



BK: 2018 PG: 787  
 Recorded: 3/13/2018 at 9:37:16.0 AM  
 Fee Amount: \$222.00  
 Revenue Tax:  
 LISA SMITH RECORDER  
 Madison County, Iowa

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,**

**ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING**

Recorder's Cover Sheet

**Preparer Information:**

Stephen Schweiger, Esq., Goulston & Storrs PC, 885 Third Avenue, 18<sup>th</sup> Floor, New York, NY 10022  
 (212) 878-5139

**Owner/Taxpayer Information:**

Mothership Master Propco KB, LLC  
 5600 S. Quebec Street, Suite 220A  
 Greenwood Village, Colorado 80111

**Return Document To:**

Stephen Schweiger, Esq., Goulston & Storrs PC, 885 Third Avenue, 18<sup>th</sup> Floor, New York, NY 10022

**Mortgagor:**

Mothership Master Propco KB, LLC

When Recorded Return To: \_\_\_\_\_  
 First American Title Insurance Company  
 National Commercial Services  
 3031 N. Rocky Point Drive West, Ste. 550  
 Tampa, FL 33607  
 File No: NCS 867834IA6

**Mortgagee:**

KeyBank National Association  
 127 Public Square, 8th Floor  
 Cleveland, Ohio 44114

**Legal Description:** See Exhibit "A"

**Document or instrument number of previously recorded documents:**

*Error! Unknown document property name.*

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*This document prepared by;  
After recording return to:*

Stephen Schweiger, Esq.  
Goulston & Storrs PC  
885 Third Avenue, 18<sup>th</sup> Floor  
New York, New York 10022

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF  
CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING**

(Property Located at 121 E. Lane Street, Winterset, Madison County, Iowa)

THIS INSTRUMENT SECURES PAYMENT OF FUTURE ADVANCES.

FOR PURPOSES OF FILING THIS INSTRUMENT AS A FINANCING STATEMENT AND  
FIXTURE FILING, THE MAILING ADDRESS OF THE MORTGAGOR (DEBTOR) AND  
THE MAILING ADDRESS OF THE MORTGAGEE (SECURED PARTY) ARE AS  
FOLLOWS:

**MORTGAGOR (DEBTOR):  
MOTHERSHIP MASTER PROPCO  
KB, LLC  
5600 S. Quebec Street, Suite 220A  
Greenwood Village, Colorado 80111**

**MORTGAGEE (SECURED PARTY):  
KEYBANK NATIONAL  
ASSOCIATION, as Administrative Agent  
127 Public Square, 8th Floor  
Cleveland, Ohio 44114**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "*Security Instrument*") is made as of February 28, 2018, by MOTHERSHIP MASTER PROPCO KB, LLC, a Delaware limited liability company, ("*Mortgagor*"), whose address is 5600 S. Quebec Street, Suite 220A, Greenwood Village, Colorado 80111, in favor of KEYBANK NATIONAL ASSOCIATION, as Administrative Agent (in such capacity, together with its successors and assigns, "*Mortgagee*" or "*Administrative Agent*"), whose address is 127 Public Square, 8th Floor, Cleveland, Ohio 44114, for itself and for each of the financial institutions and their respective successors and assigns which from time to time shall be a "Lender" under the Credit Agreement (as hereinafter defined). Capitalized terms used in this Security Instrument without definition have the meanings given to them in the Credit Agreement referred to below.

**NOTICE TO RECORDER: THIS DOCUMENT CONSTITUTES A FIXTURE FILING UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING.**

**NOTICE: This mortgage secures credit in the amount of \$370,000.00. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.**

This is a purchase money mortgage as defined in the Code of Iowa.

**Notice to Mortgagor: ADJUSTABLE RATE:** The Note secured by this Security Instrument contains provisions for a variable interest rate. The Note also includes a revolving line of credit. Under the revolving line, Administrative Agent on behalf of the Lenders will make periodic advances to Mortgagor, which may be repaid and subsequently re-advanced, subject to the terms and conditions of the Note and the other Loan Documents referenced below. The unpaid balance may from time to time be reduced to zero. A zero balance does not terminate the revolving line and the lien of this Security Instrument will remain in full force notwithstanding such reductions. However, nothing herein shall be construed as obligating Administrative Agent and/or Lenders to make any future advance to Mortgagor.

**1. GRANT AND SECURED OBLIGATIONS.**

**1.1 Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, warrants, and assigns to Mortgagee, with power of sale (to the extent permitted by applicable law) and with right of entry and possession, and grants Mortgagee a security interest in all estate, right, title and interest that Mortgagor now has or may later acquire in and to the following property (all or any part of such estate, right, title and interest that Mortgagor now has or may later acquire in and to such property, or any interest of Mortgagor in all or any part of it, as the context may require, the *"Property"*):

**1.1.1** The real property located in the County of Madison, State of Iowa, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to such real property (the *"Premises"*);

**1.1.2** All buildings, structures, and improvements now located or later to be constructed on the Premises (the *"Improvements"* and, together with the Premises, the *"Project"*);

**1.1.3** All existing and future appurtenances, privileges, easements, franchises, and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances that may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant), and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed;

**1.1.4** Subject to, and without in any way limiting the absolute assignment in Section 2 hereof, all existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made

in connection therewith, and any agreement (written or oral) between Mortgagor or its agents, and any tenant, lessee, occupant, licensee, guest or invitee pursuant to which Mortgagor, or its agent, agrees to permit such tenant, lessee, occupant, licensee, guest or invitee to park in or at the Project (each a "*Lease*", and collectively, the "*Leases*");

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises or Improvements;

