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2019-082055

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
MICHAEL B BROWN  
RECORDER

Following Recordation Return To:

2019 Nov 27

10:51 AM

Thomas A. Hauser, Esquire  
Ballard Spahr LLP  
300 East Lombard Street, 19<sup>th</sup> Floor  
Baltimore, Maryland 21202

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


**STOP**

by  
**WEC 99J-25 LLC,**  
 a Delaware limited liability company, "Borrower"

for the benefit of  
**PNC BANK, NATIONAL ASSOCIATION, "Lender"**

Dated as of November 15, 2019

Maximum Principal Amount Secured: \$27,500,000



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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Security Instrument**”) is made as of the 15th day of November, 2019, by **WEC 99J-25 LLC**, a Delaware limited liability company, with an address at 225 West Washington Street, Indianapolis, Indiana 46204, as mortgagor (“**Borrower**”) for the benefit of **PNC BANK, NATIONAL ASSOCIATION**, a national banking association, with an address at 101 Washington Street, Indianapolis, Indiana 46255 (the “**Lender**”).

Borrower is the owner of certain land located in the County of Lake, Indiana, described in Exhibit A attached hereto and made a part hereof; and

Borrower, together with certain Borrower affiliates, has requested that Lender make a loan of up to a maximum aggregate principal amount of Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) (the “**Loan**”) with the terms of that certain Loan Agreement, dated as of the date hereof, among Borrower, certain Borrower affiliates and Lender (as amended, modified, supplemental or restated from time to time, the “**Loan Agreement**”), which Loan is evidenced by a Promissory Note, dated as of the date hereof, in the maximum principal amount of Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) (as the same may be amended, modified, supplemented or restated from time to time, the “**Note**”). Capitalized terms that are used herein but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

**1. GRANTS OF SECURITY**

**1.1 Property Mortgaged.**

Borrower, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, does hereby irrevocably and unconditionally mortgages, grants, assigns, remises, releases, warrants and conveys to and for the benefit of Lender, its successors and assigns, and does agree that Lender shall have a security interest in, the following described property, all accessions and additions thereto, all substitutions therefor and replacements and proceeds thereof, and all reversions and remainders of such property (collectively, the “**Property**”) now owned or held or hereafter acquired by Borrower, to wit:

(i) all of Borrower’s fee simple estate in the premises described in Exhibit A, together with all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances thereunto belonging or appertaining, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein and in the public streets and ways adjacent thereto, either in law or in equity, in possession or expectancy (collectively, the “**Land**”);

(ii) the structures and buildings and all additions and improvements thereto now or hereafter erected upon the Land owned by Borrower (including all Personal Property, as hereinafter defined, constituting fixtures) (collectively, the **“Improvements”**);

(iii) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the **“Personal Property”**), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the **“UCC”**), and all proceeds and products of the above;

(iv) all of Borrower’s rights under that certain Amended and Restated Lease dated as of December 1, 1999, by and between Borrower and Hook-SupeRx, Inc., a Delaware corporation (the **“Original Tenant”**), as amended by that certain First Amendment to Amended and Restated Lease, dated as of October 1, 2019, by and between Borrower and Hook-SupeRx, L.L.C., a Delaware limited liability company, as successor in interest to the Original Tenant (the **“Tenant”**) (the Amended and Restated Lease, as amended, and as may be further amended, modified, supplemental or restated from time to time, the **“CVS Lease”**), together with any other leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under any Debtor Relief Laws (collectively with the CVS Lease, the **“Leases”**) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including, without limitation, all oil and gas or other mineral royalties and bonuses), paid or accruing before or after the filing by or against Borrower of any petition for relief under any Debtor Relief Laws

(collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(v) all Insurance Proceeds in respect of the Property under any Policies covering the Property in which Borrower has an interest in, including, without limitation, subject to Article 8 of the Loan Agreement, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(vi) all Awards, including interest thereon, which may heretofore and hereafter be made to Borrower with respect to the Property by reason of Condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property subject to Section 8.3 and Section 8.4 of the Loan Agreement;

(vii) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(viii) all of Borrower’s right, title and interest in any tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; and

(ix) all Borrower’s rights and interests in all agreements now or hereafter in existence providing for or relating to the construction, alteration, maintenance, repair, operation or management of the Property or any part thereof, as well as the plans and specifications therefor, and all copies thereof (together with the right to amend or terminate the same or waive the provisions of the foregoing) and any amendments, renewals and replacements thereof; to the extent permitted by the relevant authorities, all licenses, permits and approvals for the ownership, construction, maintenance, operation, use and occupancy of the Property or any part thereof and any amendments, renewals and replacements thereof; all Borrower’s rights and interests in all warranties and guaranties from contractors, subcontractors, suppliers and manufacturers to the maximum extent permissible relating to the Property or any part thereof; all insurance policies covering or affecting the Property or any part thereof; all of Borrower’s now and hereafter arising or acquired Accounts, General Intangibles, Goods, Inventory, Chattel Paper, Documents and Instruments (as such terms are defined in Article 9 of the UCC) arising out of, used in connection with, or otherwise relating to the Property (collectively, the “**Other Property**”).

