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INTOWN SUITES SOUTHPARK, LLC,
as mortgagor
(Borrower)

to

COLUMN FINANCIAL, INC.,
as mortgagee
(Lender)

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

(ALABAMA – JEFFERSON COUNTY)

Dated: February 24, 2015

Location: 1840 Southpark Drive, Hoover, AL

PREPARED BY AND UPON RECORDATION RETURN TO:

Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Attention: David W. Forti, Esq.

**THIS MORTGAGE SECURES A MAXIMUM INDEBTEDNESS IN THE STATED
PRINCIPAL AMOUNT OF \$3,932,795.70.**

**THIS MORTGAGE SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE
FILING PURSUANT TO SECTION 7-9A-502(c), CODE OF ALABAMA 1975, AS
AMENDED.**

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NCS-7009104AL3

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

This **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (this "**Security Instrument**") is made as of the 24th day of February, 2015 by **INTOWN SUITES SOUTHPARK, LLC**, a Delaware limited liability company (successor by merger with Intown Suites Southpark, LLC, a Georgia limited liability company) ("**Borrower**"), as mortgagor, each having its principal place of business at c/o Starwood Capital Group, 591 West Putnam Avenue, Greenwich, Connecticut 06830 to **COLUMN FINANCIAL, INC.**, a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (together with its successors and assigns, "**Lender**"), collectively as mortgagee.

RECITALS:

This Security Instrument is given to secure a portion of a loan in the amount of **THREE HUNDRED EIGHTY MILLION AND 00/100 DOLLARS (\$380,000,000.00)**, (the "**Loan**") made pursuant to that certain Loan Agreement, dated as of the date hereof, among Borrower, certain other borrower parties named therein (collectively, the "**Other Borrowers**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower and the Other Borrowers in favor of Lender (together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the "**Note**"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

This Security Instrument is given pursuant to the Loan Agreement, and to secure payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents.

ARTICLE I. CONVEYANCE AND GRANTS OF SECURITY

Section 1.01. **Property Mortgaged**. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to and grant a security interest to Lender and its successors and assigns in, all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) **Land**. The real property owned by Borrower and described in **Exhibit A** attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land**. All additional lands, estates and development rights now owned or hereafter acquired by Borrower for use in connection with the Land and the

development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**"), provided, that, notwithstanding the foregoing, the Improvements shall not include any such property owned by Tenants other than Borrower under the terms of their respective Leases, except to the extent Borrower has a right or interest therein;

(d) Easements. All Property Documents, easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements including, but not limited to, those arising under and by virtue of all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods), furniture, software used in or to operate any of the foregoing, and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above, provided, that, the foregoing items shall not include (except to the extent Borrower has any right, title or interest therein) (a) any property which any Tenant other than Borrower is entitled to remove pursuant to the terms of their respective Leases and/or (b) any property belonging to Tenants other than Borrower under the terms of their respective Leases;

(f) Leases and Rents. Subject to Section 1.02 hereof and the Loan Agreement, all existing and future leases, operating leases, subleases, subsubleases, lettings, licenses, concessions or other agreements made a part thereof (whether written or oral and whether now or hereafter in effect) affecting the use, enjoyment, or occupancy of all or any part

of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments, modifications or other agreements relating to such leases, operating leases, subleases, subsubleases, or other agreements entered into in connection with such leases, operating leases, subleases, subsubleases, or other agreements and every guarantee, letter of credit or any other credit support of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, and the right, title and interest of Borrower, its successors and assigns, therein, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, together with all credits, deposits, options, privileges, rights, title and interest of Borrower and its successors and assigns under any of the aforesaid agreements (collectively the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder ("Lease Guaranties"), cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including, without limitation, all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the "Rents") and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. Subject to the terms of Section 6.3 of the Loan Agreement regarding Borrower's right to and/or the application of such amounts, all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. Subject to the terms of Section 6.4 of the Loan Agreement regarding Borrower's right to and/or the application of such amounts, all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, subject to the terms of Section 6.4 of the Loan Agreement regarding Borrower's right to and/or the application of such amounts, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, upon the occurrence and during the continuance of an Event of Default, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

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

(m) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property owned by Borrower;

(n) Accounts. All Accounts (other than the Borrower Remainder Account), Account Collateral, reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, the Lockbox Account and the Cash Management Account, and all complete securities, investments, property and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(o) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Cause of Action"); and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

Section 1.02. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that, to the fullest extent permitted by applicable Legal Requirements, this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.02 and the Loan Agreement, Lender grants to Borrower a revocable license to (i) collect, receive, use, retain and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums and (ii) enforce the terms of the Leases.

