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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

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

LANDIS PROPERTIES II, LLC, as mortgagor
(Mortgagor)

to

FORETHOUGHT LIFE INSURANCE COMPANY, as agent
(Agent)

for the benefit of

FORETHOUGHT LIFE INSURANCE COMPANY
and
GLOBAL ATLANTIC ASSURED LIMITED, as lenders
(collectively, Senior Lender)

and

FORETHOUGHT LIFE INSURANCE COMPANY
and
GLOBAL ATLANTIC ASSURED LIMITED, as lenders
(collectively, Junior Lender)

Dated: As of September 1, 2021

Location: 1930 175th Street, Hammond, IN 46324

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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 this 1st day of September, 2021, by LANDIS PROPERTIES II, LLC, a Delaware limited liability company, as mortgagor, having its principal place of business at 99 Wall Street, #253, New York, New York 10005 (the "**Mortgagor**") to **FORETHOUGHT LIFE INSURANCE COMPANY**, an Indiana domiciled insurance company, having an address at c/o Global Atlantic Financial Group, 20 Guest Street, Brighton, Massachusetts 02135, as agent (the "**Agent**"), for Lender as provided in Section 10.1 of the Loan Agreement (as defined below), **FORETHOUGHT LIFE INSURANCE COMPANY**, an Indiana domiciled insurance company, having an address at c/o Global Atlantic Financial Group, 20 Guest Street, Brighton, Massachusetts 02135, in its capacity as a Senior Lender under the Loan Agreement and **GLOBAL ATLANTIC ASSURED LIMITED**, a Bermuda reinsurance company, having an address at 19 Par-La-Ville Road, Hamilton HM 11 Bermuda, in its capacity as a Senior Lender under the Loan Agreement (together with each of their respective successors and/or assigns, collectively, the "**Senior Lender**"), and **FORETHOUGHT LIFE INSURANCE COMPANY**, an Indiana domiciled insurance company, having an address at c/o Global Atlantic Financial Group, 20 Guest Street, Brighton, Massachusetts 02135, in its capacity as a Junior Lender under the Loan Agreement and **GLOBAL ATLANTIC ASSURED LIMITED**, a Bermuda reinsurance company, having an address at 19 Par-La-Ville Road, Hamilton HM 11 Bermuda, in its capacity as a Junior Lender under the Loan Agreement (together with each of their respective successors and/or assigns, collectively, the "**Junior Lender**", and collectively with the Senior Lender, the "**Lender**").

WITNESSETH:

A. This Security Instrument is given to secure a loan (the "**Loan**") in the aggregate maximum principal sum not to exceed ONE HUNDRED FIFTY MILLION AND NO/100 DOLLARS (\$150,000,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of July 16, 2021 by and among Mortgagor, Agent, Forethought Life Insurance Company and Global Atlantic Assured Limited (as successor-in-interest to Forethought Life Insurance Company) (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), and evidenced

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by one or more promissory notes dated as of the date of such Advance, made by Mortgagor to Forethought Life Insurance Company and Global Atlantic Assured Limited (as successor-in-interest to Forethought Life Insurance Company) (such promissory notes, together with all extensions, renewals, splits, consolidations, replacements, restatements, amendments or modifications thereof, being hereinafter referred to as the “*Note*”) and having a final maturity date (provided that Mortgagor is entitled to, and exercises, all applicable extension options) to occur on or before January 16, 2026. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. To induce Lenders to make, and Agent to administer, the Loan, Mortgagor desires to secure the payment of the outstanding principal amount of the Loan together with all interest (including, without limitation, Deferred Interest) accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, the Loan Agreement and the other Loan Documents (the “*Debt*”) and the performance of all of Mortgagor’s obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including without limitation, the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

NOW THEREFORE, in consideration of the making of advances of the Loan by Lenders, the administering of the Loan by Agent and the covenants, agreements, representations and warranties set forth in this Security Instrument, Ten and No/100 Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Mortgagor:

ARTICLE I.

GRANTS OF SECURITY

Section 1.01 Property Conveyed Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Agent, for the benefit of Lender, and its successors and assigns, and grants to Agent, for the benefit of Lender, security title to, all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, by Mortgagor, in and to the following (collectively, the “*Property*”):

(a) Land. The real property located in Lake County, Indiana more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the “*Land*”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land or any portion thereof and the development of the Land or any portion thereof and all additional lands and estates therein

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which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien and security title of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land or portion thereof (collectively, the "*Improvements*");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land or any portion thereof and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land or any portion thereof and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or any portion thereof, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, lighting, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel

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tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the **“Fixtures”**);

(g) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, equipment, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), other than Equipment and Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the **“Personal Property”**), and the right, title and interest of Mortgagor 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 (as amended from time to time, the **“Uniform Commercial Code”**), superior in lien to the lien and security title of this Security Instrument, and all proceeds and products of any of the above;

(h) **Leases and Rents.** (i) All leases, subleases or 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, extension, renewal, replacement 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 Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the **“Bankruptcy Code”**) (collectively, the **“Leases”**); (ii) all right, title and interest of Mortgagor, 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), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Property, the Land or the Improvements including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or Property Manager and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the **“Rents”**); (iii) all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including, without limitation, the payment of the Debt; (iv) all of Mortgagor’s right, title and interest in, and claims under, any and all lease guaranties, letters of credit and any other credit support (individually, a **“Lease Guaranty”**), and