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment, and machinery now or hereafter owned by Mortgagor and now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration, and plumbing fixtures and equipment now or hereafter owned by Mortgagor, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Security Instrument, and any manufacturer's warranties with respect thereto;

1.1.7 All building materials, equipment, work in process and other personal property (excluding Contents (hereinafter defined)) of any kind now or hereafter owned by Mortgagor, whether stored on the Premises or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

1.1.8 All of Mortgagor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserve accounts, impound accounts, and any other bank accounts of Mortgagor relating to the Project or the operation thereof;

1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of a Lender), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally;

1.1.10 All insurance policies and the proceeds thereof pertaining to the Premises, the Improvements, or any other property described in this Section 1.1, and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any property described in this Section 1.1 into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain

proceeding or any settlement in lieu thereof, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described in this Section 1.1, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

1.1.11 All of Mortgagor's right, title, and interest in and to any and all units, common elements, declarant rights, development rights, and any other rights relating to the Premises or the Improvements, whether now existing or subsequently arising, under any and all condominium declarations, covenants, conditions, and restrictions, development agreements, or other agreements or declarations now existing or later executed relating to the Premises or Improvements, and all laws now existing or later enacted relating to the Premises or Improvements, including those relating to condominiums, and all rights of Mortgagor in connection with any owner's association, condominium association, architectural control committee, or similar association or committee, established in connection with the Project, including Mortgagor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

1.1.12 All of Mortgagor's right, title, and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Mortgagor of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an **"Interest Rate Agreement"**), all whether now or hereafter entered into by Mortgagor with respect to the Loan, including any and all amounts payable to Mortgagor, any deposit account or accounts with Mortgagee or any Lender in the name of Mortgagor for deposit of payments to Mortgagor in connection with any Interest Rate Agreement or swap transaction, and any and all funds now or hereafter on deposit therein;

1.1.13 All of Mortgagor's right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements, including that certain Management Agreement dated as of February \_\_, 2018 by and between Mortgagor and RV Horizons, as the same may be amended, modified, supplemented and/or assigned from time to time in accordance with the terms of the Credit Agreement; (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (hereinafter defined); (iv) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clauses (i) through (iii) of this Section 1.1.13; and (v) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (iv) of this Section 1.1.13 (collectively, the **"Contracts"**);

1.1.14 All of Mortgagor's right, title, and interest in and to all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements;

1.1.15 To the fullest extent not prohibited by applicable laws, all of Mortgagor's rights in all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements (the "**Project Licenses**");

1.1.16 All books, records, and data pertaining to any and all of the property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data ("**Books and Records**");

1.1.17 All of Mortgagor's right, title and interest in and to all Manufactured Homes now or later located, constructed, installed or situated on the Premises, whether constituting real or personal property under applicable law, whether or not located outside or in a Manufactured Home Community and whether or not placed on or installed on, or affixed to, a permanent foundation;

1.1.18 All products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above.

1.1.19 Notwithstanding anything to the contrary set forth in this Security Instrument, the definition of Property specifically excludes, and Mortgagor does not grant a security interest in, any personal property that constitutes 'contents' for which flood insurance would be required under applicable law ("**Contents**") if such Contents were collateral for the Loan.

## 1.2 Secured Obligations.

1.2.1 Mortgagor makes the grant, conveyance, assignment, and mortgage set forth above, and grants the security interests and liens set forth below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

1.2.1.1 Payment of all obligations at any time owing under certain promissory notes of even date herewith (as may be amended from time to time), payable by Mortgagor and certain other borrowers from time to time party to the Credit Agreement (jointly and severally, "**Borrower**"), as maker, in the stated maximum aggregate principal amount of SEVENTY-ONE MILLION Dollars (\$71,000,000.00) (as such amount may be increased from time to time) to the order of Lenders and with a maturity date of February 26, 2021, subject to the exercise of two (2) successive one (1) year extension options in accordance with the terms and conditions of the Note and the Loan Agreement. (as they may be amended, restated,

modified, or extended, the "*Note*"), subject to Borrower's exercise of any extension options available under the terms and conditions of the Credit Agreement (hereinafter defined);

1.2.1.2 Payment and performance of all obligations of Mortgagor under this Security Instrument;

1.2.1.3 Payment and performance of all obligations of Borrower under a Credit Agreement of even date herewith among Borrower, Administrative Agent and the Lenders (as it may be amended, restated, or modified, the "*Credit Agreement*");

1.2.1.4 Payment and performance of any obligations of Borrower under any Loan Documents that are executed by Borrower, but specifically excluding any obligations of Borrower under any separate indemnity agreement executed in connection with the Loan (each an "*Indemnity Agreement*"), including any environmental, hazardous materials, or building access indemnity agreement;

1.2.1.5 Payment and performance of all obligations of Borrower arising from any Interest Rate Agreements, including any Cash Settlement Amount or any payments on Early Termination payable by Borrower under any Swap Transaction or Confirmation. Capitalized terms used in this subsection not otherwise defined in this Security Instrument are defined in the *2006 ISDA Definitions* published by the International Swap Dealers Association, Inc.;

1.2.1.6 Payment and performance of all other obligations that Borrower or any successor in ownership of all or part of the Property may agree to pay and/or perform for the benefit of Administrative Agent and/or the Lenders, when a writing evidences the parties' agreement that the advance or obligation is secured by this Security Instrument;

1.2.1.7 Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the foregoing Secured Obligations; and

1.2.1.8 Payment and performance of all future advances with respect to any of the foregoing Secured Obligations.

1.2.2 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of this Security Instrument and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Credit Agreement that permit borrowing, repayment and re-borrowing, or that provide for a change in the interest rate of any Secured Obligation.