## 1.2 Assignment of Leases and Rents.

Borrower does hereby give, grant, bargain, sell, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm unto Lender and hereby grants to Lender a security interest in and lien upon, as security for the payment and performance of the Obligations and the observance and performance of all the terms, covenants and provisions of this Security Instrument and the other Loan Documents, Borrower's right, title and interest in and to all present and future Leases and the Rents (the "Assignment"). This Assignment is a present, absolute and unconditional assignment from Borrower to Lender and not merely the granting of a security interest. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security Instrument and to exercise all rights and privileges extended to a landlord under the Lease and to perform all of the obligations of the landlord and to enforce all of the obligations of the Tenants under the Leases, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations (as hereinafter defined), for use in the payment of such sums. In the event the Borrower cures, to the reasonable satisfaction of Lender, the Event of Default that caused the license granted in this Section 1.2 to be revoked, and provided that no other Event of Default then exists, said license shall be reinstated to Borrower without further action of the parties.

## 1.3 Security Agreement.

This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the UCC and is being recorded as a fixture filing. With respect to said fixture filing, (i) the debtor is Borrower, and Borrower's name and address appear in the first paragraph of this Security Instrument, and (ii) the secured party is Lender, and Lender's name and address appear in the first paragraph of the Security Instrument. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property, including, but not limited to, the Leases and Rents and all proceeds thereof and all fixtures. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Personal Property to the full extent that the Personal Property may be subject to the UCC.

## 1.4 Fixture Filing.

Certain of the Property is or will become "fixtures" (as that term is defined in the UCC) on the Land and/or the Improvements, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such of the Property that is or may become fixtures.

## 2. DEBT AND OBLIGATIONS SECURED

### 2.1 Debt.

This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of all indebtedness, together with all interest

thereon, evidenced by the Note, the provisions of the Note being incorporated herein by this reference (the “Debt”).

## 2.2 Other Obligations.

This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the “**Other Obligations**”): (a) all other obligations of Borrower contained herein; (b) each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

## 2.3 Debt and Other Obligations.

Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the “**Obligations.**”

## 2.4 Payment and Performance of Obligations.

Borrower will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

## 2.5 Incorporation by Reference.

All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

## 3. **PROPERTY COVENANTS**

Borrower covenants and agrees that:

### 3.1 Insurance.

Borrower shall comply with the terms of Section 8.1 as required pursuant to the Loan Agreement.

### 3.2 Taxes.

Borrower shall comply with the terms of Section 5.5 of the Loan Agreement.

### 3.3 Leases.

Borrower shall not amend, modify, or otherwise change the CVS Lease or enter into any other Lease of the Property without Lender’s prior written consent. Further, Borrower shall not relieve, waive, forgive or otherwise alter any of the Tenant’s material obligations under the CVS Lease without Lender’s prior written consent. Lastly, Borrower shall not waive any Lease Default without Lender’s prior written consent.

3.4 Warranty of Title.

Borrower has good, marketable and insurable fee simple title to the real property owned by it comprising part of the Property and good and marketable title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty owned by Borrower (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons claiming by through or under Borrower whomsoever.

3.5 Maintenance of Property.

Borrower agrees to comply with Sections 5.2, 5.5 and 5.7 of the Loan Agreement.

3.6 Payment for Labor and Materials.

Subject to the terms of Section 5.15 of the Loan Agreement, Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Encumbrances.

4. **FURTHER ASSURANCES**

4.1 Compliance With Loan Agreement.

Borrower shall comply with the covenants set forth in Article 14 of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Lender in, the Property.

4.2 Authorization to File Financing Statements; Power of Attorney.

Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property. For purposes of such filings, Borrower agrees to furnish any information reasonably requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of

this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any such documents and otherwise to carry out the purposes of this Section 4.2 to the extent that Borrower's authorization above is not sufficient; such power of attorney to be effective only during the continuance of an Event of Default. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

## 5. DUE ON SALE/ENCUMBRANCE

### 5.1 No Sale/Encumbrance.

Borrower shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, or Borrower, other than in accordance with the provisions of Article 7 of the Loan Agreement, without the prior written consent of Lender and except for the sale of Personal Property that is being replaced or retired from service in the ordinary course of business. Any default under this Section shall cause an immediate acceleration of the Obligations without any demand by the Lender.