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collectively, the "Lease Guaranties") given by any guarantor in connection with any of the Leases or leasing commissions (individually, a "Lease Guarantor", and collectively, the "Lease Guarantors") to Mortgagor; (v) all rights, powers, privileges, options and other benefits of Mortgagor as the lessor under any of the Leases and the beneficiary under any of the Lease Guaranties, including, without limitation, the immediate and continuing right to make claims for, and to receive, collect and acknowledge receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations (as hereinafter defined)), and to do all other things which Mortgagor or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties; (vi) the right, subject to Sections 1.02 and 7.01(h) hereof, subject to the provisions of the Loan Agreement, at Agent's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents; (vii) during the continuance of an Event of Default, Mortgagor's irrevocable power of attorney, coupled with an interest, to take any or all other actions designated by Agent for the proper management and preservation of the Land and Improvements; and (viii) any and all other rights of Mortgagor in and to the items set forth in subsections (i) through (vii) above, and all amendments, modifications, replacements, renewals and substitutions thereof;

(i) Condemnation Awards. All awards or payments, including, without limitation, interest thereon, which may heretofore and hereafter be made with respect to the Property, 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 such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Property Taxes or any other charges levied or assessed or imposed against a Property, or any part thereof, other than Taxes or HOA Fees (collectively "Other Charges") charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Mortgagor, 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 Agent in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, management agreements, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

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(n) Intellectual Property. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, the Rent Deposit Account, the Security Deposit Account, the HPA Deposit Account, the Cash Management Account and all other accounts established or maintained pursuant to the Loan Agreement, or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Uniform Commercial Code Property. All documents, instruments, chattel paper and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property;

(q) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land or any portion thereof;

(r) All Other Assets. All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims, oil, gas and minerals and all other property and interests in property of Mortgagor, whether tangible or intangible, and including without limitation all of Mortgagor's claims and rights to the payment of damages arising under the Bankruptcy Code (which shall include, without limitation, any claims and rights to payments of damages arising from rejection of a lease by any lessee pursuant to the Bankruptcy Code) ("**Bankruptcy Claims**");

(s) Proceeds. All proceeds of, and proceeds of any sale of, any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(t) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (s) above.

AND, without limiting any of the other provisions of this Security Instrument to the extent permitted by applicable law, Mortgagor expressly grants to Agent, as secured party, security title to and a security interest in all of Mortgagor's right, title and interest in and to that portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and conveyed hereby.

Section 1.02 Assignment of Rents

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(a) Mortgagor hereby absolutely and unconditionally assigns to Agent all of Mortgagor's right, title and interest in and to all current and future Leases, Rents, Lease Guaranties and Bankruptcy Claims; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall include, without limitation, (i) the immediate and continuing right, subject to the Loan Agreement, to make claims for, and to receive, collect and acknowledge receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Mortgagor or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties; and (ii) the right, subject to the provisions of the Loan Agreement and the rights of any tenants, at Agent's option, upon revocation (in accordance herewith) of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents. Furthermore, Mortgagor grants to Agent during the continuance of an Event of Default, Mortgagor's irrevocable power of attorney, coupled with an interest, to take any or all other actions designated by Agent for the proper management and preservation of the Land and Improvements. Nevertheless, subject to the terms of the Loan Agreement and Section 7.01(h) of this Security Instrument, Agent grants to Mortgagor a revocable (in accordance herewith) license to (i) collect, receive, use and enjoy the Rents, as well as any sums due under the Lease Guaranties (with all such Rents and all sums due under any Lease Guaranties to be deposited into the Rent Deposit Account to the extent and as required by the terms of the Loan Agreement and the applicable Deposit Account Control Agreement). Mortgagor shall hold the Rents, as well as all sums received pursuant to any Lease Guaranty, or a portion thereof sufficient to discharge all current sums due on the Debt in trust for the benefit of Agent, for use in the payment of such sums, and (ii) enforce the terms of the Leases. This assignment is effective without any further or supplemental assignment documents.

(b) Mortgagor hereby authorizes and directs the lessees named in the Leases, any other future lessees or occupants of the Real Property and all Lease Guarantors to pay over to Agent or to such other party as Agent directs all Rents and all sums due under any Lease Guaranties, upon such lessee's receipt from Agent of written notice to the effect that Agent is then the holder of this Assignment. Such Rents shall be disbursed and/or applied in accordance with the terms of the Loan Agreement.

(c) If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code, and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Agent not less than ten (10) days' prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject such Lease. Agent shall have the right, but not the obligation, to serve upon Mortgagor within such ten (10) day period a notice stating that (i) Agent demands that Mortgagor assume and assign the Lease to Agent pursuant to Section 365 of the Bankruptcy Code and (ii) Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Agent serves upon Mortgagor the notice described in the preceding sentence, Mortgagor 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 Agent's notice shall have been given, subject to the performance by Agent of the covenant provided for in clause (ii) of the preceding sentence.

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Section 1.03 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Agent, as security for the Obligations, a security interest in all right, title and interest of Mortgagor, whether now owned or existing or hereafter acquired or arising, in, to and under the following property (the "**Collateral**"): (i) the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code and (ii) all accounts, general intangibles, instruments, inventory, equipment, investment property, documents, chattel paper, deposit accounts, goods, moneys, letters of credit, letter of credit rights, commercial tort claims and oil, gas and minerals (all terms used in this clause (ii) having the meaning assigned thereto in the Uniform Commercial Code). The foregoing sentence is intended to grant in favor of Agent a continuing lien and security interest, in all of Mortgagor's personal property. If an Event of Default shall occur and be continuing, Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Agent after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, and subject to the reasonable rights of tenants, assemble the Collateral and make it available to Agent at a convenient place reasonably acceptable to Agent (at the Land if tangible property). Mortgagor shall pay to Agent on demand, any and all expenses, including, without limitation, reasonable attorneys' fees and costs, incurred or paid by Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Agent with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law or the Loan Agreement, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Agent to the payment of the Debt in such priority and proportions as Agent in its discretion shall deem proper. The principal place of business of Mortgagor (Debtor) is as set forth in the preamble of this Security Instrument and the address of Agent (Secured Party) is as set forth in the preamble of this Security Instrument.