1.3 Notwithstanding anything contained in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument at the time of execution hereof or which under any contingency may become secured by this Security Instrument at any



time hereafter is **THREE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$370,000.00)** plus (a) taxes, charges or assessments that may be imposed by law upon the Premises; (b) premiums on insurance policies covering the Premises; and (c) expenses incurred in upholding the lien of this Security Instrument, including, but not limited to (1) the reasonable actual expenses of any litigation to prosecute or defend the rights and lien created by this Security Instrument, (2) any amount, cost, or charge to which Security Instrument becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority, (3) interest at the default rate (or regular interest rate), and (4) any late payment and prepayment penalties.

#### **1.4 Liens and Security Interest in Property.**

**1.4.1 Further Assurances.** Mortgagor shall take such further actions, and execute and/or deliver to Mortgagee such additional financing statements, amendments, assignments, agreements, documents, certificates, supplements, powers and instruments, as Mortgagee deems necessary, convenient, proper or appropriate in order to create, continue, perfect, preserve and protect the liens and security interests in the Property and preserve, perfect and enforce any rights and interests granted to Mortgagee hereunder. Mortgagor further agrees to cooperate with Mortgagee and take such further action in perfecting all liens and security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, convenient, proper or appropriate in connection with the preservation, perfection, enforcement or exercise of any of the rights, powers and remedies of Mortgagee hereunder.

**1.4.2 Powers of Mortgagee.** Mortgagor appoints Mortgagee its true attorney in fact, and authorizes Mortgagor, to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Security Instrument and may be exercised from time to time by Mortgagee's officers and employees, or any of them, whether or not Mortgagor is in default or any Event of Default has occurred or is continuing: (a) to perform any obligation of Mortgagor hereunder in Mortgagor's name or otherwise, (b) to exercise all rights, powers and remedies which Mortgagor would have, but for this Security Instrument, with respect to all Property and (c) to take any action and execute, file, record, or deliver any agreement, document, certificate, or instrument which Mortgagee may deem necessary, convenient, proper or appropriate in order to create, continue, perfect, preserve and protect the liens and security interests in the Property, to preserve, perfect and enforce any rights and interests granted to Mortgagee hereunder or to accomplish the purposes of this Security Instrument (but Mortgagee shall not be obligated to and shall have no liability to Mortgagor or any third party for failure to take or do any of the foregoing actions). Mortgagor agrees to pay or reimburse Mortgagee for all Mortgagee's costs and expenses incurred in exercising any of the foregoing powers or taking any of the foregoing actions or otherwise enforcing or preserving any rights under this Security Instrument, including the fees and other charges of counsel (including the allocated fees and expenses of internal counsel) to Mortgagee.

## **2. ABSOLUTE ASSIGNMENT OF LEASES AND RENTS.**

**2.1 Assignment.** Mortgagor hereby irrevocably, absolutely, presently, and unconditionally transfers, assigns, and conveys to Mortgagee all of the right, title and interest of Mortgagor in and to (a) the Leases; and (b) all rents, issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the

Property (collectively, "**Rents**"), including minimum rents, additional rents, advance rents, termination payments, bankruptcy claims, forfeited security deposits, common area maintenance charges, parking revenues, entrance fees, service fees, damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Mortgagor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant (hereinafter defined) under the Leases; together with any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Mortgagor may have against any tenant, resident, occupant, lessee, or licensee under the Leases (each a "**Tenant**," and collectively, "**Tenants**") or against any other occupant of the Premises or Improvements. This is a present and absolute assignment of the Leases and Rents, not an assignment for security only.

**2.2 Grant of License.** Mortgagee hereby confers upon Mortgagor a license (the "**License**") to retain possession of the Leases and collect, receive, use, enjoy, and retain the Rents as they become due and payable, unless or until the occurrence of an Event of Default (hereinafter defined). Upon the occurrence and during the continuance of an Event of Default, the License shall automatically terminate without notice to Mortgagor, and without prejudice to Mortgagee or the Lenders. Mortgagee may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Mortgagee and Mortgagor agree that the mere recordation of this Security Instrument entitles Mortgagee immediately to collect and receive Rents upon the occurrence of an Event of Default without first taking any enforcement action under applicable laws, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

**2.3 No Encumbrance.** Other than pursuant to this Security Instrument and the other Loan Documents, Mortgagor shall not assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in any of the Leases or Rents.

**2.4 Collection and Application of Rents.**

**2.4.1 Right to Collect; Attorney-in-Fact.** Subject to the License granted to Mortgagor above, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, upon the occurrence of an Event of Default, Mortgagee in its sole discretion may so choose, (a) to demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (b) to give receipts, releases and satisfactions for any and all Rents; (c) to sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents; (d) to perform any obligation, covenant or agreement of Mortgagor under any of the Leases, and, in exercising any of such obligations, pay all actual, out-of-pocket and necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees; (e) to delegate any and all rights and powers given to Mortgagee by

the assignment of Leases and Rents provided for herein; (f) to appear in any bankruptcy, insolvency or reorganization proceeding involving any Tenant under the Leases and to collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (g) to use such measures, legal or equitable, in its discretion to carry out and effectuate the terms and intent of the assignment of Leases and Rents provided for herein. All such actions shall be taken at the expense of Mortgagor, who agrees to reimburse Mortgagee, promptly following Mortgagee's written demand therefor, for all out-of-pocket amounts actually expended by Mortgagee in connection with such actions, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Post-Default Rate applicable to the Loan, and the obligation to perform such actions shall be secured by this Security Instrument. Notwithstanding any other provision of this Security Instrument, during the continuance of an Event of Default, all awards or payments received by Mortgagee shall be applied to the Secured Obligations in such order as Mortgagee may elect in its sole discretion.

