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2024-506147
02/28/2024 03:10 PM
TOTAL FEES: 55.00
BY: JAS
PG #: 48
RECORDED AS PRESENTED

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

Prepared by:
Ken Hennesay, Esq.
Allen Matkins Leck Gamble Mallory & Natis LLP
and after recording return to:
Protective Life Insurance Company
2801 Highway 280 South
Birmingham, Alabama 35223
Attn: Investment Department

MORTGAGE ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING Cover Sheet

Effective Date: As of February 22, 2024

Borrower: PEO Branch Landlord, LLC, a Delaware limited liability company

Borrower's Notice Address: 127 W. Berry Street, Suite 300
Ft. Wayne, Indiana 46802
c/o Equity Investment Group
Attn: Mr. Dan Michael

Lender: PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders from time to time of the Note (as defined herein).

Lender's Notice Address: 2801 Highway 280 South
Birmingham, Alabama 35223
Attention: Investment Department

Note Amount: \$16,899,936.00

Maturity Date: March 1, 2049

State: Indiana

Record Owner of Land: PEO Branch Landlord, LLC, a Delaware limited liability company

Exhibit A: Attached hereto and incorporated herein by reference.

Exhibit B: Attached hereto and incorporated herein by reference.

Mortgage and Security Agreement

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1. DEFINITION OF TERMS. As used herein, the terms defined on the Cover Sheet hereof shall have the meanings given on such sheet, and the following terms shall have the meanings set forth below. Any other term or phrase not defined in this Paragraph 1, but shown in quotes within parentheses in another provision of this Indenture, shall have the meaning set forth in such provision.

1.1 Additional Interest Agreement: That certain Additional Interest Agreement made by Borrower in favor of Lender providing for additional interest, in addition to the interest due under the Note, and all amendments, modifications, or restatements thereof.

1.2 After-Maturity Rate: The default interest rate as defined and set forth in the Note.

1.3 Commitment: as defined in Paragraph 3.7.

1.4 Borrower's Notice Address: as defined on the Cover Sheet.

1.5 Casualty: as defined in Paragraph 5.1.

1.6 Contested Sum: as defined in clause (e) of Paragraph 4.1.

1.7 Effective Date: as defined on the Cover Sheet

1.8 Environmental Law: Any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time; the Hazardous Substances Transportation Act, as amended from time to time; the Resource Conservation and Recovery Act (including, but not limited to Subtitle I relating to underground storage tanks), as amended from time to time; the Federal Water Pollution Control Act, as amended from time to time; the Emergency Planning and Community Right-to-Know Act, as amended from time to time; the Solid Waste Disposal Act, as amended from time to time; the Clean Water Act, as amended from time to time; the Clean Air Act, as amended from time to time; the Toxic Substances Control Act, as amended from time to time; the Safe Drinking Water Act, as amended from time to time; the Occupational Safety and Health Act, as amended from time to time; the Federal Water Pollution Control Act, as amended from time to time; the Federal Insecticide, Fungicide and Rodenticide Act, as amended from time to time; the Endangered Species Act, as amended from time to time; the National Environmental Policy Act, as amended from time to time; and the River and Harbors Appropriation Act, as amended from time to time; and any so-called "Superlien law". "Environmental Law" also includes, but is not limited to, any present or future, federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law.

1.9 Events of Default: as defined in Paragraph 7.1.

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1.10 Fixtures: All fixtures located on the Improvements or now or later installed in, or used in connection with, any of the Improvements, including, but not limited to, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire-extinguishing equipment, water tanks, heating, ventilating, air-conditioning equipment, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Land or the Improvements.

1.11 Hazardous Substance: (i) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance, or any other waste, material, or pollutant that: poses a hazard to the Property or to persons on the Property, or causes the Property to be in violation of any Environmental Law; (ii) asbestos in any form; (iii) urea formaldehyde foam insulation; (iv) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls; (v) radon gas; (vi) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws; (vii) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; (viii) any other chemical, material, or substance that may pose a hazard to the environment; and (ix) mold (defined as the presence of any form of (a) multicellular fungi that live on plant or animal matter and an indoor environment (including without limitation Cladosporium, Penicillium, Alternaria, Aspergillus, Fusarium, Trichoderma, Memnoniella, Mucor, and Stachybotrys chartarum (SC) often found in water damaged building materials), (b) spores, scents or byproducts produced or released by fungi, including mycotoxins and (c) microbial matter which reproduces through mold, mildew and viruses, whether or not such microbial matter is living).

1.12 Hazardous Substance Claim: Any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders threatened, instituted, or completed pursuant to any Environmental Law, together with all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost-recovery compensation, loss, or injury resulting from the presence, Release, or discharge of any Hazardous Substance.

1.13 Improvements: all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personality.

1.14 In its sole unfettered discretion: as defined in Paragraph 12.8.

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1.15 Indenture: This Mortgage, Assignment of Rents, Security Agreement and Fixture Filing.

1.16 Insurance Premiums: as defined in clause (c) of Paragraph 4.3.

1.17 Insurance Proceeds: as defined in Paragraph 5.1.

1.18 Laws: as defined in clause (c) of Paragraph 4.2.

1.19 Land: The land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or hereafter appertaining to, the Land.

1.20 Leases: All leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof.

1.21 Lease Assignment: That certain Assignment of Rents and Leases between Borrower and Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.22 Loan Documents: This Indenture, the Note, the Lease Assignment, the Additional Interest Agreement, the Excess Cash Flow Escrow Agreement, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to except any separate environmental indemnity agreement and except the Other Loan Documents.

1.23 Note: That certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet), subject to any call option of Lender to accelerate the principal due as may be set forth in the Note.

1.24 Other Loan Documents. Each of the Indentures, Lease Assignments, and Environmental Indemnity Agreements identified in the Note other than the Loan Documents and the Environmental Indemnity Agreement with respect to the Property.

1.25 Parties in Interest: as defined in clause (d) of Paragraph 7.1.

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1.26 **Personalty:** All of Borrower's interest in any and all personal property (other than Fixtures) of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), general intangibles (including payment intangibles and software), goods (including consumer goods, inventory, equipment and farm products), letter-of-credit rights and deposit accounts (as those terms are defined in the Uniform Commercial Code as now adopted or amended from time to time in the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, motor vehicles and aircraft, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.27 **Property:** The Realty, the Fixtures and Personalty or any portion thereof or interest therein except as the context otherwise requires.

1.28 **Property Liabilities:** as defined in clause (d) of Paragraph 4.1.

1.29 **Property Taxes and Charges:** All real estate taxes and personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed, and any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

1.30 **Realty:** the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.31 **Release:** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Borrowers, or as the term "release" is otherwise defined in Environmental Law.

1.32 **Rents:** All rents, royalties, issues, profits, revenue, income, receipts and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of

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their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.33 Secured Debt: To the extent not prohibited by the Laws, all principal, interest, Additional Interest (as defined in the Additional Interest Agreement), interest at the After-Maturity Rate set forth in the Note on all sums applicable thereto, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.34 Taking: as defined in Paragraph 5.1.

1.35 Taking Proceeds: as defined in Paragraph 5.1.

1.36 State: as defined on the Cover Sheet hereof.

1.37 User: Any person other than Borrower, who occupies, uses or comes on to or has occupied, used or come onto the Property or any part of it and any agent or contractor of that person.

2. GRANTING CLAUSES. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Lender with all STATUTORY RIGHTS in the State and, to the extent permitted by applicable law, POWERS OF SALE, all of Borrower's estate, right, title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) All Leases and Rents;

(b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;

(c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and

(d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

(1) Payment of the Secured Debt;

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(2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (at the After-Maturity Rate set forth in the Note), even if the sum of the amounts outstanding at any time exceeds the Note Amount; and

(3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as now adopted and amended from time to time in the State. Time is of the essence.