## 6. PREPAYMENT; RELEASE OF PROPERTY

### 6.1 Prepayment.

The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

### 6.2 Prepayment on Casualty/Condemnation and Change In Tax and Debit Credit Laws.

Provided no Event of Default exists under any of the Loan Documents, in the event of any prepayment of the Debt pursuant to the terms of Article 8 or Section 14.4 of the Loan Agreement, no prepayment premium shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under any of the Loan Documents.

### 6.3 Release of Property.

Borrower shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument, except upon payment in full of the Obligations or as otherwise provided in the Loan Agreement, including, without limitation, Section 7.3(c) of the Loan Agreement.



## 7. DEFAULT

### 7.1 Event of Default.

The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

## 8. RIGHTS AND REMEDIES UPON DEFAULT

### 8.1 Remedies.

Upon the occurrence and during the continuance of any Event of Default, subject to the provisions of Article 16 of the Loan Agreement, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Obligations to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) INTENTIONALLY DELETED;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) subject to the provisions of Section 16.1 of the Loan Agreement, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower;
- (h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by

its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, except to the extent of Lender's gross negligence, willful misconduct or illegal acts, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower but not including any vacant space; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees if and to the extent permitted by Law;

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

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items (to the extent not paid by Borrower and which are due and payable and not being contested) in any order in its uncontrolled discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and/or (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) unless the Policies are blanket policies as permitted by the Loan Agreement or the Policies are maintained by Tenant under the Lease, surrender the Policies

maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(l) subject to the terms of the Loan Agreement, apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

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

(n) in the event of a sale, by foreclosure or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 9.1(h) of the Loan Agreement shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender. The exercise of remedies to pursue a deficiency judgment or personal liability against Borrower or any other party shall be subject to Article 16 of the Loan Agreement, the provision of which are incorporated herein by Article 11 hereof.

## 8.2 Application of Proceeds.

The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its reasonable discretion shall deem proper subject to the terms and provisions of the Loan Agreement.

## 8.3 Right to Cure Defaults.

Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof. Upon the occurrence and during the continuance of an Event of Default, Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable out-of-pocket attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses

incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable no later than five (5) days following written demand by Lender therefor.

#### 8.4 Actions and Proceedings.

Upon the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, subject to Article 16 of the Loan Agreement, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its reasonable discretion, decides should be brought to protect its interest in the Property.

#### 8.5 Recovery of Sums Required To Be Paid.

Upon the occurrence and during the continuance of an Event of Default, subject to Article 16 of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

#### 8.6 Other Rights, Etc.

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

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

(c) Lender may resort for the payment of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as

an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded by applicable law or in equity.

8.7 Right to Release Any Portion of the Property.

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

8.8 Right of Entry.

Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times subject to the provisions of the Loan Agreement.

8.9 Bankruptcy.

(a) Upon or at any time after the occurrence and continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code (as hereinafter defined).

(b) If there shall be filed by or against Borrower a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## 9. ENVIRONMENTAL HAZARDS

### 9.1 Environmental Covenants.

Borrower has provided representations and warranties regarding environmental matters set forth in Section 11.1 of the Loan Agreement and shall comply with the covenants regarding environmental matters set forth in Sections 10.2, 10.3 and 10.4 of the Loan Agreement.

### 9.2 Lender's Rights.

Borrower has provided Lender with certain rights regarding inspection and access to the Property as more fully described in Section 10.3 of the Loan Agreement.

## 10. WAIVERS

### 10.1 Marshalling and Other Matters.

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

### 10.2 Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or any Loan Document specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not permitted by Legal Requirements to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or any Loan Document does not specifically and expressly provide for the giving of notice by Lender to Borrower to the extent permitted by applicable law.

### 10.3 Waiver of Trial by Jury.

BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER IS HEREBY

AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.

10.4 Waiver of Foreclosure Defense.

Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

10.5 Failure to Act.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Lender to take any action hereunder or under any other Loan Document, shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Lender hereunder or under any other Loan Document and (iii) relieve Borrower of any of Borrower's obligations hereunder or under any other Loan Document.

**This Document is the property of  
the Lake County Recorder!**

The provisions of Article 16 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

11. EXCULPATION

All notices or other written communications hereunder shall be delivered in accordance with Article 12 of the Loan Agreement.

12. NOTICES

13. APPLICABLE LAW

13.1 Governing Law.

This Security Instrument shall be deemed to be a contract entered into pursuant to the laws of the State of Indiana and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Indiana, provided however, that with respect to the creation, perfection, priority and enforcement of any Lien created by this Security Instrument and any of the other Loan Documents, the laws of the state where the Property is located shall apply.

13.2 Provisions Subject to Applicable Law.

All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application

thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

#### 14. DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. All initially capitalized words not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

#### 15. MISCELLANEOUS PROVISIONS

##### 15.1 No Oral Change.

This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

##### 15.2 Successors and Assigns.

This Security Instrument shall be binding upon and inure to the benefit of (a) Lender and its successors and assigns forever and (b) Borrower and its permitted successors and assigns forever.