**2.4.2 Mortgagor as Trustee.** During the continuance of an Event of Default, Mortgagor shall be the agent of Mortgagee in collection of the Rents, and any Rents so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee, and Mortgagor shall, within one (1) Business Day after receipt of any Rents, pay the same to Mortgagee to be applied by Mortgagee as set forth in Section 2.9 herein for the "Application of Rents."

**2.4.3 Possession of Property Not Required.** Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property. In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs and is continuing while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Security Instrument, Mortgagee and any receiver appointed for all or any portion of the Property shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Security Instrument and at law and in equity.

**2.5 Mortgagee Not Responsible.** Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Premises and Improvements, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

**2.5.1** Responsible for the control, care, management or repair of the Property;

**2.5.2** A "mortgagee in possession" for any purpose;

**2.5.3** Responsible for performing any of the obligations of the lessor under any Lease;

**2.5.4** Responsible for any waste committed by Tenants or other occupants of the Property or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property;

**2.5.5** Responsible for any loss sustained by Mortgagor resulting from Mortgagee's failure to lease the Premises or Improvements or from any other act or omission of Mortgagee in managing the Property or administering the Leases; or

**2.5.6** Liable in any manner for the Property or the use, occupancy, enjoyment, or operation of all or any part of it.

**2.6 Consent to Payment of Rents Directly to Mortgagee.** At any time, Mortgagee may, at its option, notify any Tenant or other parties of the existence of the assignment of Leases and Rents provided for herein. Mortgagor hereby specifically authorizes, instructs and directs each and every present and future Tenant of all or any part of the Premises or Improvements to pay all unpaid and future Rents directly to Mortgagee upon receipt of written demand from Mortgagee to so pay the same, and Mortgagor hereby agrees that each such present and future Tenant may rely upon such written demand from Mortgagee to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Mortgagee is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. Mortgagor hereby waives any right, claim or demand that Mortgagor may now or hereafter have against any present or future Tenant by reason of such payment of Rents to Mortgagee, and any such payment shall discharge such Tenant's obligation to make such payment to Mortgagor.

**2.7 Leasing.** Mortgagor shall not lease the Premises or Improvements except in accordance with the provisions of the Credit Agreement and/or the other Loan Documents. If Mortgagor has actual knowledge that any Tenant proposes to do, or is doing, any act or thing that would reasonably be expected to give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) with respect to any material set-off, notify Mortgagee thereof and of the amount of said set-offs, and (c) within thirty (30) days after such accrual, reimburse the Tenant who shall have acquired such right to set-off or take such other commercially reasonable steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

**2.8 Further Actions.** Mortgagor shall punctually observe, perform, and discharge in all material respects all obligations, terms, covenants, conditions, and warranties of the Leases to be performed by Mortgagor pursuant to the Leases. Mortgagor agrees to execute and deliver, at its sole cost and expense, promptly following Mortgagee's written request therefor, any documents reasonably necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Mortgagee's reasonable judgment to carry out the purposes of the assignment of Leases and Rents provided for herein, including any consents to such assignment of Leases and Rents. In addition, Mortgagor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any Tenant thereunder, and shall pay, promptly following Mortgagee's written demand therefor, all reasonable out-of-pocket costs and expenses,

including reasonable attorneys' fees, that Mortgagee actually incurs in connection with Mortgagee's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Post-Default Rate from the date incurred by Mortgagee until repaid by Mortgagor.

**2.9 Application of Rents.** All Rents collected following an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to the Secured Obligations. Mortgagee or the receiver shall be liable to account only for those Rents actually received by Mortgagee or the receiver.

### **3. SECURITY ASSIGNMENT OF CONTRACTS.**

**3.1 Assignment.** To the fullest extent not prohibited by applicable laws, Mortgagor hereby grants, assigns, and pledges to Mortgagee all of Mortgagor's right, title and interest in and to all of the Contracts as security for the Secured Obligations.

**3.2 Mortgagor's Covenants.** Mortgagor hereby covenants and represents to Mortgagee as follows:

**3.2.1** Mortgagor shall punctually observe, perform, and discharge each and every material obligation, covenant, condition, and agreement of the Contracts to be performed by Mortgagor.

**3.2.2** Mortgagor shall use commercially reasonable efforts to enforce performance by the other part(y)(ies) to any Contract of each and every material obligation, covenant, condition and agreement to be performed by such other part(y)(ies) pursuant to the Contracts.

**3.2.3** Other than pursuant to this Security Instrument and the other Loan Documents, Mortgagor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in any Contract. In addition, Mortgagor shall not consent to, suffer or permit any future assignment or transfer of any material Contract by any party without Mortgagee's prior written consent in each instance.

**3.2.4** Mortgagor shall not alter, amend or modify in any material way, or terminate any of the material Contracts without the prior written consent of Mortgagee, except for service contracts entered into in the ordinary course of business.

**3.2.5** Promptly following Mortgagee's written request therefor during the continuance of an Event of Default, Mortgagor shall deliver to Mortgagee copies of all of the

Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto.

3.2.6 Mortgagor shall execute and deliver, at its sole cost and expense, promptly following Mortgagee's written request therefor, any documents reasonably necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is reasonably necessary, proper or desirable in Mortgagee's reasonable judgment to carry out the purposes of the assignment of Contracts provided for herein, including any consents to such assignment of Contracts.