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Lender that the following warranties and representations in this Paragraph are and will be true, correct and complete at all times:

3.1 Due Organization, Authority. If Borrower is an entity, Borrower is duly organized and validly existing, and in good standing under the laws of the state of its organization and duly qualified in the state where the Property is located and has power adequate to carry on its business as presently conducted in such state and in the State, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3 Other Obligations. Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis

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for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents other than those obtained prior to the date hereof.

3.4 Construction and Completion of Improvements. The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to and approved in writing by Lender. Any unoccupied space in the Improvements has been completed as provided above except for floor and wall coverings. The Improvements are served by electric, gas, sewer, or septic system, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Property, whether located on the Property as described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to Lender, and that Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5 Legal Actions. There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 Financial Statements. All statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the

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parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7 Solvency of Tenants. To the best of Borrower's knowledge and belief, no Tenant (as specified in the loan commitment to Lender (the "Commitment") for the loan secured hereby) of the Property or any part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment. The rent roll as delivered to Lender is complete and not misleading and no tenant is in default under its lease.

3.8 Adverse Change to Property. To Borrower's knowledge, no event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9 Title to Property. Borrower has good and clear record and marketable title to the Realty and Fixtures and good and merchantable title to the Personality. Borrower warrants and shall forever defend the title thereto and Lender's first and prior lien thereto unto Lender, its successors and assigns, against the claims of all persons whomsoever.

3.10 Compliance with Laws and Private Covenants. The Property complies with all Laws. The Land consists of one or more separate and distinct parcels for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land, and there now exists no violation of any such agreements. Except as set forth in the survey with respect to the Property certified to Lender in connection with the closing of the Loan, Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.

3.11 Independence of the Property. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements, and no Improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

Without the prior written consent of Lender, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property, and shall not without Lender's prior written consent (a) file any declaration and constituent documents of any condominium, townhome, cooperative or planned community development project for the Property, or (b) join in the amendment or rescission of any covenants, conditions, restrictions, rules or regulations now or hereafter affecting the Property. Borrower will

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comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property.

3.12 Environmental. Borrower is a party to and has executed this date in favor of Lender an Environmental Indemnity Agreement dated as of the date hereof with respect to the Property and executed by Borrower and Principal (as defined in the Commitment or any Loan Document) in favor of Lender (the "Environmental Indemnity Agreement"). For purposes of this Indenture, Borrower hereby restates and confirms the representations and warranties contained in the Environmental Indemnity Agreement and hereby covenants to comply with and perform the obligations contained in the Environmental Indemnity Agreement.

3.13 Compliance with ERISA and State Statutes on Governmental Plans. Borrower is not an "employee benefit plan" as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") nor a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and (ii) the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Borrower represents and warrants to Lender that, as of the date of this Indenture and throughout the term of this Indenture, (i) Borrower is not a "governmental plan" within the meaning of ERISA and (ii) transactions by or with Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

4. BORROWER'S COVENANTS. Until the Secured Debt has been paid in full, Borrower covenants and agrees with Lender as follows:

4.1 Payments.

(a) Secured Debt. Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all Property Taxes and Charges. Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof. If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Lender.

(c) Taxes on Lender. If any Law of the State or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Lender, then Borrower shall pay Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

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(d) Property Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) Right to Contest. Borrower may, in good faith and diligently, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security to protect the Property against any lien arising out of such Property Taxes and Charges, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon; and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) Expenses. Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, reasonable attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents, (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof, and (iii) Lender's protection of the Property and its interest therein.

(g) Servicing Fees. Borrower shall be solely responsible for any reasonable legal and/or processing fees and costs actually incurred or charged by Lender or its third-party loan servicer for any servicing-related matter arising from a request of Borrower during the term of the Loan. Borrower agrees to immediately reimburse Lender or such servicer upon Lender's request for any such legal and/or processing fees and costs.

(h) No Credit on Secured Debt. Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

4.2 Operation of the Property.

(a) Maintenance; Alterations. Borrower shall maintain and preserve the Property in good repair and condition and shall correct (or cause to be corrected) any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or physical waste of the Property or any use or occupancy

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which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personality or Fixtures if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.

(b) Liens. Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) Compliance with Laws and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator, including, but not limited to, the Americans with Disabilities Act and any similar state or local law or regulation ("ADA Laws") and Environmental Law (herein collectively "Laws") and private covenants affecting the Property. Borrower further agrees to comply with and to require all tenants in any present or future lease of all or any part of the Property to comply with all present and future local, state or Federal laws relating to the design, physical characteristics, and operation of improved real property, including, without limitation, ADA Laws, all amendments, regulations, orders, decrees, permits and licenses now or hereafter promulgated thereunder and all laws hereafter enacted or reenactments thereof relating to access and use of real estate by handicapped or physically impaired persons. Borrower shall use its best efforts to give Lender telephonic notice within one (1) day, and shall give Lender written notice (which shall include a copy of any notice received by Borrower) within three (3) days, of Borrower's receipt of any notice received by or on behalf of Borrower with respect to Borrower's noncompliance with any of the provisions of any covenants, conditions or restrictions now or hereafter affecting the Property. If Borrower fails to correct the conditions specified in the notice to it, then Lender may do so at the sole cost and expense of Borrower, and Borrower shall reimburse Lender for such cost and expense upon demand. Any amounts so expended by Lender shall bear interest at the After-Maturity Rate specified in the Note from the date of expenditure until repaid to Lender, and shall be secured by this Indenture.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by Borrower (so long as no default exists under any of the Loan Documents) or a leasing and management agent which has been approved by the Lender prior to execution of any management agreement with the same. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Lender.

(e) Inspection; Right of Entry. Subject to the rights of tenants of the Property, Borrower grants to Lender and its agents, employees, consultants, and contractors the right to enter on the Property during normal business hours without delay, hindrance or restriction for the purpose of making any inspections, reports, tests (including, without limitation, soils borings, groundwater testing, wells testing, or soils analysis), inquiries, and reviews that Lender, in its sole unfettered discretion,

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deems necessary to assess the then current condition of the Property. Lender will provide Borrower with not less than three (3) business day's notice of the entry. However, Borrower's consent will not be required for such entry or for the performance of tests. All costs, fees, and expenses incurred by Lender with respect to the inspections, reports, tests, inquiries, and reviews will be paid by Borrower to Lender on demand, will accrue interest at the After-Maturity Rate until paid, and will be secured by this Indenture, prior to any right, title, or interest in or claim on the Property attaching subsequent to the lien of this Indenture.

(f) Seismic Requirements. Borrower shall at all times during the term hereof cause all improvements on the Real Property to comply with any Laws regarding retrofitting for earthquakes.

(g) Unlawful Use and Prohibited Activities. The Borrower shall not use, occupy, or permit the use or occupancy of any Property by the Borrower or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy, or possession of any Property (collectively a "lease") with any third person ("lessee") entered into after the date of this Indenture shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. The Borrower shall upon demand from Lender provide Lender with a written statement setting forth its compliance with this section and stating whether any Prohibited Activities are occurring in, on or around the Property. If the Borrower becomes aware that any lessee is likely engaged in any Prohibited Activities, the Borrower shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities.

This section is a material consideration and inducement upon which Lender relies in extending credit and other financial accommodations to the Borrower. Failure by the Borrower to comply with this section shall constitute an Event of Default. Notwithstanding anything in this Indenture, the Note, or any of the other Loan Documents regarding rights to cure Events of Default, Lender is entitled upon breach of this section to immediately exercise any and all remedies under this Indenture, the Note, any of the other Loan Documents, and by law.

In addition and not by way of limitation, the Borrower shall indemnify, defend and hold Lender harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of, or related to any Prohibited Activities at or on the Property, Prohibited Activities by the Borrower or any lessee of the Property, or the Borrower's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation, any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property (with or without compensation to Lender, and whether or not Property is taken free of or subject to Lender's lien or security interest).

