

which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the income or profits derived by any person from the property leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of gross receipts or gross sales), and that any such purported lease, sublease, license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy or utilization of any part of the Mortgaged Premises, and Mortgagor further agrees to ~~use~~ its best efforts to enforce such provisions.

12. Advances. All advances made by the Mortgagee pursuant to the Building Loan Agreement shall be secured by this Mortgage and shall increase the unpaid balance of the Note by the amount of such advance. The Mortgagor will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement before using any part of the total of the same for any other purpose. If the Premises are located in New York, the covenants of this Article are made pursuant to and in compliance with Section 13 of the Lien Law.

13. Further Assurances. That Mortgagor will, at the cost and expense of Mortgagor and without any expense to the Mortgagee, do, execute, acknowledge and deliver all and every such future acts, deeds, conveyances, mortgages, assignments, notices of assignments,