##### 15.3 Inapplicable Provisions.

If any term, covenant or condition of the Loan Agreement, the Note, this Security Instrument or any other Loan Documents is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note, this Security Instrument and/or such other Loan Documents, as applicable, shall be construed without such provision.

##### 15.4 Headings, Etc.

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



15.5 Number and Gender.

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

15.6 Entire Agreement.

This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower, Lender are superseded by the terms of this Security Instrument and the other Loan Documents.

15.7 Limitation on Lender's Responsibility.

No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger except for any such parties' gross negligence, intentional misconduct, illegal acts or bad faith. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**16. STATUS OF BORROWER**

16.1 Status of Borrower.

Borrower's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Borrower is an organization of the type specified in the first paragraph of this Security Instrument. Borrower is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, is the address of Borrower set forth on the first page of this Security Instrument. Borrower's organizational identification number assigned by the state of incorporation or organization is 3126220. Except as otherwise provided in the Loan Agreement, Borrower will not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower (other than changes in its organizational structure resulting from Transfers of direct or indirect ownership interests in Borrower made in accordance with the provisions of the Loan Agreement), (e) Borrower's state of organization, or (f) Borrower's organizational number, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender (to the extent such change is not expressly permitted by the Loan Agreement). If Borrower does not now have an organizational identification number and

later obtains one, Borrower promptly shall notify the Lender of such organizational identification number.

## 17. STATE-SPECIFIC PROVISIONS

### 17.1 Preparation and Filing of Financing Statements.

Borrower irrevocably authorizes Lender at any time and from time to time to prepare and file, on Borrower's behalf, all financing statements, amendments thereto and continuation statements under the Uniform Commercial Code necessary or appropriate to establish or maintain the validity, perfection and priority of Lender's security interest in UCC Collateral. Such financing statements, amendments and continuation statements may be unsigned or, if required to be signed by the applicable office with which Lender intends to file such financing statement, signed only by a representative of Lender.

### 17.2 Release.

Upon payment in full of the Obligations or as otherwise provided in the Loan Agreement, Lender will release this Security Instrument. Borrower will pay Lender's reasonable costs incurred in releasing this Instrument.

### 17.3 Waiver of Valuation and Appraisal.

Borrower waives all right of valuation and appraisal.

### 17.4 Modification of Section 8.1(h).

To the extent this Section 17.4 is inconsistent with Section 8.1(h) of this Security Instrument, Section 8.1(h) of this Security Instrument is hereby modified by the following: If Lender enters the Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property, by reason of any act or omission of Lender under Section 8.1, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

### 17.5 Limitations on Lender Responsibility.

(a) The acceptance by Lender of the assignment of the Leases pursuant to Section 1.2 of this Security Instrument will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.

(b) Except to the extent of Lender's willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person or Persons, firm or corporation in or about the Property.

(c) Prior to Lender's actual entry into and taking possession of the Property, Lender will not be obligated for any of the following: (i) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any

obligation with respect to any Lease); (ii) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Property; (iii) Lender will not be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Security Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and will be that of Borrower, prior to such actual entry and taking of possession.

17.6 Maturity Date.

- (a) The maturity date of the Note is November 15, 2022.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**



[SIGNATURE PAGE 1 OF 1 – MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING]

IN WITNESS WHEREOF, Borrower has caused this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be duly executed the day and year first above written.

WEC 99J-25 LLC, a Delaware limited liability company

By: 

Name: Brian J. McDade

Title: Executive Vice President and Treasurer

**Document is NOT OFFICIAL!**

STATE OF INDIANA, COUNTY OF MAKADON, to-wit:

**This Document is the property of the Lake County Recorder!**  
On this the 11<sup>th</sup> day of November, 2019, before me, the undersigned, personally appeared Brian J. McDade, who acknowledged himself to be the Executive Vice President and Treasurer of WEC 99J-25 LLC, a Delaware limited liability company, and on behalf of said limited liability company did acknowledge that he, as such Executive Vice President and Treasurer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company as by himself as Executive Vice President and Treasurer.

In witness whereof I hereunto set my hand and official seal.



PAMALA REINHARDT  
My Commission Expires  
September 11, 2027  
Commission Number NP0629326  
Marion County



  
Notary public

This instrument was prepared by:

Thomas A. Hauser, Esq.  
(Print name of preparer)

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.



(Signature of preparer) Thomas A. Hauser, Esq.

EXHIBIT A

LEGAL DESCRIPTION

Lot 1 in Vander Tuuk and Kaznak's Re-Subdivision of a portion of Douthett's Addition to Highland, an addition to the Town of Highland, Lake County, Indiana, as per plat thereof, recorded in Plat Book 87 Page 42, in the Office of the Recorder of Lake County, Indiana.