4.3 Insurance Requirements.

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(a) Insurance Policies. Borrower shall obtain (or cause to be obtained through tenants of the Property) and keep in force, with one or more insurers acceptable to Lender meeting the requirements of Paragraph 4.3(c) below, such insurance as Lender may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$1,000,000 per occurrence, \$2,000,000 aggregate (and naming Lender as an additional insured thereunder); (ii) protection against "extended coverage" and other "All Risk" perils, including, where required, flood, to the full replacement value of the Property with a waiver of subrogation, replacement cost, and difference in conditions endorsements, (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months' rental income from all Leases and naming Lender as loss payee thereunder; and (iv) and such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mine subsidence, terrorism, mold and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy, and earthquake insurance in an amount acceptable to Lender in accordance with Lender's Seismic Risk Policy, as may be amended from time to time, with no more than a ten percent (10%) of Insurable Value (defined below) deductible.

(b) Minimum Requirements. The property policy shall provide insurance in an amount equal to the lesser of (i) the appraised value of the Property, determined on the cost approach of appraisal, less land and approved soft costs, as shown on a current full narrative appraisal of the Property, acceptable to Lender in form and content and conducted by an appraiser acceptable to Lender (the "Approved Appraisal") or (ii) the insurable value as set forth in the Approved Appraisal (the "Insurable Value").

(c) Required Provisions. All property insurance policies shall include the standard mortgage clause in the State naming Lender as the first mortgagee with loss payable to Lender as such mortgagee, shall not be cancelable or modifiable without thirty (30) days' prior written notice to Lender, and shall not have more than a \$25,000 deductible for any single Casualty, and if the policy provides for co-insurance, shall contain provide an agreed amount endorsement. All public liability insurance policies shall name the Lender as an additional insured. Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3 in such forms as required from time to time by Lender upon notice from Lender or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment has been made shall be delivered by Borrower to Lender. Such insurance policies shall be written by insurance companies licensed to do business in the state where the Property is located and (i) have a minimum rating of "A/IX" according to Best's Insurance Reports - Property/Casualty Edition, (ii) have a claims paying rating of at least single "A" by two approved rating agencies, and (iii) must be a stock company or a non-assessable mutual company located in a country acceptable to Lender. No insurance carrier or self-insurer will be permitted to provide a policy limit in excess of ten percent (10%) of its policyholders surplus on any one risk. A tenant may be permitted to self-insure through a wholly-owned subsidiary provided that Lender has

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received satisfactory evidence that such tenant's tangible net worth at all times exceeds \$100,000,000.00.

(d) Waiver of Subrogation. Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Lender. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

(e) No Liability of Lender. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

(f) Insurance Company Requirements. Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

(g) Transfer of Property. Upon sale of any of the Property for default in performance of any obligation hereby secured or other transfer of title or assignment of the Property in discharge, in whole or in part, of the Secured Debt, all rights, title and interests of Borrower in and to all policies of hazard or other insurance policies required hereunder on or obtained in connection with the Property so sold or transferred shall pass to and inure to the benefit of the purchaser of such Property at such sale or transfer, and Lender is hereby irrevocably authorized, said power being coupled with an interest, to assign in Borrower's name to such purchaser all such policies, which may be amended or rewritten to show the interest of such purchaser.

4.4 Escrow. Subject to the following paragraph, Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges and Insurance Premiums before becoming past due. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made adjusted to reflect for any anticipated or known increases for the coming year. Lender may require Borrower to pay one-sixth (1/6th) of said estimate as escrow coverage, which may be retained by Lender in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 7.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds. Upon the occurrence of an Event of Default hereunder, Lender may apply, at any time and in such order as Lender may determine, the

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balance then remaining in the account accumulated under this Paragraph against the amounts due and payable under the Note, this Indenture or any other Loan Document.

Lender agrees to waive the requirements under the foregoing paragraph that Borrower pay to Lender monthly escrow installments for Property Taxes and Charges and Insurance Premiums subject to the following conditions ("Conditions") and further reservation set forth below:

- (a) No Event of Default after any applicable period of notice and cure shall exist under the Note or the Loan Documents;
- (b) No change shall occur in the ownership or management of the Property; and
- (c) Subject to the provisions of Paragraph 4.1(e) hereof, Property Taxes and Charges and Insurance Premiums shall be paid promptly when due and without accrual of interest or penalty, and Borrower shall promptly furnish to Lender satisfactory evidence of such payment on an annual basis.

Notwithstanding the foregoing, Lender reserves the right to revoke its waiver (x) if any one or more of the Conditions are at any time not satisfied or (y) at such time as Lender, in its sole unfettered discretion, deems such revocation necessary to protect the security granted by this Indenture or any of the other Loan Documents.

4.5 Sales and Encumbrances.

(a) Borrower shall not, without the prior written consent of Lender, which consent, if given by Lender in its sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, delivery of a management contract approved by Lender with a management company approved by Lender, and/or the satisfaction of other conditions required by Lender or one or more of the foregoing or other requirements of Lender:

(i) Property, Leases or Rents. Convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the Rents, whether or not for value and whether voluntarily or involuntarily, except the lien in favor of Lender under the Indenture; or

(ii) Interest in Borrower. Sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of any legal or beneficial interest in Borrower (or in any entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in the Borrower), whether in the form of a beneficial, stock ownership, membership or partnership interest or in the form of a power of direction, control or management, or otherwise (all said encumbrances, sales, contracts, leases or other transfers described above being collectively described as a "Prohibited Transfer"). Any breach of the foregoing

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by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Paragraph 7.1(a).

(iii) Notwithstanding anything to the contrary set forth herein or in the other Loan Documents, and without Lender's prior approval or consent, Borrower may incur unsecured customary and reasonable short-term trade payables (in the absence of a triple-net lease) obtained and repaid in the ordinary course of Borrower's business, which in the case of such unsecured trade payables (1) are not evidenced by a note, (2) do not exceed, at any time, a maximum aggregate amount of two percent (2%) of the outstanding principal balance of the Secured Debt, and (3) are paid within sixty (60) days of the date incurred.

Lender's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Lender's security or whether or not it may or may not be reasonable (commercially or otherwise) for Lender to consent to any Prohibited Transfer. Without limiting the foregoing, Lender's consent may, if given in Lender's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): the payment of an assumption fee, an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee or transferee, a management contract acceptable to Lender with a manager acceptable to Lender, an assignment to Lender of any security given to Borrower in connection with the transaction, including without limitation any purchase money second mortgage and/or a change in any of the other terms and conditions of this Indenture or in any of the Loan Documents.

(b) Subject to Paragraph 4.5(a) above and the provisions of the Additional Interest Agreement (including, without limitation, Lender's Right of First Refusal and Option to Purchase thereunder), Lender agrees to release the Property from the lien hereof and the Assignment of Rents and Leases and any UCC-1 Fixture Filing recorded against the Property (a "Release") provided the following conditions are satisfied at the time of the requested release:

- (i) no Event of Default shall exist;
- (ii) Borrower has made written request to Lender for such Release at least thirty (30) days prior to the date upon which the Release is requested to be effectuated;
- (iii) Borrower has provided Lender with such documentation and assurances as Lender may reasonably require in connection with the above requirements at least ten (10) days prior to the date upon which the Release is requested to be effectuated, including without limitation, an endorsement reflecting the recording of the partial release document;
- (iv) Borrower pays Lender's out-of-pocket costs and expenses of document review and preparation, Lender's reasonable out-of-pocket attorneys' fees, a prepayment Premium (as defined in the Note) on the paydown amount required under subsection 4.5(b)(v) below, if any, recording fees and title insurance fees and title insurance premiums incurred in connection with such Release;
- (v) Borrower shall deliver to Lender one hundred percent (100%) of the net sales proceeds, less the amount sufficient to cover the tax liability from the sale of the Property,

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through the escrow established for sale of the Property to pay down the outstanding balance of the Loan; and

(vi) Borrower shall pay to Lender its pro rata share of the Appreciation Interest (as defined in the Additional Interest Agreement).