Section 1.04 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, 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 naming Mortgagor as the Debtor and Agent as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. For such purpose the following information is given:

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Name of Debtor: LANDIS PROPERTIES II, LLC

Address of Debtor: 99 Wall Street, #253, New York, New York 10005

Name of Secured Party: FORETHOUGHT LIFE INSURANCE COMPANY

Address of Secured Party: c/o Global Atlantic Financial Group, 20 Guest Street, Brighton, Massachusetts 02135

Description of the collateral: The Property (as defined in this Security Instrument).

Description of real estate to which the collateral is attached or upon which it is or will be located: The Land (as defined in this Security Instrument).

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Agent and its successors and assigns, in fee simple, forever, and Mortgageor covenants that Mortgageor is lawfully seized and possessed of the Property as aforesaid, and has good right to convey the same, that there are no easements, restrictions or prior liens or encumbrances, except for the Permitted Liens, and that Mortgageor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Liens;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgageor shall well and truly pay and perform the Obligations (including, without limitation, the payment of the Debt) at the time and in the manner provided in this Security Instrument, the Note, the Loan Agreement and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, then this Security Instrument shall be cancelled and surrendered in the manner provided by applicable law and the presents and estates hereby granted shall cease, terminate and be void; provided, however, that Mortgageor's obligation to indemnify and hold harmless Agent pursuant to the provisions hereof shall survive any such payment, cancellation, surrender or release.

ARTICLE II.

DEBT AND OBLIGATIONS SECURED

Section 2.01 **Obligations** This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt. It is contemplated and acknowledged that the secured indebtedness may include revolving credit loans and future advances from time to time, and that this Security

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Instrument shall have effect, as of the date hereof, to secure all secured indebtedness, regardless of whether any amounts are advanced on the date hereof or on a later date or, whether having been advanced, are later repaid in part or in whole and further advances made at a later date. Should the secured indebtedness decrease or increase pursuant to the terms of the Notes, the Loan Agreement, the Loan Documents or otherwise, at any time or from time to time, this Security Instrument shall retain its priority position of record and effectiveness until the termination of the Loan Agreement and other Loan Documents, until full, final and complete payment of all the secured indebtedness and until the Loan Agreement is no longer in effect.

Section 2.02 Other Obligations This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (collectively, the "**Other Obligations**"):

- (a) the performance of all other obligations of Mortgagor contained herein;
- (b) the performance of each obligation of Mortgagor contained in the Loan Agreement and in each other Loan Document; and
- (c) the performance of each obligation of Mortgagor 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.

Section 2.03 Debt and Other Obligations Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.04 Intentionally Omitted

Section 2.05 Loan Repayment Notwithstanding the terms of the Conditions to Grant hereof, the Lien and security title of this Security Instrument shall not be terminated, released, cancelled, surrendered or reconveyed of record by Agent prior to the full repayment or satisfaction of the Debt and the Obligations in accordance with the Loan Agreement, except as otherwise permitted under the terms and provisions set forth in the Loan Agreement.

Section 2.06 Other Security Instruments; No Election of Remedies

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds to secure debt, deeds of trust and other security agreements (collectively, as the same may be amended, restated, replaced, supplemented, extended, renewed or otherwise modified and in effect from time to time, are herein collectively called the "**Other Mortgages**"), which cover or will hereafter cover other properties that are or may be located in various states and in other counties in Indiana (collectively, the "**Other Collateral**"). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of Mortgagor set forth in the Loan Documents. Upon the occurrence of an Event of Default, Agent may proceed under this Security Instrument and/or any or all the Other Mortgages against either the Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Agent shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by

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law, and whether now or hereafter in force, any right to have the Property and/or the Other Collateral marshaled upon any foreclosure of this Security Instrument or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Agent in this Security Instrument or the other Loan Documents, in the case of an Event of Default (i) Agent shall have the right to pursue all of its rights and remedies under this Security Instrument and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Agent, in its sole and absolute discretion, shall determine from time to time, (ii) Agent shall not be required to either marshal assets, sell the Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Property and/or any Other Collateral, (iii) the exercise by Agent of any remedies against any one item of Property and/or any Other Collateral will not impede Agent from subsequently or simultaneously exercising remedies against any other item of Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Agent herein shall remain in full force and effect until Agent has exhausted all of its remedies against the Property and all Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt and (v) Agent may resort for the payment of the Debt to any security held by Agent in such order and manner as Agent, in its discretion, may elect and Agent may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Agent thereafter to foreclose this Security Instrument.

(c) Without notice to or consent of Mortgagor and without impairment of the lien and security title and rights created by this Security Instrument, Agent may, at any time (in its sole and absolute discretion, but Agent shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien and security title of this Security Instrument as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Agent to Mortgagor of any such written instrument of release, this Security Instrument shall no longer secure such obligations of Mortgagor so released.

ARTICLE III.

MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

Section 3.01 Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.02 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; provided, however, that in the event of any conflict

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between the terms of Section 1.03 of this Security Instrument and the terms of the Security Agreement the terms of the Security Agreement shall control and in the event of any conflict between any of the terms of this Security Instrument (including, without limitation, the terms of Section 1.03 herein) and the Loan Agreement, the terms of the Loan Agreement shall control. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Property, pay Property Taxes and Other Charges, and comply with Requirements of Law, in accordance with the Loan Agreement and (ii) agrees that the Insurance Proceeds and Awards shall be settled, held, applied and/or disbursed in accordance with the Loan Agreement. Mortgagor acknowledges that Agent has disclosed to Mortgagor that, under applicable Requirements of Law, no lender may require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

Section 3.03 Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

ARTICLE IV.

OBLIGATIONS AND RELIANCES

Section 4.01 Relationship of Mortgagor and Agent. The relationship between Mortgagor and Agent is solely that of debtor and creditor, and Agent has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Agent to be other than that of debtor and creditor.

Section 4.02 No Reliance on Agent. The direct or indirect controlling owners (or, if Mortgagor is a trust, beneficial controlling owners) of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Agent are relying solely upon such expertise in connection with the ownership and operation of the Property. Mortgagor is not relying on Agent's expertise, business acumen or advice in connection with the Property.

Section 4.03 No Agent Obligations.

(a) Notwithstanding the provisions of Subsections 1.01(h) and (m) or Section 1.02, Agent is not undertaking the performance of (i) any obligations under the Leases or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Agent pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate,

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balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Agent shall not be deemed to have warranted, consented to or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Agent.

Section 4.04 Reliance. Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Agent is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Agent; that such reliance existed on the part of Agent prior to the date hereof; that the warranties and representations are a material inducement to Agent in making the Loan; and that Agent would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

ARTICLE V.

FURTHER ASSURANCES

Section 5.01 Recording of Security Instrument, Etc. Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien, security title or security interest or evidencing the Lien, security title and security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien, security title and security interest hereof upon, and the interest of Agent in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed to secure debt, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed to secure debt, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.02 Further Acts, Etc.

(a) Mortgagor will, at the sole cost and expense of Mortgagor, and without expense to Agent, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds to secure debt, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Agent and/or Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Agent the Property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or

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which Mortgagor may be or may hereafter become bound to convey or assign to Agent, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Requirements of Law. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Agent to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Agent may lawfully do so, one or more financing statements to evidence more effectively the security title and security interest of Agent in the Property and the Collateral. Financing statements to be filed with the Secretary of State of the State in which the Mortgagor is organized may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect (notwithstanding that such collateral description may be broader in scope than the collateral described herein).

(b) Mortgagor grants to Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Agent at law and in equity, including, without limitation, such rights and remedies available to Agent pursuant to Section 5.02(a). Without limiting the generality of the irrevocable power of attorney granted in the first sentence of this Section 5.02(b), Mortgagor designates Agent as Mortgagor's agent and grants to Agent an irrevocable power of attorney coupled with an interest for the purpose of paying any Other Charges, including without limitation, assessments, fees, dues, penalties, fines, charges and other impositions, to the applicable homeowners' association, condominium owners' association, community interest association or other Person to the extent needed to protect the Collateral upon Mortgagor's failure to timely pay any such obligations.

Section 5.03 Changes in Tax, Debt, Credit and Documentary Stamp Laws

(a) If any law is enacted, adopted or amended after the date of this Security Instrument that imposes a tax, either directly or indirectly, on the Debt or Agent's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Agent is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Agent (and, if taxable, Mortgagor is not permitted by law to pay such tax or compensate Agent therefor) or unenforceable or provide the basis for a defense of usury, then Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to demand that Mortgagor prepay (and Mortgagor shall prepay), the Debt in an amount equal to the Release Amount for the affected portion of the Property, and upon the payment of such amount, Agent shall execute, deliver, file and record a release of mortgage for such portion of the Property in accordance with, and subject to, the terms of the Loan Agreement.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Property Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law and Mortgagor is not permitted by law to pay such tax or compensate Agent therefor, Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to demand that Mortgagor prepay (and Mortgagor shall prepay), the Debt in an amount equal to the Release Amount for the affected portion of the Property, and upon the payment of such amount, Agent

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shall execute, deliver, file and record a release of mortgage for such portion of the Property in accordance with, and subject to, the terms of the Loan Agreement.

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

Section 5.04 Compliance with Loan Agreement Mortgagor shall comply with all covenants set forth in the Loan Agreement relating to acts or other further assurances to be made on the part of Mortgagor in order to protect and perfect the lien or security interest hereof upon, and the interest of Agent in, the Property.

ARTICLE VI.

ENCUMBRANCE/RELEASE OF PROPERTY

Section 6.01 Agent Reliance Mortgagor acknowledges that Agent has examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners, as applicable, in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including, without limitation, the repayment of the Debt. Mortgagor acknowledges that Agent has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the payment and/or performance of the Obligations, including, without limitation, the repayment of the Debt, Agent can recover the Debt by a sale of the Property.

Section 6.02 No Transfer Mortgagor and the other Loan Parties shall not create or suffer to exist any Lien other than a Permitted Lien with respect to any of the Collateral (including, without limitation, the Property), nor sell, mortgage, pledge, convey, assign, transfer, grant an option to purchase or otherwise transfer or dispose of a legal or beneficial interest in, whether direct or indirect, voluntarily or involuntarily or by operation of law (except for any involuntary Condemnation), the Property or consummate any secured or unsecured loan or similar financing transaction that is secured by, or involving, the Property, in each case except in accordance with the terms of the Loan Agreement and the Pledge Agreement.