Section 1.03. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as herein defined) a security interest in the Personal Property, the Accounts, and the Account Collateral to the full extent that the Personal Property, the Accounts and the Account Collateral may be subject to the Uniform Commercial Code.



Section 1.04. Pledge of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Reserve Funds, the Accounts, Net Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

Section 1.05. Fixture Filing. This Security Instrument shall also constitute a “fixture filing” for the purposes of the Uniform Commercial Code upon all of the Property which is or is to become “fixtures” (as that term is defined in the Uniform Commercial Code), upon being filed for record in the real estate records of the county wherein such fixtures are located and cross-referenced as a fixture-filing in such county real estate records. For this purpose, the following information is set forth:

- (i) Name and address of Borrower, as debtor:

Intown Suites Southpark, LLC
c/o Starwood Capital Group
591 West Putnam Avenue
Greenwich, Connecticut 06830

- (ii) Name and address of Lender, as secured party:

Column Financial, Inc.
11 Madison Avenue
New York, New York 10010

- (iii) This document covers goods which are or are to become fixtures.
- (iv) Borrower is the record owner of the Property.
- (v) Borrower’s chief executive office is located in the State of Connecticut.
- (vi) Borrower’s state of formation is Delaware.
- (vii) Borrower is a limited liability company.
- (viii) Borrower’s exact legal name is as set forth in the first paragraph of this Security Instrument.
- (ix) Borrower’s organizational identification number is 4041482.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument,

whether at maturity, by acceleration, by prepayment or otherwise, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE II. DEBT AND OBLIGATIONS SECURED

Section 2.01. Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt, other than the Excluded Obligations, as hereafter defined. Any provision of this Security Instrument or any other Loan Document to the contrary notwithstanding, this Security Instrument does not secure any of the following (collectively, the “**Excluded Obligations**”): (i) any guarantee of the Loan; (ii) any environmental indemnification agreement executed by Borrower or any other party in connection with the Loan; and (iii) any provision of this Security Instrument or any other Loan Document which would be considered the “substantial equivalent” of an environmental indemnity described in clause (ii).

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

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower and the other Borrowers contained in the Loan Agreement or any other Loan Document; and

(c) the performance of each obligation of Borrower and the other Borrowers contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Section 2.03. Debt and Other Obligations. Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the “**Obligations**.”

ARTICLE III. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.01. Payment of Debt. Borrower will pay, or cause to be paid, the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Security Instrument.

Section 3.02. Incorporation by Reference. The terms and conditions of this Security Instrument are subject to the terms and conditions of the Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the

Loan Agreement shall govern. The occurrence of an "Event of Default" under the Loan Agreement shall constitute an "Event of Default" under this Security Instrument.

Section 3.03. Insurance. Borrower shall obtain and maintain, or cause to be maintained, insurance in full force and effect at all times with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.04. Payment of Taxes, Etc. Borrower shall pay, or cause to be paid, all Taxes and Other Charges in accordance with the terms of the Loan Agreement.

Section 3.05. Intentionally Omitted.

Section 3.06. Intentionally Omitted.

Section 3.07. Intentionally Omitted.

Section 3.08. Performance of Other Agreements. Borrower shall observe and perform each and every material term to be observed or performed by Borrower pursuant to the terms of the Loan Agreement, any other Loan Documents and any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Obligations and any amendments, modifications or changes thereto, in each case subject to any applicable notice, cure and/or grace periods set forth therein.

Section 3.09. Intentionally Omitted.

Section 3.10. Intentionally Omitted.

Section 3.11. Leases. Borrower shall not (and shall not permit any other applicable Person to) enter into any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

ARTICLE IV. INTENTIONALLY OMITTED

ARTICLE V. OBLIGATIONS AND RELIANCES

Section 5.01. Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 5.02. No Reliance on Lender. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property.

Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 5.03. No Lender Obligations.

(a) Notwithstanding the provisions of Section 1.01(f), (l) and (m) or Section 1.02 hereof, Borrower's assignment to Lender of all Rents and Leases shall not be construed (i) to make Lender a "mortgagee in possession" of the Property or (ii) to obligate Lender to take any action with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents or the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower, unless and until, in the case of both immediately preceding clauses (i) and (ii), (a) Lender completes foreclosure of the Property, (b) Borrower transfers the Property by deed in lieu with the advance written consent of Lender, or (c) Lender otherwise takes title to the Property (each of the events described immediately preceding clauses (a), (b) and (c), a "**Control Event**"). Without limiting the foregoing, except to the extent resulting from the gross negligence or willful misconduct of Lender, this assignment shall not operate to place on Lender any obligation or liability for: (i) the control, care, management or repair of the Property prior to the occurrence of a Control Event; (ii) for carrying out any of the terms and conditions of the Leases prior to the occurrence of a Control Event; (iii) any waste committed on the Property by tenants or any other parties prior to the occurrence of a Control Event; (iv) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials; or (v) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property prior to the occurrence of a Control Event. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by applicable Legal Requirements. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.


Section 5.04. Reliance. Borrower recognizes and acknowledges that in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (i) Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 4 of the Loan Agreement, as conditioned, qualified, supplemented and/or limited as set forth herein, without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (ii) that such reliance existed on the part of Lender prior to the date hereof; (iii) that the warranties and representations are a material inducement to Lender in accepting the Note, the Loan Agreement,

this Security Instrument and the other Loan Documents; and (iv) that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 4 of the Loan Agreement.

ARTICLE VI. FURTHER ASSURANCES

Section 6.01. Recording of Security Instrument, Etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Loan Agreement, this Security Instrument, the other Loan Documents, and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 6.02. Further Acts, Etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable Legal Requirements, or for facilitating the sale and transfer of the Loan (or any portion thereof) and the Loan Documents in connection with a "Secondary Market Transaction" as described in Section 9.1 of the Loan Agreement, provided, that, same does not increase Borrower's obligations or diminish Borrower's rights hereunder or under any other Loan Document in any material respect. Borrower, promptly following written demand, will execute and deliver and hereby authorizes Lender to file one or more financing statements or execute in the name of Borrower to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, as required to maintain the security interest of Lender in the Property or any Collateral. Upon the occurrence and during the continuance of an Event of Default, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies in connection with the Loan available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 6.02.


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Section 6.03. Changes in Tax, Debt Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax (excluding any franchise tax, income tax or other similar tax), either directly or indirectly, on the Debt or Lender's interest in the Property, other than taxes measured by the gross or net income of Lender, Borrower will pay the tax, with interest and penalties thereon, if any, subject to Borrower's right to contest such taxes as expressly provided in the Loan Agreement. If the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than one-hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than one-hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Loan Agreement, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any, subject to Borrower's right to contest as expressly provided in the Loan Agreement.

Section 6.04. Intentionally Omitted.

**ARTICLE VII.
DUE ON SALE/ENCUMBRANCE**

Section 7.01. Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 7.02. No Sale/Encumbrance. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

**ARTICLE VIII.
PREPAYMENT**

Section 8.01. Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

**ARTICLE IX.
RIGHTS AND REMEDIES**

Section 9.01. Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable Legal Requirement in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions in accordance with applicable Legal Requirements and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by any applicable Legal Requirement, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to a foreclosure sale, receivership sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by applicable Legal Requirements;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement, or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, Guarantor or of any Person liable for the payment of the Debt;




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(h) subject to applicable Legal Requirements, the license granted to Borrower under Section 1.02 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) intentionally omitted; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) collect the Rents and other receipts from the Property directly from tenants or Manager and apply the Rents ~~and~~ other receipts from the Property to operating expenses of the Property and the excess if any toward the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all out-of-pocket expenses (including reasonable attorneys' fees) actually incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

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

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

(i) Taxes and Other Charges;


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- (ii) Insurance Premiums;
 - (iii) interest on the unpaid principal balance of the Note;
 - (iv) amortization of the unpaid principal balance of the Note; or
 - (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;
- (k) surrender the Policies, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;
- (l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;
- (m) foreclose and apply the proceeds of any recovery as a result of any foreclosure or receivership sale to the Debt in accordance with Section 9.02 of this Security Instrument or to any deficiency under this Security Instrument;
- (n) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 9.02 of this Security Instrument or to any deficiency under this Security Instrument; or
- (o) pursue such other remedies as Lender may have under applicable Legal Requirements.