4.6 Financial Records and Statements. Borrower shall keep accurate books and records in accordance with generally accepted accounting principles, consistently applied, or such other accounting method reasonably acceptable to Lender and consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within sixty (60) days after the end of each calendar year a statement of condition or balance sheet of Borrower relating solely to the Property as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy at Lender's option: (i) by Borrower; or (ii) if an Event of Default exists, by an independent certified public accountant acceptable to Lender (said documents need not be audited but shall be reviewed); and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender. On Lender's request at all reasonable times and on reasonable notice, Lender shall have the right to audit Borrower's books of account and financial records, all of which will be made available to Lender and/or Lender's representatives for that purpose.

In addition, the Borrower and Principals shall deliver or cause to be delivered to Lender, their respective balance sheets and income and expense statements under original signature within sixty (60) days after the end of each calendar year.

4.7 Further Assurances. Borrower shall promptly upon request of Lender: (i) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; or (ii) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases); or (iii) join with the Lender in notifying any third party, who is in possession of any Personalty, of Lender's security interest in such Personalty and obtaining the acknowledgment from such third party that it is holding such Personalty for the benefit of Lender; or (iv) cooperate with Lender in obtaining control (as defined in the Uniform Commercial Code as now adopted and amended from time to time in the State) with respect to Personalty consisting of deposit accounts, letter-of-credit rights and electronic chattel paper and do such further acts, in any case as may be necessary, desirable or proper in Lender's opinion to (a) carry out more effectively the purposes of the Loan Documents, (b) protect and preserve the first and valid lien and security interest of this Indenture on the Encumbered Property or to subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto or (c) protect the interest and security interest of Lender in the Encumbered Property against the rights or interests of third

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parties. By signing this Indenture, Borrower authorizes Lender to file such financing statements, with or without the signature of Borrower, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Fixtures and Personality. Borrower further authorizes Lender to file, with or without any additional signature from Borrower, as Lender may elect, such amendments and continuation statements as Lender may deem necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Fixtures and Personality. Borrower hereby expressly ratifies any financing statements that may have been filed by Lender in advance of the date hereof to perfect Lender's security interest in the Fixtures and Personality. Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8 Indemnity. Borrower shall indemnify, defend and hold harmless Lender from and against, and, upon demand, reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable out-of-pocket attorneys' fees and disbursements, which may be imposed upon, asserted against or actually incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Lender.

4.9 No Preferences. Borrower shall not repay any sums borrowed from anyone other than Lender, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10 Notices. Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases. Borrower shall promptly give written notice of any litigation commenced or threatened affecting Borrower or the Property.

4.11 Loan Estoppel Certificates. Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.

4.12 Legal Existence and Place of Business. If Borrower as an entity is executing this instrument:

(a) Authorization: Organization. Borrower warrants that Borrower (i) is duly organized and validly existing, in good standing under the laws of the state of its organization,

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(ii) is duly qualified to do business and is in good standing in the state of its organization and in the state where the Property is located, (iii) has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) has duly authorized by all necessary action the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof.

(b) Dissolution; Disposition of Assets; State of Organization. Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not change, dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity, and will not change the state of its organization, without the prior express written consent of Lender except as may be otherwise provided herein.

(c) Place of Business. Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied it will not change its place of business, or if it has more than one place of business, it will not change its chief executive office (i.e. the place from where the Borrower manages the main part of its business operations or affairs), unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13 Place of Residence. If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied, Borrower will not change his/her place of residence, unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.14 Borrower Name or Identity. Borrower shall not change its name or identity unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.15 Defense and Notice of Actions. Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

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4.16 Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note.

4.17 Personalty and Fixtures. Borrower shall use the Personalty and Fixtures primarily for business purposes and keep the Personalty at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty or Fixtures, Borrower shall provide Lender with a current, accurate inventory of the Personalty and Fixtures. Borrower will not permit any of the Fixtures or Personalty to be removed at any time from the Realty without the prior written consent of Lender unless actually replaced by articles of equal suitability and value owned by Borrower free and clear of any lien or security interest except as may be approved in writing by Lender.

4.18 Obligations. Borrower will timely perform all covenants, agreements, terms and conditions to be performed by Borrower under this Indenture and as required of Borrower under the Loan Documents.

4.19 SDN List. An Event of Default shall exist, without notice or cure rights, if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the "SDN List"): (a) any Borrower; (b) any Principal (as defined in the Commitment or any Loan Document); (c) any guarantor or indemnitor; or (d) any person or entity related to any Borrower, any Principal, any guarantor, any indemnitor, the Secured Debt or the Property.

4.20 Single Purpose Entity. At all times during the term of this Indenture and until the Secured Debt is fully and indefeasibly paid in full, the Borrower must be a "single purpose entity", which means that it satisfies each of the following conditions:

(a) the Borrower does not engage in any business or activity other than the ownership, operation and maintenance of the Property and activities incidental thereto, and the Borrower has not acquired, owned, held, leased, operated, managed, maintained, developed or improved any assets other than the Property;

(b) the Borrower preserves its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization and observes all organizational formalities to maintain its existence as a legal entity separate and apart from its owners; and

(c) the Borrower has not and will not merge or consolidate with any other entity.

5. CASUALTIES AND TAKINGS.

5.12 Notice to Lender. In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent. Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Lender. Such Proceeds shall be applied in accordance with the terms and provisions of this Paragraph 5.

5.13 Restoration; Proceeds.

(a) Property Restoration. Lender shall make the Insurance Proceeds or the Taking Proceeds in the event of a partial Taking available for the repair, reconstruction, rebuilding and/or alteration ("Restoration") of the Property if damaged, subject to the following conditions: (i) that Borrower shall notify Lender in writing within thirty (30) days following such casualty or partial taking that Borrower desires to rebuild or restore the Property; (ii) that Borrower is not then in default under any of the terms, covenants and conditions of this Indenture or the Loan Documents and at all times while Restoration work progresses no such default shall occur; (iii) that, except as provided in (iv) below, Lender shall be satisfied that by the expenditure of such Insurance Proceeds all Improvements will be fully restored within a reasonable period of time to the full extent of their value immediately preceding the loss or damage, free and clear of all liens, except as to the lien of this Indenture, the lien for Property Taxes and Charges and such other liens as are specifically approved by Lender in writing or in the case of a partial taking, the non-taken portion of the Property can be restored into a functional economic unit; (iv) that in the event such Proceeds shall be insufficient for Restoration of the Improvements, Borrower shall deposit promptly with Lender funds which, together with such Proceeds, shall be sufficient in Lender's judgment for Restoration of the Property; (v) that Borrower shall use its best efforts to obtain a waiver of the right of subrogation from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Borrower or the then owner or the assured under such policies; (vi) that the excess of such proceeds above the amount necessary to complete Restoration and compensate Borrower for all other insured losses shall be applied, at Lender's option, to the Secured Debt without payment of any prepayment premium; any amounts applied by Lender to the Note shall be applied first to interest and then to principal; (vii) Borrower shall have delivered to Lender and Lender shall have reviewed and approved in writing (such approval not to be unreasonably withheld) the plans and specifications for the Restoration work and the same shall have been approved by all governmental authorities having jurisdiction (Lender shall use best efforts to review and approve or disapprove such plans and specifications within thirty (30) days after submission thereof by Borrower); (viii) Borrower shall have furnished to Lender for Lender's approval

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a detailed budget and cost breakdown for said Restoration work signed by Borrower and describing the nature and type of expenses and amounts thereof estimated by Borrower for said Restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Lender shall have given to Borrower written approval of such budget and cost breakdown (if Borrower determines that its actual expenses differ from its estimated budget, it will so advise Lender promptly); (ix) in Lender's reasonable judgment, Restoration work can be completed prior to maturity of the Note; and (x) all Leases are in full force and effect and require the Restoration work described herein. In the event any of the conditions described above are not or cannot be satisfied, then such Insurance Proceeds or Taking Proceeds, as applicable, shall be applied, at Lender's option, as follows:

Payment of Secured Debt. Payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

Restoration. Restoration, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

(b) Release of Proceeds. All proceeds released or applied by Lender to the Restoration of the Improvements pursuant to the provisions of this Paragraph 5.2 of this Indenture shall be released and/or applied on the cost of Restoration as such Restoration progresses, in amounts which shall equal ninety percent (90%) of the amounts from time to time certified by an architect approved by Lender to have been incurred in such Restoration of any and all of said Property (i.e., ninety percent (90%) of the total amount expended by the contractor for the project under a contract approved by Lender and billed by the contractor to Borrower) and performed by a contractor reasonably satisfactory to Lender and who shall furnish such corporate surety bond, if any, as may be reasonably required by Lender, in accordance with the plans and specifications therefor approved by Lender and the remaining ten percent (10%) upon completion of such restoration and delivery to Lender of evidence reasonably satisfactory to Lender that no mechanics' lien exists with respect to such Restoration, that the Restoration has been completed in accordance with plans and specifications approved by Lender and that all governmental approvals required for the completion of said Restoration have been obtained and the same are in form and substance reasonably satisfactory to Lender.

