51 seconds East; thence Southeasterly along said curve 131.81 feet to the POINT OF BEGINNING.

Parcel II: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5,1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel III: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6,1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in an Access Easement recorded August 5, 1997 as Instrument #97-108040 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel V: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in a Limited Warranty Deed recorded March 25, 1997 as Instrument #97-44966 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

TRACT 2:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by DOT plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument 87-105141 in the Office of the Recorder of Marion County, Indiana (the next five courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius of 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of

305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 204.00 feet to the POINT OF BEGINNING, which point is also the Northwest corner of a 4.244 acre tract described in a Warranty Deed recorded June 4, 1990 as Instrument 90-54079 in said Recorder's Office; thence along the West line of said 4.244 acre tract South 00 degrees 38 minutes 30 seconds East 537.17 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 345.00 feet; thence North 00 degrees 38 minutes 30 seconds West 473.16 feet to a point on the Southerly right of way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 00 degrees 38 minutes 30 seconds West (the next three courses are along the Southerly line of said Allison Pointe Boulevard); (1) thence Easterly and Northeasterly along said curve. 82.98 feet to a point which bears South 48 degrees 11 minutes 15 seconds East from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears South 48 degrees 11 minutes 15 seconds East; (2) thence Northeasterly and Easterly along said curve, 82.98 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (3) thence North 89 degrees 21 minutes 30 seconds East 197.44 feet to the POINT OF BEGINNING.

Parcel II: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel III: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5,1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development

Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel IV: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated October 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6,1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.