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

Section 9.02. Application of Proceeds. Upon the occurrence and during the continuance of any Event of Default, the purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper or as otherwise required under applicable law.

Section 9.03. Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand (except as otherwise expressly set forth in the Loan Agreement) on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may

deem necessary to protect the security hereof. In connection with the foregoing, to the extent permitted by applicable Legal Requirements, Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by applicable Legal Requirements), with interest as provided below, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses actually incurred by Lender in remedying such Event of Default shall bear interest at the Default Rate for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender and shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor. The above notwithstanding, the repayment of expenditures by Lender to cure a default under an Excluded Obligation shall not be secured by this Security Instrument.

Section 9.04. Actions and Proceedings. Subject to the terms and conditions of the Loan Agreement, during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of any Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 9.05. Recovery of Sums Required to be Paid. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

Section 9.06. Other Rights, Etc.

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

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



(c) Subject to applicable Legal Requirements, Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 9.07. Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 9.08. Intentionally Omitted.

Section 9.09. Right of Entry. Subject to the rights of Tenants pursuant to the express terms of their Leases and the terms of the Loan Agreement, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times and upon reasonable notice.

Section 9.10. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, and the performance and discharge of the Obligations.

Section 9.11. Bankruptcy.

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



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

ARTICLE X. INDEMNIFICATIONS

Section 10.01. General Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Legal Requirements; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument; provided, that, to the extent any of the above matters constitute Excluded Obligations such Excluded Obligations shall not be secured by this Security Instrument. Any amounts payable to Lender by reason of the application of this Section 10.01 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid; provided however, that Borrower shall not have any indemnification obligations or liabilities to the Indemnified Parties with respect to any and all Losses arising directly out of: (a) the presence of Hazardous Materials in, on under or about any Property (or any other condition which would give rise to liability under the Environmental Indemnity Agreement) to the extent first present or first occurred after the date that Lender or Lender's nominee acquires title to such Property whether by foreclosure, exercise of power of sale, acceptance of a deed-in-lieu of foreclosure or otherwise, if such presence or other condition is unrelated to any act or omission of Borrower; or (b) the gross negligence or willful misconduct of any Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

Section 10.02. Mortgage and/or Intangible Tax. Subject to the terms of the Loan Agreement, Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Loan Agreement, the Note or any other Loan Document, other than taxes measured by the gross or net income of the Lender.

Section 10.03. Environmental Indemnity. Simultaneously with this Security Instrument, Borrower and Guarantor have executed and delivered the Environmental Indemnity. The Environmental Indemnity is an Excluded Obligation.

ARTICLE XI. WAIVERS

Section 11.01. Waiver of Counterclaim. Subject to the terms and provision of the Loan Agreement, Borrower hereby waives, to the extent permitted by applicable Legal Requirements, the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, the Loan Agreement, any of the other Loan Documents, or the Obligations.

Section 11.02. Marshalling and Other Matters. Subject to the terms and provision of the Loan Agreement, Borrower hereby waives, to the extent permitted by applicable Legal Requirements, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable Legal Requirements.

Section 11.03. Waiver of Notice. Subject to the terms and provision of the Loan Agreement, to the extent permitted by applicable Legal Requirements, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Lender to Borrower, and (b) with respect to matters for which Lender is required by any applicable Legal Requirements to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.04. Waiver of Statute of Limitations. Subject to the terms and provision of the Loan Agreement, to the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by applicable Legal Requirements, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 11.05. Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly and specifically provided herein or in any of the other Loan Documents.