Section 6.03 Release of Property Mortgagor shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in strict accordance with terms and conditions of the Loan Agreement.

ARTICLE VII.

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.01 Remedies Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Agent may take such action, without notice or demand to the extent permitted by applicable law, as it deems advisable to protect and enforce its rights

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against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which shall be made in accordance with any applicable laws and may be pursued concurrently or otherwise, at such time and in such order as Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete or partial 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, security title and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) Cause the Property to be sold, or any part thereof, at public sale or sales of the county in which the Property, or any part thereof, is situated, to the highest bidder for cash, in order to pay the Obligations and insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, if any, with accrued interest thereon and all costs incurred by Agent in connection with such sale and all other expenses of the sale and of all proceedings in connection therewith, including, without limitation, reasonable attorneys' fees actually incurred, after advertising the time, place and terms of sale in accordance with applicable law in a newspaper in which sheriff's sales are advertised in said county; and without limiting the foregoing:
 - (i) In connection with any sale or sales hereunder, Agent shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any Improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property or Equipment (including, without limitation, all Fixtures), whether or not such Personal Property or Equipment (including, without limitation, all Fixtures) is located on or within the Real Property, Agent shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property and Equipment (including, without limitation, all Fixtures) in such order and manner as is now or hereafter permitted by applicable law;
 - (ii) Agent shall be entitled to elect to proceed against any or all of the Real Property, Personal Property and Equipment (including, without limitation, all Fixtures) in any manner permitted under applicable law; and if Agent so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property and Equipment (including, without limitation, all Fixtures) covered hereby, as designated by Agent and Agent is hereby authorized and empowered to conduct any

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such sale of any Real Property, Personal Property and Equipment (including, without limitation, all Fixtures) in accordance with the procedures applicable to Real Property;

(iii) Should Agent elect to sell any portion of the Property which is Real Property or which is Personal Property, or Equipment (including, without limitation, all Fixtures) that Agent has elected under applicable law to cause such sale to occur together with Real Property in accordance with the laws governing a sale of the Real Property, Agent shall give such notice of the occurrence of an Event of Default, if any, and its election to cause the sale of such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Mortgagor, such Property or part thereof, shall be sold at public auction to the highest bidder for cash in lawful money of the United States of America. Agent may bid and purchase at any such sale, and at any other sale or sales hereunder, and may satisfy Agent's obligations to purchase pursuant to Agent's bid by canceling an equivalent portion of any Obligations then outstanding and secured hereby. Agent may from time to time request the postponement of any sale hereunder;

(iv) Intentionally deleted.

(v) If the Property consists of several lots, parcels or items of property, Agent shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold or (B) elect to cause the sale of such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Agent designates and Mortgagor waives any right to require otherwise. Any Person, including, without limitation, Mortgagor or Agent, may purchase at any sale hereunder. Should Agent desire that more than one sale or other disposition of the Property be conducted, Agent shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Agent may designate, and no such sale shall terminate or otherwise affect the Lien, security title and security interest of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Agent elects to cause the disposition of the Property through more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(vi) If Agent has started enforcement of any right by foreclosure, sale, entry or otherwise and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Agent and Mortgagor shall be restored to their former positions and rights under the Loan Documents with respect to the Property, subject to the lien, security title and security interest of this Security Instrument, and Mortgagor hereby expressly waives any and all benefits Mortgagor may have under Indiana or any similar law to claim that the withdrawal of any foreclosure proceedings shall operate to rescind the acceleration of the maturity of the Obligations and to reinstate the Obligations upon the terms and conditions existing prior to such acceleration; and

(vii) In connection with any sale or sales hereunder, Mortgagor shall vacate and surrender possession of the Property, or such part thereof as is sold, to Agent or to

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such purchaser, and, in default thereof, Mortgagor shall be deemed a tenant holding over and may be evicted by summary proceedings or otherwise;

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

(f) 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 to the extent permitted by applicable law and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof and Mortgagor hereby irrevocably consents to such appointment;

(h) the license granted to Mortgagor under Section 1.02 hereof shall automatically be revoked, Agent shall become entitled to possession of all Rents and all sums due under Lease Guaranties (whether or not Agent takes possession of the Property) on such terms and for such period of time as Agent may deem proper, and Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may do such acts and things as Agent deems necessary or desirable to protect the security hereof, including without limitation, (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 on such terms and for such period of time as Agent may deem proper; (ii) complete any construction on the Property in such manner and form as Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants in accordance with the provisions of any Leases or applicable law and demand, sue for or otherwise collect and receive all Rents and all sums due under all Lease Guaranties, including, without limitation, those past due and unpaid; (v) require Mortgagor to pay monthly in advance to Agent, 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 Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Agent or to such receiver and, in default thereof, Mortgagor shall be deemed a tenant holding over and may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Property Taxes, Other Charges,

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Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent, its counsel, agents and employees;

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

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Agent in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion:

(i) Property Taxes and Other Charges;

(ii) Interest on the unpaid principal balance of the Note (including, without limitation, Deferred Interest);

(iii) The unpaid principal balance of the Note; and/or

(iv) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, any advances made by Agent pursuant to the terms of this Security Instrument;

(k) Upon and during the continuance of an Event of Default, Agent shall have the right to proceed in its own name or in the name of Mortgagor 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 Mortgagor, 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;

(l) pursue such other remedies available to Agent as may be available at law or in equity; and/or

(m) apply the undisbursed balance of any deposit made by Mortgagor with Agent in connection with the restoration of the Property after a Casualty thereto or Condemnation thereof, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Agent shall deem to be appropriate in its discretion.