(c) Other Rights of Lender. If within a reasonable period of time after the occurrence of any loss or damage to the Property, Borrower shall not have submitted to Lender and received Lender's approval of plans and specifications for the Restoration of such loss or damages or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Lender and by all such governmental authorities, Borrower shall fail to commence promptly such Restoration or if thereafter Borrower fails to carry out diligently such Restoration or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such

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work, or if any other condition of this Paragraph 5 is not satisfied within a reasonable period of time after the occurrence of any such loss or damage, then Lender, in addition to all the other rights herein set forth, and after giving Borrower thirty (30) days written notice of the nonfulfillment of one or more of the foregoing conditions may, failing Borrower's fulfillment of said conditions within said thirty (30) day period, at Lender's option (i) declare that an Event of Default has occurred and/or apply all proceeds to the payment of the Secured Debt and/or (ii) Lender, or any lawfully appointed receiver of the Property, may at their respective options, perform or cause to be performed such Restoration, and may take such other steps as they deem advisable to carry out such Restoration and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Lender and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Lender of any such receiver) arising out of anything done by them or any of them pursuant to this Paragraph 5 and Lender may in its discretion apply any insurance or condemnation proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Borrower to Lender and Borrower's obligation to pay such excess costs shall be secured by the lien of this Indenture and shall bear interest at the After-Maturity Rate, until paid.

(d) Proceeds Not Held in Trust. No Insurance Proceeds at any time held by Lender hereunder shall be deemed to be held in trust, and Lender may commingle Insurance Proceeds with Lender's other funds, but Lender shall not be liable for payment of any interest or other return thereon.

(e) Settlement of Claims. Lender shall have the right to compromise and settle all insurance claims, and all Insurance Proceeds shall be paid by the insurer directly to Lender to the extent of its interest, which shall be the loss payee thereof as its interests may appear.

(f) If any material part of the Property is damaged or destroyed and the loss is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit, within ten (10) days of Lender's request therefor, the amount of the loss not so covered.

(g) Secured Debt Not Released. If any portion of the Secured Debt shall be unpaid after the application of the Insurance Proceeds or Taking Proceeds, as applicable, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

(h) Waiver. Borrower hereby specifically, unconditionally and irrevocably waives all rights of a property owner with respect to allocation of condemnation proceeds between a property owner and a lienholder under any statute or law, including case law.

6. LEGAL PROCEEDINGS. Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable

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proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases, the Rents or any of the rights created by the Loan Documents.

7. DEFAULTS; REMEDIES OF LENDER.

7.1 Defaults; Events of Default. Any of the following shall constitute an "Event of Default" hereunder:

(a) Breach of Named Covenant. Any breach by Borrower of the covenants in the Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) Misrepresentations. Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled, and such failure continued unremedied for a period of thirty (30) days following written notice thereof (to the extent such failure is unintentional and capable of being remedied); or

(c) Breach of Covenant. Any breach by Borrower of any other covenant in the Loan Documents or any covenant contained in any of the Leases or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any covenant contained in any of the Leases or any certificate or side letter delivered in connection with the Loan Documents, and such breach or failure continued unremedied for a period of thirty (30) days following written notice thereof; or

(d) Bankruptcy. Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partner or joint venturer, or if Borrower is a limited liability company, any managing member or majority (or other controlling) member (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due, or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment, or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent, or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the

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filing thereof, or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a part of the Property, or the Property is taken on execution or by other process of law; or

(f) Suspension. Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents dies, terminates or suspends its business, and, with respect to any guarantor who is a natural person, same is not replaced with a substitute guarantor acceptable to Lender, in Lender's sole discretion, who executes such documents as required by Lender (including, without limitation, a guaranty and environmental indemnification in the forms executed by such deceased natural person guarantor within sixty (60) days of the death of such natural person guarantor);

(a) Cross-Default. The occurrence of any "Event of Default" under any of the Other Loan Documents; or

(g) Other Events. Any other event occurs which, under the Loan Documents, constitutes a default by the Borrower or gives the Lender the right to accelerate the indebtedness secured by this Indenture.

7.2 Remedies. In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable.

(b) Foreclosure. Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Lender;

(c) Offset Rights. Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4.

(d) Cure of Default. Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities, as defined in Paragraph 4.1(d); (ii) paying any Insurance Premiums, and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing.

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Should Lender make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate until repaid.

(e) Possession of Property. Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing any default. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower. In connection with any action taken by Lender pursuant to this subparagraph (e), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or gross negligence of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate until repaid. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender;

(f) Remedies under State Law. Lender shall have the right to exercise all rights under Laws of the State, whether or not herein specified, including without limitation those described or referred to in Exhibit B of this Indenture;

(g) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents pursuant to the Lease Assignment.

(h) Uniform Commercial Code Remedies. Exercise any and all rights of a secured party with respect to the Personalty or Fixtures under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for those rights and remedies:

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- (i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and
- (ii) require Borrower to assemble the Personalty and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of Property as provided in this Indenture. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personalty prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT TO THE EXTENT ALLOWED BY THE LAWS OF THE STATE. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF;

- (i) Sale. Sell the Property as provided in Exhibit B or under applicable laws of the State;
- (j) Judicial Actions. Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy.
- (k) Subrogation. Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the

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Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record; and

(l) Other. Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws. In the case of the occurrence of an Event of Default under Paragraph 4.19 hereof, Lender shall have the right to take any and all action or to make any report or notification required by OFAC or any other applicable governmental entity or agency or by the Laws relating to the SDN list.

Any sums advanced by Lender under this Paragraph 7.2 shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 7.2, less all costs and expenses incurred by Lender under this Paragraph 7.2, including, without limitation, attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

7.3 Holding Over . Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, based upon the value of the Property occupied computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

7.4 General Provisions .

(a) Order of Sale(s) . Subject to Ind. Code § 32-30-10-10, a sale made pursuant to Paragraph 7.2 may be conducted separately or together with any one or more such sales of the Projects (as defined in the Additional Interest Agreement) and in such order as Lender may determine. To the extent permitted by law, several sales may be made pursuant to Paragraph 7.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made. Borrower shall have no right to direct the order in which the Property or the Projects are sold.

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(b) Cumulative Remedies. All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.

(c) Right to Purchase. At any sale or sales of the Property pursuant to Paragraph 7.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid), the amount of the Secured Debt then due.

(d) Right to Terminate Proceedings. Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Lender, such proceedings or actions.

(e) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so, Borrower hereby:

(i) Redemption; Valuation. Agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) Marshalling of Assets. Waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of

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Lender to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) Counterclaims; Setoff. Waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action;

(iv) Suretyship. Waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) Laches; Statutes of Limitation. Waives the defense of laches and any applicable statutes of limitation.

(g) Lender's Discretion. Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) Sales. In the event of a sale or other disposition of the Property pursuant to Paragraph 7.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or Lease.