Section 11.06. Waiver of Trial by Jury. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, BORROWER AND, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION RELATED TO OR ARISING IN CONNECTION THEREWITH OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER (AS THE CASE MAY BE), ITS OFFICERS, EMPLOYEES, DIRECTORS, ATTORNEYS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF BORROWER AND, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER, IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.**

Section 11.07. Waiver of Foreclosure Defense. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

ARTICLE XII. EXCULPATION

Section 12.01. Exculpation. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement and the other Loan Documents shall be limited as set forth in Section 9.4 of the Loan Agreement.

ARTICLE XIII. SUBMISSION TO JURISDICTION

Section 13.01. Submission to Jurisdiction. With respect to any claim or action arising hereunder or under the Note or the other Loan Documents, each of Borrower and, by

virtue of its acceptance of this Security Instrument, Lender (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York, New York, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Security Instrument brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

ARTICLE XIV. APPLICABLE LAW

Section 14.01. CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 14.02. Provisions Subject to Applicable Legal Requirements. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable Legal Requirement and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable Legal Requirement.

ARTICLE XV. DEFINITIONS

Section 15.01. General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note," shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees", "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 15.02. Headings, Etc. The headings and captions of various articles and sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**ARTICLE XVI.
MISCELLANEOUS PROVISIONS**

Section 16.01. No Oral Change. This Security Instrument and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 16.02. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 16.03. Inapplicable Provisions. If any term, covenant or condition of this Security Instrument or any other Loan Document, is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument or the other Loan Documents, as the case may be, shall be construed without such provision.

Section 16.04. Successors and Assigns. This Security Instrument shall be binding upon, and shall inure to the benefit of, Borrower and Lender and their respective successors and assigns.

Section 16.05. Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 16.06. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 16.07. Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 10.6 of the Loan Agreement.

**ARTICLE XVII.
STATE-SPECIFIC PROVISIONS**

Section 17.01 Inconsistencies; Conflicts. In the event of any inconsistencies and/or conflicts between the terms and conditions of this Article XVII and the other provisions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

Section 17.02 Power of Sale. In addition to the rights and remedies set forth in Article IX hereof, if an Event of Default exists, this Security Instrument shall be subject to

foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) under the power of sale which is hereby given to Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is land to be sold in more than one county, publication shall be made in all counties where the land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held sometime during the applicable legal hours of sale on the day designated for the exercise of the power of sale hereunder. Lender may bid at any sale held under this Security Instrument in the form of cash, cash equivalents and/or cancellation of all or any part of the Obligations, or any combination thereof, and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Security Instrument shall have been terminated as provided herein.


Section 17.03 Foreclosure Deeds. To the extent permitted by applicable law, Borrower hereby authorizes and empowers Lender, or any person conducting the sale for Lender, at any foreclosure sale had hereunder, for and in the name of Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

Section 17.04 Multiple Sales. If an Event of Default exists, Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Security Instrument, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Security Instrument shall remain in full force and effect as though no sale had been made under this Article 17. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

Section 17.05 Additional Fixture Filing Language. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Property and is to be filed and recorded in, among other places, the real estate records of the county where the Property is located. For this purpose the following information is included: The Property is described by item or type in Section 1.01. Borrower is the debtors, and Lender is the secured party. The name of the debtor (Borrower) and the secured party (Lender) are given in the first paragraph of this Security Instrument. The mailing addresses of Lender set out in the first paragraph hereof are addresses of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in the first paragraph hereof is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in Section 1.01 and in this Section 17.05. The real estate to which the goods are or are to be affixed is described in Exhibit A.

Section 17.06 Document under Seal. Borrower acknowledges having read all the provisions of this Security Instrument, and Borrower agrees to its terms. This Security Instrument is given under seal and it is intended that this Security Instrument is and shall constitute and have the effect of a sealed instrument according to law.

