

from again pursuing the same remedy so long as any amount remains due and unpaid.

4.4 Remedies Where No Amount of Secured Indebtedness Due. In the event of any breach of this Agreement which constitutes an Event of Default hereunder, Mortgagee may, if it so desires, without regard to whether any amount of the Secured Indebtedness is then due and unpaid, and without resort to any right of acceleration but without waiving such right:

(a) File and prosecute suit against Mortgagor or any other person legally answerable therefor to recover any actual damages sustained as a result of any breach of this instrument, or to enforce compliance herewith, and whether or not it does so.

(b) Cure such default for the account of Mortgagor, entering upon and taking possession of the Mortgaged Property to such extent as may be necessary to accomplish the same. All sums expended and costs incurred by Mortgagee in so curing shall, at the election of Mortgagee, either (i) be deemed advances made to Mortgagor pursuant to the Loan Agreement, or (ii) constitute additional indebtedness of Mortgagor to Mortgagee, due on demand, to which the provisions of Sections 3.6 and 3.7 shall apply, and, in either case, shall be part of the Secured Indebtedness. The rights of Mortgagee under this Section are cumulative of and shall not preclude the simultaneous or subsequent resort to any rights or remedies otherwise provided in this Article.

4.5 Receivership. Should legal proceedings be instituted for collection of the Secured Indebtedness or any part thereof, or for foreclosure of the lien hereof, then Mortgagee shall have the right to have a receiver appointed to take possession of and operate the Mortgaged Property, who, after deducting all charges and expenses attending such proceedings and of the execution of the said trust as receiver, shall apply the residue of the said rents and profits towards the payment of the debt secured hereby. Mortgagor hereby waives any requirement for a showing of a necessity for any such receivership and agrees to pay the costs thereof.

4.6 Possession Upon Default. At any time when any Event of Default is continuing hereunder, or when otherwise specifically authorized hereby, Mortgagee may, without prejudice to any other right or remedy of Mortgagee, enter and take possession of the Mortgaged Property, or any part thereof and manage and control the same to the exclusion of Mortgagor. In such event, Mortgagor shall deliver to Mortgagee upon demand any part of the Mortgaged Property which is personal property, and all books and records concerning the Mortgaged Property. Mortgagee shall never be liable to Mortgagor or to Mortgagor's successors and assigns for any act done or omitted to be done by Mortgagee while in possession of the Mortgaged Property pursuant to this Section. Mortgagor shall reimburse Mortgagee for any expenses incurred by Mortgagee in taking possession of, managing and operating the Mortgaged Property, and in constructing or operating, promoting and selling the Improvements, pursuant to this Section or to related provisions of other Loan Documents prior to foreclosure, and the liability of Mortgagor in this respect shall be part of the Secured Indebtedness.

4.7 Possession after Sale. If the Mortgaged Property or any part thereof is sold pursuant to any foreclosure, Mortgagor shall peaceably deliver possession thereof to the purchaser at such sale. If Mortgagor or any person claiming under Mortgagor remains in possession of the Mortgaged Property or any part thereof, Mortgagor or such person shall be deemed a tenant at sufferance of such purchaser.