8. POSSESSION AND DEFEASANCE.

8.1 Possession. Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

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8.2 Defeasance. If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by Law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

9. SECURITY AGREEMENT.

9.1 Grant of Security Interest. Borrower also grants to Lender a security interest in all of Borrower's right, title, and interest now owned or later acquired to the following property (collectively, "Collateral") now or later affixed to or located on the Property, or used in connection with the operation of the Property or the Improvements and all the proceeds of that property: the Personalty; the Fixtures; all security and cleaning deposits collected from any tenants or lessees of any part of the Property, all deposits collected from purchasers pursuant to contracts for sale of the Property or any portion of the Property; and, subject to the other provisions of this Indenture, all proceeds of any fire and builders' risk insurance policy, or of any policy insuring the Property (and the contents of the Improvements) against any other perils, all awards made in eminent domain proceedings, or purchased in lieu of that, made with respect to the Property, and any compensation, award, payment, or relief given by any governmental agency or other source because of damage to the Property resulting from earthquake, flood, windstorm, or any emergency or any other event or circumstance. The security interest also includes all additions to, substitutions for, changes in, or replacements of the whole or any part of these articles of property, together with all contract rights of Borrower in construction contracts, bonds, agreements for purchase and sale of the Property, all policies of insurance arising out of the improvement or ownership of the Property, and all accounts, contract rights, chattel paper, instruments, general intangibles, and other obligations of any kind now or later existing, arising out of, or in connection with the operation or development of the Property, and proceeds of the foregoing.

9.2 Security Agreement; Remedies. This Indenture constitutes a security agreement with respect to the Collateral in which Lender is granted a security interest. Lender has all of the rights and remedies of a secured party under the Indiana Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Borrower agrees to execute and deliver on demand (or file as applicable), and irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower (such power being coupled with an interest) to execute, deliver, and file, any

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security agreements, financing statements, continuation statements, or other instruments that Lender may request to impose, perfect, or continue the perfection of the lien or security interest created by this Indenture.

9.3 Fixture Filing.

(a) Financing Statement. This Indenture constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to all Fixtures and with respect to any goods, Collateral, or other personal property that may now be or later become Fixtures.

(b) New; Replacement Fixtures. It is understood and agreed that, to protect Lender against the effect of Uniform Commercial Code § 9334, if any Fixture owned by Borrower on the Property, or any part of any Fixture, is replaced or added to, or any new Fixture owned by Borrower is installed by Borrower, and the fixture is or may be subject to a security interest held by a seller or any other party, the following will apply:

(1) Notice to Lender. Borrower or any owner of all or any part of the Property will, before the replacement, addition, or installation of any such Fixture, obtain the prior written approval of Lender, and give Lender written notice that a security agreement with respect to such Fixture has been or will be consummated, and the notice will contain the following information: (i) a description of the Fixtures to be replaced, added to, installed, or substituted; (ii) a recital of the location at which the Fixtures will be replaced, added to, installed, or substituted; (iii) a statement of the name and address of the holder and amount of the security interest; and (iv) the date of the purchase of such Fixtures. Neither this subsection nor any consent by Lender pursuant to this subsection will constitute an agreement to subordinate any right of Lender in Fixtures or other property covered by this Indenture.

(2) Option to Pay. Lender may at any time pay the balance due under the security agreement and the amount paid will be: (i) secured by this Indenture and will be a lien on the Property, enjoying the same priorities as this Indenture; (ii) added to the amount of the Secured Debt; and (iii) payable on demand with interest at the After-Maturity Rate from the time of the payment; and if Borrower is in default for ten (10) days after demand, this shall be an Event of Default. The provisions of this subsection (2) will not apply if the goods that may become Fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding the security interest have been expressly subordinated, at no cost to Lender, to the lien of this Indenture in a manner satisfactory to Lender.

10. ASSIGNMENT OF LEASES AND RENTS.

10.1 Assignment. Borrower irrevocably assigns to Lender the Leases and the Rents. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and the Rents is not contingent on, and may be exercised without, possession of the Property.

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10.2 License. Lender grants to Borrower a license ("License") to collect and retain the Rents as they become due until the occurrence of an Event of Default. Upon an Event of Default, the License will be automatically revoked and Lender may collect and retain the Rents without notice and without taking possession of the Property. Borrower irrevocably authorizes and directs the lessees under the Leases to rely on and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums that may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases. The lessees will have no right or duty to inquire as to whether any default has actually occurred or is then existing. Borrower relieves the lessees from any liability to Borrower by reason of relying on and complying with any notice or demand by Lender.

10.3 Effect of Assignment. The assignment will not impose on Lender any duty to produce the Rents or cause Lender to be: (i) a "mortgagee-in-possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any of the Leases; or (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property. Lender will not be liable to Borrower or any other party as a consequence of the exercise of the rights granted to Lender under this assignment or the failure of Lender to perform any obligation of Borrower arising under the Leases.

10.4 Leasing Covenants. Borrower covenants and agrees as follows:

(a) Borrower Covenants. Borrower, at Borrower's sole cost and expense shall: (i) perform all obligations of the lessor under the Leases and enforce performance by the lessees of their obligations under the Leases; (ii) subject to the provisions of Paragraph 10.4(b)(iv) below, enforce all remedies available to Borrower in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration, or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases; (iii) give Lender prompt notice of any default that occurs under any of the Leases, whether by the lessees or Borrower; and (iv) promptly upon execution, deliver to Lender fully executed counterpart originals of the Leases; and

(b) Consent Required. Borrower shall not, without Lender's prior written consent: (i) enter into any Leases after the date of this Indenture; (ii) execute any other assignment relating to any of the Leases or the Rents; (iii) discount any rent or other sums due under the Leases or collect them in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate (other than default of applicable tenant), modify, or amend any of the terms of the Leases or release or discharge the lessees from any obligations; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate any of the Leases to any other mortgage or encumbrance. Any attempted action in violation of the provisions of this Paragraph 10.4(b) will be voidable at Lender's election.

10.5 Lease Estoppel Certificates. Within twenty (20) days after request by Lender, Borrower will use commercially reasonable efforts to deliver to Lender and to any party designated by Lender estoppel certificates executed by Borrower and by each of the lessees certifying: (i) that

this assignment and the Leases are in full force; (ii) the date of each lessee's most recent payment of rent; (iii) that there are no defenses or offsets outstanding, or stating those claimed by Borrower or lessees under the assignment or the Leases; and (iv) any other information reasonably requested by Lender.

11. ENVIRONMENTAL PROVISIONS.

11.1 Environmental Representations and Warranties. Except as disclosed in writing to, and acknowledged in writing by, Lender, or as set forth in that certain Phase I Environmental Site Assessment Report for the Property dated November 13, 2023, prepared by Partner Engineering and Science, Inc. for Borrower and Lender, Borrower represents and warrants that:

(a) No Hazardous Substances. During the period of Borrower's ownership of the Property; (i) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by any person on or around the Property; and (ii) there have been no Hazardous Substances transported over or through the Property;

(b) No Prior Use; Litigation. After diligent inquiry, Borrower has no knowledge of, or reason to believe that, there has been: (i) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Property or by any third parties onto the Property; or (ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) Permitted Levels; Reportable Quantities. No Hazardous Substances in excess of permitted levels or reportable quantities under applicable Environmental Law are present in or about the Property or, to the best of Borrower's knowledge, any nearby real property that could migrate to the Property;

(d) Releases. No Release or threatened Release exists or has occurred;

(e) Underground Storage Tanks. No underground storage tanks of any kind are or, to the best of Borrower's knowledge, ever have been located in or about the Property;

(f) Compliance with Environmental Law. (i) The Property and all operations and activities at, and the use and occupancy of, the Property, comply with all applicable Environmental Law; and (ii) Borrower and every user of the Property has, and is now in strict compliance with, every permit, license, and approval required by all applicable Environmental Law for all activities and operations at, and the use and occupancy of, the Property;

(g) No Claims. To the best of Borrower's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Borrower or any guarantor with respect to the Property;

(h) Use of Property. That the current use of the Property is commercial, as a bank branch building;

(i) Disclosures. Any written disclosure submitted by or on behalf of Borrower to Lender concerning any Release or threatened Release, past or present compliance by Borrower, or any User or other person of any Environmental Law applicable to the Property, the past and present use and occupancy of the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Indenture.