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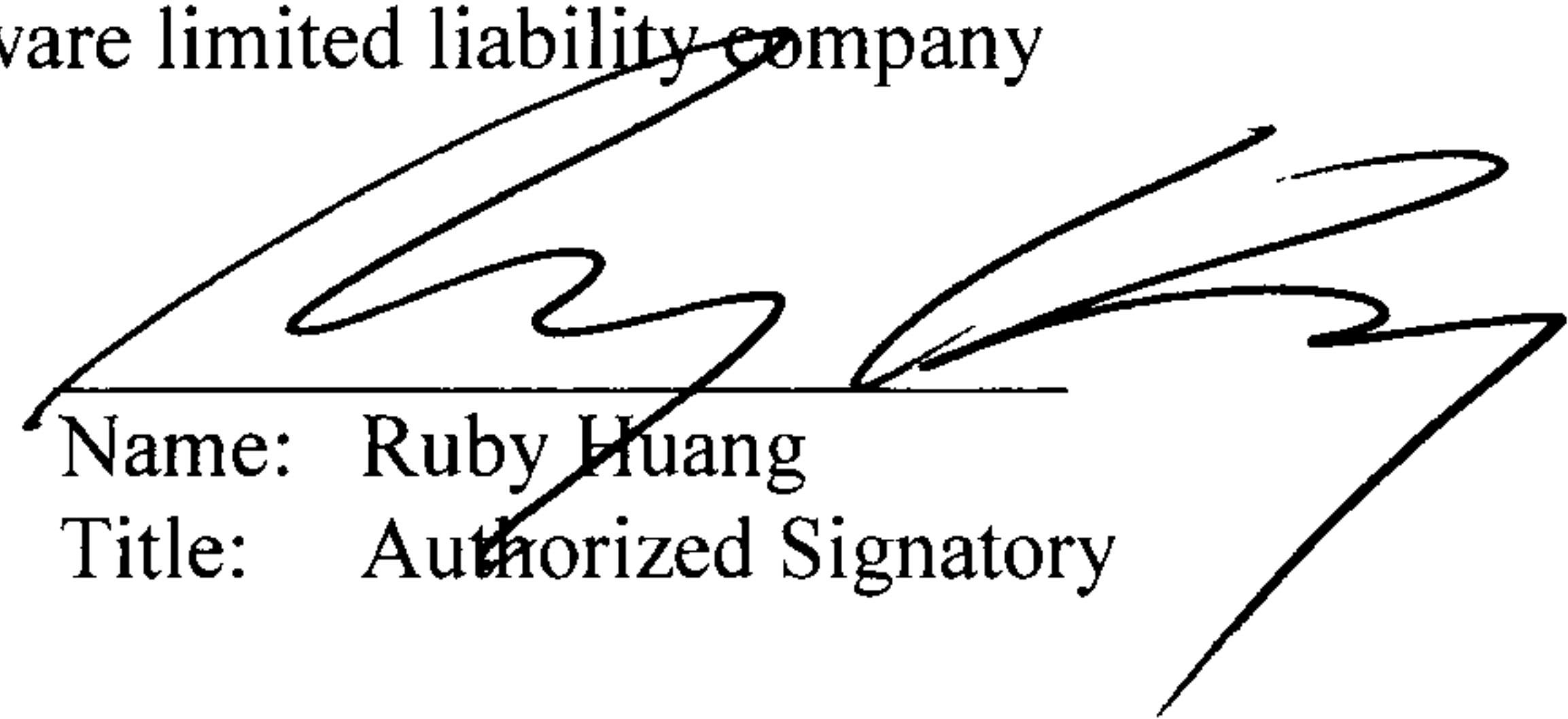

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed
the day and year first above written.


BORROWER:

INTOWN SUITES SOUTHPARK, LLC, a
Delaware limited liability company

By:



Name: Ruby Huang
Title: Authorized Signatory



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ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Donna M. Galanti Notary Public in and for said County in said State, hereby certify that RUBY HUANG, whose name as AUTHORIZED SIGNATORY of INTOWN SUITES SOUTHPARK, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such AUTHORIZED SIGNATORY and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 19th day of February, 2015.

Donna M. Galanti
NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

DONNA M. GALANTI
Notary Public, State of New York
No. 01GA4765274
Qualified in Queens County
Commission Expires 1/30/20 19



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Shelby Cnty Judge of Probate, AL
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EXHIBIT A

LEGAL DESCRIPTION

1840 SOUTHPARK DRIVE, BIRMINGHAM, AL

Lot 9-A, according to a Resurvey of Lots 9 and 10, Southpark, as recorded in Map Book 22, Page 17, in the Office of the Judge of Probate of Shelby County, Alabama.



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