

all times hereafter, and with full power to cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Developer to cancel the same, to elect to disaffirm any Lease or sublease made subsequent to the Second Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, renewals, replacements, alteration, additions, betterments and improvements to the Premises that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to the Surety's possession, operation and management thereof and to receive all such rents, issues, profits, revenues and other income.

5. **Indemnity.** The Surety shall not at any time (regardless of any exercise by the Surety, or rights of the Surety to exercise, any powers herein conferred) be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases or rental agreements relating to the Premises, and the Developer shall and does hereby agree to indemnify and hold the Surety harmless of and from any and all liability, loss or damage which the Surety may or might incur under or by reason of (i) any Leases, (ii) the assignment thereof, (iii) any action taken by the Surety or its agents hereunder, unless constituting willful misconduct or gross negligence, or (iv) claims and demands which may be asserted against the Surety by reason of any alleged obligations or undertakings on its part to (or to cause the Developer to) perform or discharge any of the terms, covenants or agreements contained in the Leases.

6. **Application of Proceeds.** The Surety in the exercise of the rights and powers conferred upon it by this Assignment of Rents shall have full power to use and apply the rents, issues, profits, revenues and other income of the Premises to the payment of or on account of the following, in such order as the Surety may determine:

(a) operating expenses of the Premises, including costs of management and leasing thereof (including reasonable compensation to the Surety and its agents, and lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), establishing any claims for damages, and premiums on insurance with respect to the Premises; it being expressly understood and agreed that the Surety in the exercise of such powers may so pay any claims purporting to be due for any operating expenses of the Premises;

(b) taxes and special assessments now due or which may hereafter become due on the Premises;

(c) the costs of all repairs, decorating, renewals, replacements, alterations, additions, or betterments, and improvements of the Premises, including without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Premises in such condition as will, in the reasonable judgment of the Surety, make it readily rentable; and

(d) any indebtedness evidenced by the Second Secured Note or secured or guaranteed by the Second Mortgage Documents or any of the other Loan Documents or any deficiency which may result from any foreclosure sale or which is due and owing under the Second Mortgage Documents.