

encumbering of the Mortgaged Property; provided, however, that the consent of the Surety shall not be required for any sale, transfer or encumbrance of the Premises or Mortgaged Property permitted by Section 17.

SECTION 3. LIENS.

3.1. Prohibition.

Subject to Section 4 hereof and unless otherwise consented to in writing by the Surety, the Developer shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Premises (which liens are herein defined as "Mechanic's Liens") and excepting only Permitted Encumbrances.

3.2. Contest of Mechanic's Liens Claims.

Notwithstanding the provisions of Section 3.1, the Developer, or any party obligated to the Developer to do so, may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises, or any part thereof, or any interest therein, to satisfy such Mechanic's Liens; (ii) that, within 10 days after the Developer has been notified of the filing of such Mechanic's Liens, the Developer shall have notified the Surety in writing of the Developer's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens; and (iii) that the Developer shall have obtained a title insurance endorsement over such Mechanic's Liens insuring the Surety against loss or damage by reason of such Mechanic's Liens or the Developer shall deposit and keep on deposit with the Surety, a sum of money or other security satisfactory to the Surety sufficient, in the judgment of Surety, to pay in full such Mechanic's Liens and all interest thereon. Such deposits will be deposited by the Surety in an interest-bearing book account, if available, as directed by the Developer. In case the Developer shall fail to maintain such deposit or to prosecute such contest or cause such contest to be prosecuted with reasonable diligence or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount on deposit with the Surety, the Surety may, at its option, apply the money as deposited in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, the Developer shall forthwith, upon demand, deposit with the Surety a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. In the event the contest of a Mechanic's Lien claim is ultimately resolved in favor of the claimant, the Surety shall apply the money so deposited in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided the Developer is not then in Default hereunder) when furnished with evidence satisfactory to Surety of the amount of payment to be made. Any coverage remaining in the control of the Surety shall be applied to the payment of any indebtedness then due and unpaid under the Second Mortgage Documents with any balance to be paid to the Developer, provided the Developer is not then in Default hereunder or thereunder.

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