**3.3 Mortgagee's Remedies upon Default.** During the continuance of an Event of Default, Mortgagee, at its sole option, and without any notice whatsoever to Mortgagor, but without assuming any of the obligations of Mortgagor under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any default of Mortgagor in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof; (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Mortgagor under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Mortgagor or Mortgagee, with such third parties as Mortgagee may in its discretion select, and upon such terms and conditions as Mortgagee in its reasonable discretion may determine; (f) compromise amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Mortgagee by the assignment of Contracts provided for herein; (i) perform any obligation, covenant or agreement of Mortgagor under any of the Contracts, and, in exercising any such powers, paying all actual, out-of-pocket and necessary costs and expenses, employing counsel and incurring and paying reasonable attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of the assignment of Contracts provided for herein. All such actions shall be taken at the expense of Mortgagor.

**3.4 No Liability of Mortgagee.** Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of the assignment of Contracts provided for herein. Further, nothing in this Security Instrument shall obligate Mortgagee to assume any obligations under any Contract, unless and until Mortgagee becomes the owner of the Property and affirmatively assumes a particular Contract in writing.

**3.5 Instructions to Contracting Parties.** During the continuance of an Event of Default, the assignment of Contracts provided for herein constitutes an irrevocable direction to and full authority from Mortgagor to any other party to any Contract to pay directly to Mortgagee, upon Mortgagee's written request therefor, all amounts that may be or become due to

Mortgagor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Mortgagor to rely upon and comply with any written notice or demand by Mortgagee during the continuance of an Event of Default for the payment to Mortgagee of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

**3.6 Application of Income.** Notwithstanding any other provision of this Security Instrument, the payments, proceeds and income collected by Mortgagee with respect to the Contracts during the continuance of an Event of Default may be applied, in whatever order Mortgagee in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property (excluding Contents) of Mortgagor.

**3.7 Interpretation.** The terms of any separate assignment of Contracts or assignment of construction documents shall supersede and control over any inconsistent terms of the assignment of Contracts provided for herein.

#### **4. SECURITY AGREEMENT AND FINANCING STATEMENT.**

**4.1 Security Agreement.** The parties intend for this Security Instrument to create a lien on and security interest in the Property, an absolute assignment of the Leases and Rents, and a security assignment of Contracts, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable laws to be personal property (excluding Contents) or fixtures. To the extent that any Property (including the Leases, Rents, or Contracts), is or may be determined to be personal property or fixtures, Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a lien on and security interest in all such Property to secure payment and performance of the Secured Obligations. This Security Instrument constitutes a security agreement under Article 9 of the Uniform Commercial Code of the state in which the Premises are located, as amended or recodified from time to time (the "*Project State UCC*"), covering all such Property.

#### **4.2 Financing Statement.**

**4.2.1** Mortgagor hereby irrevocably authorizes Mortgagee, at any time and from time to time, to prepare and file, in any filing office in any Uniform Commercial Code jurisdiction necessary to perfect the security interests granted herein, any financing statements and amendments thereto that (a) indicate the "collateral" (i) as all assets of Mortgagor related to the Project or words of similar effect, regardless of whether any particular asset included in the collateral falls within the scope of Article 9 of the Project State UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information for the sufficiency of the filing or acceptance of any financing statement or amendment by the filing office. Mortgagor agrees to furnish any such information to Mortgagee promptly following Mortgagee's written request therefor.

4.2.2 Mortgagor shall pay all reasonable out-of-pocket fees and costs that Mortgagee actually incurs in filing one or more financing statements and such other documents as Mortgagee may from time to time reasonably require to perfect or continue the perfection of Mortgagee's security interest in any Property and in obtaining such record searches as Mortgagee may reasonably require to confirm the perfection and priority of the security interests granted herein.

4.2.3 Mortgagor shall cooperate with Mortgagee in any way reasonably necessary to perfect and continue the perfection of Mortgagee's security interest in any part of the Property.

4.2.4 If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Security Instrument as a lien on the Property or the rights or obligations of the parties under it.

4.2.5 Mortgagor shall not terminate any financing statement filed to perfect Mortgagee's security interest without Mortgagee's express written consent.

4.3 **Fixture Filing.** This Security Instrument covers goods which are or are to become fixtures related to the real property described in this Security Instrument as the Premises. This Security Instrument constitutes a financing statement filed as a fixture filing under Article 9 of the Project State UCC, covering any Property that now is or later may become fixtures attached to the Premises or Improvements. Mortgagor is a record owner of the real property described in this Security Instrument as the Premises.

#### 4.4 **Representations, Warranties, and Covenants.**

4.4.1 Mortgagor represents and warrants to Mortgagee as of the date hereof that (a) Mortgagor's exact legal name is as set forth on the signature page of this Security Instrument, which name is stated to be Mortgagor's name on the public organic record most recently filed with Mortgagor's jurisdiction of organization; (b) Mortgagor is an organization of the type, and is organized in the jurisdiction, set forth on the signature page of this Security Instrument; (c) Mortgagor's organizational identification number is 6552680; and (d) Mortgagor's address set forth in the preamble of this Security Instrument is the location of Mortgagor's principal place of business and the location of Mortgagor's chief executive office.

4.4.2 Mortgagor shall not, without prior written notice to Mortgagee: (a) change the location of Mortgagor's principal place of business or the location of Mortgagor's chief executive office from that specified in the preamble of this Security Instrument; (b) change Mortgagor's name, identity or organization type in a manner that would affect the perfection or priority of Mortgagee's financing statement(s) against, or the attachment of any lien or security interest granted to Mortgagee in or to, all or any portion of the Property without further action by Mortgagee; or (c) change the jurisdiction of Mortgagor's incorporation or organization. In addition, Mortgagor shall keep all Property that is personal property (excluding Contents), to the



extent not delivered to Mortgagee, at the Project or such other locations as have been disclosed in writing to Mortgagee, and Mortgagor shall not remove the personal property (excluding Contents) from such locations without providing written notice to Mortgagee of the new location of such personal property (excluding Contents).