In the event of a sale, by a judicial foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a Lien, security title and security interest on

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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 Sections 7.1(a)(vii), 7.1(a)(viii), or 7.1(a)(ix) of the Loan Agreement shall occur with respect to Mortgagor, Pledgor or any Relevant Party, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Agent.

The exercise by Agent of the option granted it in Section 7.01(h) of this Security Instrument and the collection of the Rents and the sums due under the Lease Guaranties and the application thereof as provided in the Loan Documents shall not be considered a waiver of any Default or Event of Default under the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Section 7.02 Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, the purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Agent pursuant to the Note, this Security Instrument or the other Loan Documents, may, subject to the terms of the Loan Agreement, be applied by Agent to the payment of the Obligations in such priority and proportions as Agent in its discretion shall deem proper, to the extent consistent with law.

Section 7.03 Right to Cure Defaults. During the continuance of any Event of Default, Agent may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in default in such manner and to such extent as Agent may deem necessary to protect the security hereof. Subject to the rights of tenants, Agent 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, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Interest Rate for the period after notice from Agent that such cost or expense was incurred to the date of payment to Agent, shall constitute a portion of the Debt, shall be secured by this Security Instrument and the other Loan Documents and shall be due and payable to Agent upon demand.

Section 7.04 Other Rights, Etc.

(a) The failure of Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Agent to comply with any request of Mortgagor 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 Agent 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 Mortgagor, and Agent shall have no liability whatsoever for any decline in value of the Property, for failure

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to maintain the Policies or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Agent 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 Agent's possession.

(c) Agent may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Agent in such order and manner as Agent, in its discretion, may elect. Agent may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of Agent thereafter to enforce any remedy hereunder or under applicable law against Mortgagor, including, without limitation, the right to foreclose this Security Instrument. The rights of Agent 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 Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Agent 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 at law or in equity.

Section 7.05 Right to Release Any Portion of the Property. Without limiting anything contained in the Loan Agreement, Agent may release any portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the Lien, security title or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and Agent may accept by assignment, pledge or otherwise any other property in place thereof as Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien, security title and security interest in the remaining portion of the Property.

Section 7.06 Right of Entry. Upon reasonable written notice to Mortgagor and subject to the rights of tenants under Leases and under applicable law, Agent and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE VIII.

INDEMNIFICATION

Section 8.01 Mortgage and/or Intangible Tax. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Agent and the other Indemnitees from and against any and all losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities, obligations, debts, fines, penalties or charges imposed upon or incurred by or asserted against any Indemnitee and directly or indirectly arising out of or in any way relating to any mortgage, recording, stamp, intangible or other similar taxes required to be paid by any Indemnitee under applicable Requirements of Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of this Security Instrument or any of the Loan Documents (but excluding any income, franchise or other similar taxes).

Section 8.02 No Liability of Agent. This Security Instrument shall not be construed to bind Agent to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Agent not expressly set forth herein. Agent shall not be liable for any loss sustained by Mortgagor resulting from Agent's failure to let the Property or any portion thereof after an Event of Default or from any other act or omission of Agent in managing the Property or any portion thereof after an Event of Default unless such loss is caused by the willful misconduct, bad faith or gross negligence of Agent. Agent shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Security Instrument and Mortgagor shall indemnify the Indemnitees for, and hold the Indemnitees harmless from and against, (a) any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Security Instrument and (b) any and all claims and demands whatsoever, including, without limitation, the defense of any such claims or demands which may be asserted against any Indemnitees by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties, unless caused by the willful misconduct, gross negligence or fraud of an Indemnitee. Should any Indemnitees incur any such liability for which it is entitled to indemnification hereunder, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees and costs, shall be secured by this Security Instrument and the other Loan Documents and Mortgagor shall reimburse the Indemnitees therefor within seven (7) Business Days after demand therefor and upon the failure of Mortgagor so to do Agent may, at its option, declare the Obligations to be immediately due and payable. This Security Instrument shall not operate to place any obligation or liability for the control, care, management or repair of the Property or any portion thereof upon Agent or Lenders, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties, nor shall it operate to make any Indemnitees responsible or liable for any waste committed on the Property or any portion thereof by the tenants or any other parties, or for any dangerous or defective condition of the Property or any portion thereof, including, without limitation, the presence of any Hazardous Materials (as defined in the Environmental Indemnity), or for any negligence in the management, upkeep, repair or control of the Property or any portion thereof resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 8.03 Duty to Defend: Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnitee, Mortgagor shall defend such Indemnitee (if requested by any Indemnitee, in the name of the Indemnitee) by attorneys and other professionals approved by the Indemnitees. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Mortgagor and any Indemnitee and Mortgagor and such Indemnitee shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnitees that are different from or in addition to those available to Mortgagor, such Indemnitee shall have the right to select separate counsel, at reasonable attorneys' fees, to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnitee. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of the reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

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ARTICLE IX.

WAIVERS

Section 9.01 Waiver of Counterclaim. To the extent permitted by applicable law, Mortgagor hereby unconditionally and irrevocably waives the right to assert any setoff, counterclaim or cross-claim of any nature (other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Agent) arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents or the Obligations.

Section 9.02 Marshalling and Other Matters. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument or behalf of Mortgagor, 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.