11.2 Environmental Covenants. Borrower agrees as follows:

(a) Use of Property. Except in the ordinary course of business and in strict compliance with all applicable Environmental Law, not to cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any Hazardous Substance;

(b) Release. Not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;

(c) Change of Property Use. Not to change or modify the use of the Property without the prior written consent of Lender;

(d) Compliance with Environmental Law. To comply with and to cause the Property and every User of the Property to comply with all Environmental Law;

(e) Notices. Upon obtaining knowledge thereof, to immediately notify Lender in writing and to provide Lender with a reasonably detailed description of: (i) any noncompliance of the Property with any Environmental Law; (ii) any Hazardous Substance Claim; or (iii) any Release or threatened Release;

(f) Violation of Environmental Law. In the event that Borrower discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Environmental Law, to: (i) notify Lender of that discovery together with a reasonably detailed description; (ii) promptly after a request by Lender, engage a qualified environmental engineer reasonably satisfactory to Lender to investigate these matters and prepare and submit to Lender a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Borrower; and (iii) take, at Borrower's sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance in accordance with Environmental Law, including, but not limited to, any remedial action required by any Environmental Law or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims. Such actions shall be performed: (i) in accordance with Environmental Law; (ii) in a good and proper manner; (iii) under the supervision of a qualified environmental engineer approved in writing by Lender; (iv) in accordance with plans and

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specifications for these actions approved in writing by Lender; and (v) using licensed and insured qualified contractors approved in writing by Lender;

(g) Delivery of Material. To immediately furnish to Lender copies of all written communications received by Borrower from any governmental authority or other person or given by Borrower to any person and any other information Lender may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Environmental Law; and

(h) Information. Keep Lender generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Environmental Law.

11.3 Inspection and Receivership Rights. Upon Lender's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Borrower in connection with the making of the Loan or the execution of this Indenture or upon Lender's reasonable belief that Borrower has failed to comply with any environmental provision of this Indenture or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Borrower, Lender or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater, and all books, records, and files of Borrower relating to the Property) and perform those acts and things that Lender deems necessary or desirable to inspect, investigate, assess, and protect the security of this Indenture, for the purpose of determining: (i) the existence, location, nature, and magnitude of any past or present Release or threatened Release; (ii) the presence of any Hazardous Substances on or about the Property in violation of any Environmental Law; and (iii) the compliance by Borrower of every environmental provision of this Indenture and every other Loan Document.

11.4 Rights of Lender. In furtherance of the purposes in Paragraph 11.3, without limitation of any of its other rights, Lender may:

(a) Court Order. Obtain a court order to enforce Lender's right to enter and inspect the Property; and

(b) Receiver. Have a receiver appointed to enforce Lender's right to enter and inspect the Property for the purpose set forth above.

11.5 Costs and Expenses. All costs and expenses incurred by Lender with respect to the audits, tests, inspections, and examinations that Lender or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Borrower to Lender upon demand. All costs or expenses incurred by Lender pursuant to this subsection (including without limitation court costs, consultant's fees, and attorneys' fees, whether incurred by outside counsel, in-house counsel, in litigation or otherwise,

and whether before or after judgment) shall be secured by the lien of this Indenture and shall bear interest at the After-Maturity Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Lender or its representatives, employees, and agents will be for Lender's purposes only and will not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. Lender will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Lender that constitutes or could constitute a breach of any of Borrower's obligations under any environmental provision contained in this Indenture or any Loan Document.

11.6 Release and Indemnity. Borrower hereby:

(a) Release. Releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any Environmental Law or under any Hazardous Substance Claim, except to the extent caused by the gross negligence or willful misconduct of Lender and/or its agents;

(b) Reimbursement. Agrees to reimburse Lender, on demand, for all out-of-pocket costs and expenses actually incurred by Lender in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Indenture together with interest, after demand, at the After-Maturity Rate; and

(c) Indemnity. Agrees to indemnify, defend, and hold Lender harmless from all losses, out-of-pocket costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, reasonable out-of-pocket attorneys' fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses, in each case, actually incurred by Lender, but excluding in all cases any of the foregoing arising from the gross negligence or willful misconduct of Lender and/or its agents (collectively, "Expenses"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Indenture or deed in lieu of it, to the extent such Expenses are attributable to matters or conditions first arising prior to the Foreclosure Transfer (as defined in the Environmental Indemnity Agreement), which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Indenture or in any Loan Document or as a consequence of any Release or threatened Release or the presence, use, generation, manufacture, storage, disposal, or transportation of any Hazardous Substance on or about the Property, including the soils and groundwaters, caused or permitted by Borrower, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any Hazardous Substance at the Property in accordance with Environmental Law and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Indenture. Borrower's obligations will survive the satisfaction, release, or cancellation of the Secured Debt, the release and reconveyance or partial release and reconveyance of this Indenture, and the foreclosure of the lien of this Indenture or deed in lieu of the Indenture. Notwithstanding anything to the contrary set

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forth in this Indenture or in the Loan Documents, (A) Borrower shall have no liability under this Paragraph 11.6 for any matter, condition, obligation, Expenses or otherwise that arises from actions or occurrences first occurring after the earliest to occur of the following: (i) the date the Loan has been repaid in full, (ii) the date of a Foreclosure Transfer or Borrower Transfer (as each is defined in the Environmental Indemnity Agreement), and (B) Borrower shall have no liability under this Paragraph 11.6 for any matter, condition, obligation, Expenses or otherwise that arise from any act that is taken by Lender as Borrower's attorney-in-fact.

11.7 Effect of Site Assessment. Even though Borrower may have provided Lender with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Borrower acknowledges and agrees that Lender is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather Lender has relied on the representations and warranties of Borrower in this Indenture, and Lender is not waiving any of its rights and remedies in the environmental provisions of this Indenture or any other Loan Document.

12. GENERAL.

12.1 Lender's Right to Waive, Consent or Release. Lender may at any time and from time to time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing, (ii) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing, or (iii) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

12.2 No Impairment. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation: (i) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

12.3 Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

12.4 No Usury. Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection

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or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 12.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

12.5 Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

12.6 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Indenture to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns.

If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Lender's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

12.7 Severability. A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

12.8 Gender and Construction. Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

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12.9 Joint and Several Liability. If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

12.10 Modifications. References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

12.11 Governing Laws. This Indenture shall be construed according to and governed by the Laws of the State.

12.12 Captions. All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

12.13 Acknowledgment of Receipt. Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

12.14 Exhibits. The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

Exhibit A - Property Description

Exhibit B - State Law and Additional Provisions

12.15 WAIVER OF JURY TRIAL. AFTER CONSULTATION WITH COUNSEL AND RECOGNIZING THAT ANY DISPUTE HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS AND TIME INVOLVED IN ANY DISPUTE RESOLUTION PROCESS, THE UNDERSIGNED KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS TRANSACTION OR THIS INSTRUMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THIS TRANSACTION, OR RESPECTING ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY AND ACKNOWLEDGE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ENTERING INTO THIS LOAN TRANSACTION BY ALL PARTIES.

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13. CROSS-DEFAULT. The occurrence of an "Event of Default" under any of the Other Loan Documents shall constitute an Event of Default under this Indenture, the Note and the other Loan Documents. The occurrence of any Event of Default under the Note, this Indenture or any of the other Loan Documents shall constitute an "Event of Default" under the Other Loan Documents.

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Property of Lake County Recorder

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned as of the Effective Date.

“BORROWER”:

PEO Branch Landlord, LLC,
a Delaware limited liability company

By: _____

Name: Daniel J. Michael

Title: Chief Financial Officer

ACKNOWLEDGMENT

STATE OF INDIANA

COUNTY OF ALLEN

Before me, the undersigned, a Notary Public in and for said County and State, this 20th day of February, 2024, personally appeared Daniel J. Michael, Chief Financial Officer of PEO Branch Landlord, LLC and acknowledged that he signed the above and foregoing instrument in the name and on behalf of said limited liability company as such officer in his capacity said officer of PEO Branch Landlord, LLC, that the same is the free act and deed as such officer; and that he was duly authorized thereunto for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal at office the day and year above written.