**4.4.3** Mortgagor will fully and punctually perform any material duty required of it under or in connection with any of the Property that is personal property (excluding Contents), and will not take any action that would impair, damage or destroy, in any material respect, Mortgagee's rights to such Property or the value thereof. Mortgagor will timely take any and all commercially reasonable action reasonably required to maintain the continued performance by every other party to any material agreement comprising the Property.

**4.5 Uniform Commercial Code Remedies.** During the continuance of an Event of Default, Mortgagee may exercise any or all of the remedies granted to a secured party under the Project State UCC.

## **5. RIGHTS AND DUTIES OF THE PARTIES.**

**5.1 Representations and Warranties.** Mortgagor represents and warrants that:

**5.1.1** Except with respect to Manufactured Homes, as of the date hereof, Mortgagor lawfully possesses and holds indefeasible fee simple title to all of the Premises and Improvements, subject only to this Security Instrument and the other Permitted Liens;

**5.1.2** Mortgagor has or will have good title to all Property (other than the Manufactured Homes) free and clear of any security agreements, reservations of title, or conditional sales contracts, except for this Security Instrument and other Permitted Liens, and there is no financing statement affecting such personal property (excluding Contents) on file in any public office, except for this Security Instrument and other Permitted Liens;

**5.1.3** [Intentionally Omitted];

**5.1.4** Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts; there are no outstanding assignments of the Leases, Rents, or Contracts; Mortgagor is the absolute owner of the landlord's interest in the Leases; and Mortgagor has performed no act or executed any other instrument that might prevent Mortgagee from enjoying and exercising any of its rights and privileges evidenced by this Security Instrument with respect to the Leases, Rents, and Contracts;

**5.1.5** To Mortgagor's knowledge, no Rents applicable to the period from and after the date hereof have been discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than one (1) month prior to the accrual thereof;

5.1.6 To Mortgagor's knowledge, (a) no material default by Mortgagor under any of the Leases or Contracts exists and (b) no fact or circumstance exists under any of the Leases or Contracts that, with the lapse of time or giving of notice or both, would constitute a material default by Mortgagor under such Leases or Contracts;

5.1.7 The Leases and Contracts were duly executed, are in full force and effect, and are the valid and binding obligations of the parties thereto and are enforceable in accordance with their respective terms;

5.1.8 Upon recording of this Security Instrument in the real estate records of the county where the Premises are located and the filing of a UCC financing statement in the applicable Uniform Commercial Code jurisdiction, this Security Instrument will create a first and prior lien on the Property;

~~5.1.9 The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; and~~

5.1.10 To Mortgagor's knowledge: (a) the Project Licenses held by Mortgagor include all licenses and permits necessary for the occupancy and operation of the Project; (b) the Project Licenses are in full force and effect; (c) Mortgagor has at all times complied with all material terms and requirements of the Project Licenses, and Mortgagor has received no written notices contrary to the foregoing; (d) no suspension, revocation or cancellation of the Project Licenses is threatened, and no event has occurred, nor do any circumstances exist, that would (i) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (ii) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License; and (e) all applications required to have been filed for the renewal of any Project License have been duly filed on a timely basis with the appropriate authority, and all other required filings have been made with respect to the Project Licenses on a timely basis with the appropriate authority.

**5.2 Performance of Secured Obligations.** Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms (subject to any applicable notice, grace and/or cure periods).

**5.3 Use of Property.** Unless required by applicable laws or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which the Property was intended at the time this Security Instrument was executed. Mortgagor shall not initiate or acquiesce to a change in the zoning or other land use classification of the Property without Mortgagee's prior written consent. Mortgagor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime or improvement district.

**5.4 Taxes, Assessments, Liens, Charges and Encumbrances.** Mortgagor shall pay, or cause to be paid, prior to delinquency, all taxes, levies, charges, assessments, water and sewer rates, rents insurance premiums, charges and impositions, attributable to the Property.

Mortgagor shall promptly discharge, or cause to be discharged, any lien on the Property that is not a Permitted Lien, and promptly notify Mortgagee after Mortgagor obtains knowledge of any mechanic's lien that is filed against the Property. Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim if Mortgagor posts a statutory lien bond that removes such lien from title to the Project within thirty (30) days after the earlier of (a) Mortgagor's obtaining actual knowledge that the lien exists or (b) receipt by Mortgagor of written notice from Mortgagee of the existence of the lien. Failure to remove the lien from title to the Project within such thirty-day period shall constitute an immediate Event of Default.

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## **5.5 Event of Loss.**

### **5.5.1 Upon an Event of Loss (hereinafter defined):**

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**5.5.1.1** if Net Cash Proceeds (hereinafter defined) do not exceed the sum of \$250,000, the Mortgagor shall be permitted to collect the same and shall proceed with diligence to make settlement with insurers or the appropriate Governmental Authorities and apply such proceeds to restoration of the Property to the general condition (or better) as that existing prior to such Event of Loss.