Section 9.03 Waiver of Notice. To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Agent, except with respect to matters for which this Security Instrument or any of the other the Loan Documents specifically and expressly provide for the giving of notice by Agent to Mortgagor, and except with respect to matters for which Agent is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Agent with respect to any matter for which this Security Instrument or any of the other Loan Documents, or applicable law, does not specifically and expressly provide for the giving of notice by Agent to Mortgagor.

Section 9.04 Waiver of Statute of Limitations. To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

Section 9.05 Waiver of Jury Trial. TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER 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 MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN

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ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

Section 9.06 Survival. The indemnifications made pursuant to Article VIII herein and the representations and warranties, covenants and other obligations arising under Article X herein, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release, reconveyance or other termination of this Security Instrument or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Security Instrument or any other Loan Document or Agent's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnitees and any such assignee or transferee), (c) any exercise of Agent's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Security Instrument, the Loan Agreement, the Note or any other Loan Document and/or (e) any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the Obligations or any portion thereof; provided that such indemnifications, representations, warranties, covenants and obligations shall not apply to any actions, omissions, conditions or events (i) arising after any satisfaction, release, termination, foreclosure or acceptance of a deed in lieu of foreclosure of this Security Instrument and (ii) which are not in any way attributable to the actions or omissions of Mortgagor or its Affiliates.

ARTICLE X.

INDEMNIFICATION

The provisions of Section 9.15 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, and, in the event of any conflict, the provisions of Section 9.15 of the Loan Agreement shall control and be binding.

ARTICLE XI.

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 9.5 of the Loan Agreement.

ARTICLE XII.

APPLICABLE LAW

Section 12.01 Governing Law; Jurisdiction; Service of Process.

(a) **WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS SECURITY INSTRUMENT, THIS SECURITY**

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INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

(b) Mortgagor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever, whether in law or equity, or whether in contract or tort or otherwise, against any other party or any other Person in any way relating to this Security Instrument or any other Loan Document or the transactions contemplated hereby or thereby, in any forum other than the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and Mortgagor irrevocably and unconditionally submits to the exclusive jurisdiction, and Agent submits to the non-exclusive jurisdiction, of such courts and agrees that any such action, litigation or proceeding may be brought in any such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein or in any other Loan Document shall affect any right Agent may otherwise have to bring any action or proceeding relating to the Property in the courts of any jurisdiction where the Property is located.

(c) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court referred to in Section 12.01(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 12.02 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Agent are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Agent shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Agent and (c) if through any contingency or event, Agent receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then

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outstanding indebtedness of Mortgagor to Agent, or if there is no such outstanding indebtedness, such excess amount shall immediately be returned to Mortgagor.

Section 12.03 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.

ARTICLE XIII.

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 the singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Agent" shall mean "Agent" and any subsequent agent under the Loan Agreement, 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 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 Agent in protecting its interest in the Property, the Leases, the Rents, the sums due under the Lease Guaranties and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

Section 14.01 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 Mortgagor or Agent, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.02 Successors and Assigns. This Security Instrument shall be binding upon, and shall inure to the benefit of, Mortgagor and Agent and their respective successors and permitted assigns, as set forth in the Loan Agreement.

Section 14.03 Inapplicable Provisions. If any provision of this Security Instrument is held to be illegal, invalid or unenforceable under present or future laws effective

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during the term of this Security Instrument, such provision shall be fully severable and this Security Instrument shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Security Instrument, and the remaining provisions of this Security Instrument shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Security Instrument, unless such continued effectiveness of this Security Instrument, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 14.04 Headings, Etc. The headings and captions of the 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.

Section 14.05 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Agent shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived, but rather are continued in full force and effect in favor of Agent and are merged with the Lien, security title and Security interest created herein as cumulative security for the payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

Section 14.06 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Agent with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Agent with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.07 Limitation on Agent'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 Agent, nor shall it operate to make Agent responsible or liable for any waste committed on the Property by the tenants of the Property 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 tenants, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent a "mortgagee in possession."

Section 14.08 Recitals. The recitals hereof are a part hereof, form a basis for this Security Instrument and shall be considered prima facie evidence of the facts and documents referred to therein.

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Section 14.09 Time of the Essence. Time is of the essence with respect to this Security Instrument and each and every provision hereof.

Section 14.10 Joint and Several Liability. The representations, covenants, warranties and obligations of Mortgagor hereunder shall be joint and several.

Section 14.11 Sole Discretion of Agent. Whenever pursuant to this Security Instrument, Agent exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Agent, the decision of Agent to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Agent and shall be final and conclusive.

ARTICLE XV.

STATE-SPECIFIC PROVISIONS

Section 15.01 Principles of Construction. Without limiting Article XII, to the extent that the laws of the State of Indiana govern the interpretation or enforcement of this Security Instrument, (a) the provisions of this Article XV shall apply and (b) in the event of any inconsistencies between the terms and conditions of this Article XV and the other terms and conditions of this Security Instrument, the terms and conditions of this Article XV shall control and be binding.

Section 15.02 Maturity. The obligations under the Note have a maturity date to occur on or before January 16, 2026.