Veronica Orme

NOTARY PUBLIC

My Commission Expires: 02/04/2025



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Ken Hennesay, Esq.

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Exhibit A
Property Description

For APN/Parcel ID(s): 45-12-28-230-003.000-030

PARCEL 1:

Lot 1 of the replat of Lots 1 and 5 in the Williamsburg, a subdivision in the Town of Merrillville, Lake County, Indiana, as per plat thereof, recorded in Plat Book 68, page 22, in the Office of the Recorder of Lake County, Indiana.

PARCEL 2:

Non-exclusive easements set out in that certain Declaration of Covenants, Easements, Conditions, Limitations and Restrictions for "The Williamsburg" dated December 5, 1989 and recorded November 14, 1990 as Instrument No. 90134149 in the Office of the Recorder of Lake County, Indiana.

Address: 8600 Broadway, Merrillville, IN 46410

Exhibit B

State Law and Additional Provisions

1.1 Business Loan. Borrower represents and warrants that the loan evidenced by the Note and secured hereby is not a consumer loan within the purview of the Uniform Consumer Credit Code of the State of Indiana (or any substitute, amended or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of Borrower, and that the indebtedness secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*, and has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

1.2 Further Assurances. By signing this Indenture, Borrower authorizes Lender to file such financing statements, with or without the signature of Borrower, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Fixtures and Personality. Borrower further authorizes Lender to file, with or without any additional signature from Borrower, as Lender may elect, such amendments and continuation statements as Lender may deem necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Fixtures and Personality. Borrower hereby expressly ratifies any financing statements that may have been filed by Lender in advance of the date hereof to perfect Lender's security interest in the Fixtures and Personality.

1.3 Third Parties. Borrower shall promptly upon request of Lender: (i) join with the Lender in notifying any third party, who is in possession of any Personality, of Lender's security interest in such Personality and obtaining the acknowledgment from such third party that it is holding such Personality for the benefit of Lender; or (ii) cooperate with Lender in obtaining control (as defined in the Uniform Commercial Code) with respect to Personality consisting of deposit accounts, letter-of-credit rights and electronic chattel paper.

1.4 Reserved.

1.5 Applicable Law. Any references to applicable law shall include, without limitation, all statutory and case law in the State, including, but not by way of limitation, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the Uniform Commercial Code - Secured Transactions, Ind. Code 26-1-9.1 (the "UCC"), as amended, modified and/or recodified from time to time; provided, however, if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection, and the priority of a security interests in any personal property are governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection, and the priority of the security interests in any such personal property.

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1.6 Property. The definition of Property provided for in this Indenture shall include all refunds and rebates with respect to any tax or utility payments, regardless of the time period to which they relate.

1.7 Secured Debt. The Secured Debt shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Borrower to Lender and/or to enforce the performance or collection of all covenants, agreements, other obligations and liabilities of the Borrower under this Indenture or the Loan Documents; provided, however, such Secured Debt shall not include any judgment(s) or final decree(s) rendered in another jurisdiction, which judgment(s) or final decree(s) would be unenforceable by a State Court pursuant to Ind. Code 34-54-3-4. The obtaining of any judgment by Lender (other than a judgment foreclosing this Indenture) and any levy of any execution under any such judgment upon the Property shall not affect in any manner or to any extent the lien of this Indenture upon the Property or any part thereof, or any liens, powers, rights and remedies of Lender, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied.

1.8 Maximum Amount Secured. This Indenture shall, pursuant to Indiana Code 32-29-1-10, as amended, secure future obligations and advances made by the Lender up to a maximum amount equal to 200% of the original Loan pursuant to the terms of the Loan Documents and hereunder and hereafter, and further, shall secure future modifications, extensions and renewals hereof and hereunder, and the lien hereof and thereof shall have the priority to which this Indenture otherwise would be entitled under Indiana Code 32-21-4-1 without regard to the fact that the future advance, modification, extension or renewal may occur after the execution hereof.

1.9 Enforceability. To the full extent applicable law limits: (i) the availability of the exercise of any of the remedies set forth in this Indenture, including without limitation the remedies involving a power of sale on the part of Lender and the right of Lender to exercise self-help in connection with the enforcement of the terms of this Indenture, or (ii) the enforcement of waivers and indemnities made by Borrower, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Indenture to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to whether such remedies, waivers or indemnities were enforceable at the time of the execution and delivery of this Indenture.

1.10 No Waiver of Deficiency. Nothing in this Indenture is intended to constitute a waiver of deficiency under Ind. Code 32-29-7-5, nor a consent by Lender to such a waiver.

1.11 Assignment of Rents and Profits. Without limiting the scope of the assignment of Rents and Profits contained in this Indenture, the assignment of Rents and Profits set forth herein shall constitute an assignment of rents as set forth in Ind. Code 32-21-4-2 and thereby creates, and Borrower hereby grants to Lender, a security interest in the Rents and Profits that will be perfected upon the recording of this Indenture.

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1.12 **No Reporting.** The Property (i) does not contain any facility or facilities that are subject to reporting (by either Borrower or any tenant or lessee thereon or other person or entity in possession or occupancy of any portion thereof) under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11022); (ii) is not the site of any underground storage tanks; and (iii) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. §9616).

1.13 **Attorney Fees.** All attorneys' fees and expenses incurred by Lender in connection with the enforcement of any of the terms of this Indenture shall include, without limitation, support staff costs and amounts expended in connection with litigation preparation and computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service, videotapes, environmental testing and audits, environmental reviews and inspections and environmental clean-up and remediation.

1.14 **Maturity Date.** The last installment or final payment upon maturity of the indebtedness secured by this Indenture becomes due and payable not later than March 1, 2049.

1.15 **Power of Attorney.** In no event shall any power of attorney granted herein give to Lender the right or the power of attorney or authority as attorney on behalf of Borrower 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 Indenture; (b) confess judgment on this Indenture for a sum of money to be ascertained in a manner other than by action of the court upon a hearing after notice to Borrower; 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.

1.16 **Receiver.** Borrower agrees that Lender shall be entitled to the appointment of a receiver as a matter of right, without notice or the requirement of posting a bond, in accordance with Indiana Code § 32-30-5-1(4)(C) in any action by Lender seeking to enforce this Indenture, including without limitation, by foreclosure.

1.17 **No Merger.** If both any leasehold estate and the fee estate for all or any portion of the Property at any time become vested in one owner, this Indenture and the lien created hereby shall not be merged, destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of the Lender as to the separate estates. In addition, upon the foreclosure of the lien of this Indenture, pursuant to the provisions hereof or applicable law, or upon any conveyance in lieu thereof, neither the fee estate, nor any leases, subleases or sub-subleases then existing with respect to all or any portion of the Property shall be merged, terminated or destroyed by application of the doctrine of

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merger, or as a result of such foreclosure or conveyance, unless in such case Lender or any purchaser at any foreclosure sale shall elect in writing to the contrary.

1.18 **Fixture Filing.** It is intended that as to the fixtures that are or are to become part of the Property hereby mortgaged, this Indenture shall be effective as a continuously perfected financing statement filed as a fixture filing from the date of the filing of this Indenture 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 Indenture shall comply with the requirements of the Uniform Commercial Code, for a mortgage instrument to be filed as a continually perfected financing statement. This Indenture also covers goods which are or are to become fixtures.

- (a) Name of Debtor and Record Owner: PEO Branch Landlord, LLC, a Delaware limited liability company
- (b) Address of Debtor and Record Owner: 127 W. Berry Street, Suite 300, Ft. Wayne, Indiana 46802, c/o Equity Investment Group, Attn: Mr. Dan Michael
- (c) Name of Secured Party: PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders from time to time of the Note (as defined herein)
- (d) Address of Secured Party: 2801 Highway 280 South, Birmingham, Alabama 35223, Attention: Investment Department