**5.5.1.2** if Net Cash Proceeds equal or exceed \$250,000, the Administrative Agent agrees to make available the Net Cash Proceeds for restoration of the Property if (1) no Event of Default is continuing, (2) all Net Cash Proceeds are deposited with the Administrative Agent in the Collateral Account or other interest bearing escrow account maintained by the Administrative Agent over which the Mortgagor has granted a first priority security interest in favor of the Administrative Agent in the Net Cash Proceeds on deposit in such account, (3) in the Administrative Agent's reasonable judgment, the amount of Net Cash Proceeds (together with any sums or other security reasonably acceptable to the Administrative Agent, and if in cash, is deposited with the Administrative Agent by the Mortgagor for such purpose) is sufficient to pay the full and complete costs of such restoration, (4) in the Administrative Agent's reasonable determination, the Property is capable of being Fully Restored (hereinafter defined), (5) no material Contract relating to the Property has been validly terminated as a result of such Event of Loss or as a result of any delay in restoration of the Property following such Event of Loss (unless such Contract has been replaced with a reasonably comparable Contract), and (6) in the Administrative Agent's reasonable determination, such restoration is likely to be completed no later than (A) 180 days following the occurrence of such Event of Loss (or such longer period as may be agreed by the Administrative Agent in its reasonable discretion) and (B) three months prior to the Termination Date.

**5.5.1.3** Following the restoration of the Property following an Event of Loss described in subsection 5.5.1.2 above, the Administrative Agent may at its option obtain, at the Mortgagor's sole cost and expense, a new Appraisal of the Property, which new Appraisal shall determine the new Appraised Value of the Property, taking into account the changes to the Property in connection with such Event of Loss and subsequent restoration; provided, however,

that upon the Mortgagor's request, the Administrative Agent may consent in writing to forego any such new Appraisal and agree to a new value proposed by the Mortgagor for the Property (which such new value, if approved by the Administrative Agent, would be used in place of the "Appraised Value" until changed in accordance with the Credit Agreement).

**5.5.1.4** In the event any portion of the Property suffers a casualty loss or is involved in any proceeding for condemnation or taking by any Governmental Authority, then if an Event of Default has occurred and is continuing, the Administrative Agent is authorized and empowered, at its option, to participate in, control, direct, adjust, settle and/or compromise any such loss or proceeding, to collect and receive the proceeds therefrom and, after deducting from such proceeds any out-of-pocket expenses actually incurred by the Administrative Agent in connection with the collection or handling thereof, to apply the net proceeds to the Obligations in accordance with Section 11.4 of the Credit Agreement.

**5.5.2** In case of an Event of Loss, if and to the extent Administrative Agent is holding the Net Cash Proceeds, Administrative Agent shall make such Net Cash Proceeds available to Mortgagor, subject to the conditions set forth in subsection 5.5.1.2 and in subsection 5.5.3, and the Mortgagor shall:

**5.5.2.1** Proceed with diligence to make settlement with insurers or the appropriate Governmental Authorities and cause the Net Cash Proceeds (if greater than Five Hundred Thousand Dollars (\$500,000)) to be deposited with the Administrative Agent;

**5.5.2.2** In the event the Net Cash Proceeds and the available proceeds of the Loan are insufficient to Fully Restore the Property, promptly deposit with the Administrative Agent the amount of the deficiency; and

**5.5.2.3** Promptly proceed to Fully Restore the Property.

**5.5.3** Any request by the Mortgagor for a disbursement by the Administrative Agent of the Net Cash Proceeds and any funds deposited by the Mortgagor shall be subject to the Administrative Agent's reasonable satisfaction with respect to the use of such amounts (including the satisfaction of reasonable conditions precedent with respect thereto). For avoidance of doubt, the Mortgagor shall repair and restore the Property following any casualty event or other damage occurring with respect to the Property (regardless of whether such casualty or damage constitutes an Event of Loss).

#### **5.5.4 Definitions**

**5.5.4.1** "Event of Loss" means, with respect to the Property, (i) the destruction or damage of all or a material (in Administrative Agent's reasonable discretion) portion of the Property from any casualty or similar occurrence whatsoever, or (ii) the condemnation, confiscation or seizure of, or requisition of title to or use of, all or any material (in Administrative Agent's reasonable discretion) portion of the Property.

**5.5.4.2 “Fully Restored”** means, following any Event of Loss, the restoration and repair of the Property, lien free and defect free and in an architecturally and economically viable manner in material compliance with all applicable laws, to the general condition (or better) as that existing prior to such Event of Loss.

**5.5.4.3 “Net Cash Proceeds”** means, with respect to any Event of Loss, (a) all insurance proceeds paid pursuant to any insurance policies maintained by or for the benefit of the Mortgagor, net of reasonable costs of collection of such proceeds, and (b) the amount of any award paid by any Governmental Authority in connection with condemnation or eminent domain proceedings with respect to a taking, net of reasonable costs of collection of such award.

## **5.6 Maintenance and Preservation of Property.**

**5.6.1** Mortgagor shall insure the Property as required by the Credit Agreement and keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair (in all material respects) and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good condition and repair (in all material respects).

**5.6.2** Neither Mortgagor nor any Tenant shall remove or demolish the Property or any material part of it, or alter, restore or add to the Property, except as permitted or required by the Credit Agreement, this Security Instrument and/or the other Loan Documents or with Mortgagee’s express prior written consent in each instance.

**5.6.3** If all or any material part of the Improvements becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Improvements in a good and workmanlike manner in accordance with sound building practices, regardless of whether Net Cash Proceeds are available for disbursement pursuant to the terms of the Credit Agreement and/or the other Loan Documents.

**5.6.4** Mortgagor shall take all action reasonably necessary to keep the Property at all times in material compliance with: (a) all applicable laws and all orders of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including the Americans with Disabilities Act; and (b) all public and private covenants, conditions, restrictions and equitable servitudes affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on the Property if doing so would invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Credit Agreement.