Section 15.03 Future Advances. This Security Instrument is intended to secure future advances made under the Note, hereunder, the Loan Agreement and/or under the other Loan Documents, and all modifications, extensions and renewals of any of the foregoing, with the same priority as if made on the day of execution of this Security Instrument, up to a maximum amount of \$150,000,000.00, pursuant to Indiana Code § 32-29-1-10. The maximum amount stated in the preceding sentence does not affect or alter the principal amount that Mortgagor is entitled to borrow under the Note and/or under any of the Loan Documents, and may be in excess of permitted borrowing to cover expenses, accrued interest, costs of collection and the like. Nothing in this provision requires Lender to make any future advances, and Mortgagor represents that Lender has not promised to do so. Pursuant to Ind. Code 32-29-1-10, the lien of this Security Instrument with respect to any future advances, modifications, extensions or renewals referred to in this Security Instrument and made from time to time shall have the same priority to which this Security Instrument would otherwise be entitled as of the date this Security Instrument is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Security Instrument is executed.

Section 15.04 Financing Statements. Agent, on behalf of Lender, is hereby authorized to execute and file on behalf of Mortgagor, without the signature of Mortgagor, any financing statement deemed necessary or appropriate by Agent in order to further evidence, perfect or continue the security interest granted herein, or in any other Loan Document.

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Section 15.05 Collection Cost Recovery. This Security Instrument shall secure, and Agent, for the benefit of Lender, shall be entitled to collect from Mortgagor and add to the obligations incurred by Mortgagor all costs and expenses of remedial actions by Agent to the extent provided for and contemplated by this Security Instrument, the Loan Agreement and the Environmental Indemnity.

Section 15.06 Non-Waiver. Nothing in this Security Instrument is intended to constitute a waiver of deficiency under Indiana Code §32-29-7-5 nor a consent by the Agent or Lender to such a waiver.

Section 15.07 Receiver. Mortgagor agrees that Agent, on behalf of Lender, shall be entitled to the appointment of a receiver as a matter of right in accordance with Indiana Code § 32-30-5-1(4)(C) in any action by Agent seeking to enforce this Security Instrument, including without limitation, by foreclosure.

Section 15.08 No Joint Venture. Nothing contained in this Security Instrument or any other Loan Document is intended to create a partnership, joint venture or association between Mortgagor, Agent and/or Lender or in any way make Agent or Lender a co-principal with Mortgagor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

Section 15.09 Subrogation; Waiver. If any of the proceeds of the Note are utilized to pay off outstanding liens against all or any part of the Property, Agent and Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any such outstanding liens and debts, however remote, regardless of whether said liens or debts are acquired by Agent, on behalf of Lender, by assignment, or are released by the holder thereof upon payment. Mortgagor, any guarantors and any endorsers hereof or of the Note jointly and severally waive absolutely and unconditionally any and all rights of subrogation to the rights of Agent and Lender hereunder or under any Loan Document. All guaranties and endorsements of any Loan Document shall contain a waiver of subrogation approved by Agent.

Section 15.10 Fixture Filing. It is intended that as to the fixtures that are or are to become part of the Property hereby mortgaged, this Security Instrument shall be effective as a continuously perfected financing statement filed as a fixture filing from the date of the filing of this Security Instrument for record with the office of the recorder of the county in which the land is located, pursuant to Ind. Code 26-1-9.1-502 and Ind. Code 26-1-9.1-515. This information is provided in order that this Security Instrument shall comply with the requirements of the Uniform Commercial Code, for a mortgage instrument to be filed as a continually perfected financing statement. This Security Instrument covers goods which are or are to become fixtures.

- (a) Name of Debtor: LANDIS PROPERTIES II, LLC
- (b) Address of Debtor: 99 Wall Street, #253, New York, New York 10005
- (c) Type of Organization: Limited liability company
- (d) State of Organization: Delaware

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- (e) Name of Record Owner: LANDIS PROPERTIES II, LLC
- (f) Address of Record Owner 99 Wall Street, #253, New York, New York
10005
- (g) Name of Secured Party: FORETHOUGHT LIFE INSURANCE
COMPANY
- (h) Address of Secured Party: c/o Global Atlantic Financial Group, 20 Guest
Street, Brighton, Massachusetts 02135
- (i) The fee simple interest in the Land is owned by LANDIS PROPERTIES
II, LLC

Mortgagor hereby acknowledges receipt of a copy of this Security Instrument in compliance with Agent's obligation to deliver a copy of the fixture filing to Mortgagor pursuant to Section 9.1-502(f) of the Uniform Commercial Code.

Section 15.11 Power of Attorney. In no event shall any power of attorney granted herein give to Agent the right or the power of attorney or authority as attorney on behalf of Mortgagor to: (a) appear in any court of record and waive the service of process in an action to enforce the payment of money claimed to be due on or under this Security Instrument; (b) confess judgment on this Security Instrument for a sum of money to be ascertained in a manner other than by action of the court upon a hearing after notice to Mortgagor; or (c) release errors and rights of appeal from a judgment rendered for the matters described in subclause (a) or (b) hereof or to consent to the issue of execution on the judgment or the matters described in subclause (a) or (b) hereof.

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Mortgagor under seal as of the day and year first above written with the intention that this Security Instrument take effect as an instrument under seal.

MORTGAGOR:

LANDIS PROPERTIES II, LLC,
a Delaware limited liability company

By: 

Name: Kevin Fortnoy

Title: Authorized Signatory

Property of Lake County Recorder

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EXHIBIT A
LEGAL DESCRIPTION

Lot 35 in Resubdivision of Unit 2 of Woodmar, in the City of Hammond, as per plat thereof recorded in Plat Book 29 Page 49 in the Office of the Recorder of Lake County, Indiana.

COMMONLY KNOWN AS: 1930 175th Street, Hammond, IN 46324
TAX PARCEL ID: 45-07-17-180-005.000-023

Property of Lake County Recorder