

obligation of Mortgagor hereunder or thereunder, Mortgagee, so long as it acts reasonably and in good faith, shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any default on the part of Mortgagor under this Mortgage, any "Event of Default" under the Loan Agreement or any default under any other instrument evidencing Secured Obligations.

(d) Subrogation. To the extent that Mortgagee, after the date hereof, pays any sum due under any provision of law or any instrument or documents creating any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on the Collateral equal in priority to that discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence for the benefit of Mortgagee to secure the Secured Obligations. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendor's liens, liens, charges, encumbrances, rights and equities on the Premises to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under any instrument evidencing Secured Obligations.

(e) No Merger. Unless Mortgagee shall otherwise expressly consent beforehand in writing, the fee title to any part of the Premises demised by any lease and the leasehold estates thereunder shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party by purchase or otherwise, and in the event the owner or holder of the leasehold estate created by any such lease becomes the owner of the fee title to the property demised thereby, this Mortgage, without further act, deed, conveyance, mortgage, deed of trust or other assurance on behalf of said owner or holder, shall be deemed to have covered and spread to the fee estate of the property demised thereby and in the event thereof, upon request of Mortgagee without cost or expense to Mortgagee or any Secured Party, the then owner or holder of said lease will execute, acknowledge and deliver all and every such further acts, conveyances, deeds, mortgages, deeds of trust and assurances as Mortgagee shall reasonably require for purposes of accomplishing the subjection of the fee estate to this Mortgage and the spread of this Mortgage thereto.

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