**5.6.5** Mortgagor shall not commit material physical waste or knowingly permit material physical impairment or deterioration of the Property.

**5.6.6** Mortgagor shall not abandon the Property.

5.6.7 Mortgagor shall give notice in writing to Mortgagee of, appear in and defend any action or proceeding purporting to affect the Property, the security of this Security Instrument or the rights or powers of Mortgagee, in each case except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee.

5.6.8 Mortgagor shall take all action that may be reasonably necessary to maintain and preserve the value of the Property in all respects.

**5.7 Preservation of Project Licenses.**

5.7.1 Mortgagor shall, within thirty (30) days after written demand therefor by Mortgagee, deliver to Mortgagee a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Mortgagee;

~~5.7.2 Mortgagor shall not take any action or make any omission that would~~ (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License, which in the case of (a) or (b) of this Section 5.7.2 would change or adversely affect the use for which the Property is currently intended;

5.7.3 Mortgagor shall cause all filings for the renewal of any Project License that impacts the use for which the Property is currently intended to be made on a timely basis with the appropriate authority; and

5.7.4 Mortgagor shall notify Mortgagee promptly of any notice or claim actually known to Mortgagor alleging a material violation of any Project License or threatening to revoke, withdraw, suspend, cancel or terminate any Project License, and Mortgagor shall take all action reasonably necessary to defend such allegation and, as applicable, reinstate such Project License.

**5.8 Releases, Extensions, Modifications and Additional Security.** From time to time, Mortgagee may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Security Instrument or any other Loan Document:

5.8.1 Release any person liable for payment of any Secured Obligation;

5.8.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

5.8.3 Accept additional real or personal property (excluding Contents) of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

5.8.4 Alter, substitute or release any property securing the Secured Obligations;

5.8.5 Consent to the making of any plat or map of the Property or any part of it;

5.8.6 Join in granting any easement or creating any restriction affecting the Property;

5.8.7 Join in any subordination or other agreement affecting this Security Instrument or the lien of it;

5.8.8 Apply any other security for the Secured Obligations held by Mortgagee;  
and

5.8.9 Release the Property or any part of it.

**5.9 Protection of Mortgagee's Security.**

5.9.1 If an Event of Default under this Security Instrument or the other Loan Documents is continuing, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Mortgagee, at Mortgagee's option, may cure any breach or default of Mortgagor, make such appearances, disburse such sums, enter upon the Premises and Improvements, and/or take such action as Mortgagee deems reasonably necessary, in its sole discretion to protect Mortgagee's security and the first priority lien of this Security Instrument. Such actions may include, without limitation: (a) appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Mortgagee under, this Security Instrument; (b) paying, purchasing, contesting, or compromising any encumbrance, tax, assessment, charge, lien or claim of lien that is or, in Mortgagee's reasonable judgment may be, senior in priority to this Security Instrument, such judgment of Mortgagee to be conclusive as among the parties to this Security Instrument; (c) purchasing fuel and providing utilities; (d) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Credit Agreement; (e) otherwise caring for and incurring expenses to protect any and all of the Property; (f) employing counsel, accountants, contractors, and other appropriate persons to assist Mortgagee; and/or (g) such other actions reasonably necessary to protect Mortgagee's security.

5.9.2 Nothing contained in this Security Instrument shall require Mortgagee to incur any expense or take any action hereunder.

5.9.3 The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee pursuant to the Loan Documents to accelerate the maturity of any of the Secured Obligations. Mortgagee's receipt of any Net Cash Proceeds shall not operate to cure or waive any Default or Event of Default.

**5.10 Release and Reconveyance.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor to Mortgagee under this Security

Instrument and the other Loan Documents have been received, Mortgagee shall release this Security Instrument and release the lien created hereby, and release all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay the reasonable out-of-pocket costs actually incurred by Mortgagee for the preparation and recordation of such releases.

## **5.11 Compensation, Exculpation, Indemnification.**

### **5.11.1 Compensation.**

**5.11.1.1** Mortgagor agrees to pay or reimburse Mortgagee for all reasonable out-of-pocket amounts actually incurred or advanced by Mortgagee in connection with Section 5.9 and Section 5.10 hereof.

**5.11.1.2** Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee actually renders in connection with this Security Instrument, including exercising their rights with respect to the Leases, Rents, and Contracts, providing a statement of the Secured Obligations, or releasing the lien of this Security Instrument. Mortgagor also agrees to pay or reimburse Mortgagee for all of Mortgagee's reasonable out-of-pocket costs and expenses that Mortgagee actually incurs in rendering any such services, including all costs of administering the Leases and Contracts.

**5.11.1.3** Whether or not any lawsuit is filed, Mortgagor agrees to pay or reimburse Mortgagee, as applicable, for all reasonable out-of-pocket costs, expenses, or other advances actually incurred or made by Mortgagee in any litigation or proceeding affecting this Security Instrument, the other Loan Documents, or the Property (including probate, discretionary review, bankruptcy, and on appeal), and any efforts to enforce any terms of this Security Instrument, exercise any rights or remedies afforded to Mortgagee hereunder, under the other Loan Documents, or at law or in equity, or defend any action or proceeding arising under or relating to this Security Instrument, including reasonable attorneys' fees and other legal expenses, receiver's fees, and any cost of evidence of title.

**5.11.1.4** Mortgagor further agrees to pay all out-of-pocket costs, expenses, and other advances actually incurred or made by Mortgagee in connection with one or more Foreclosure Sales (hereinafter defined) of the Property.

**5.11.1.5** All such expenditures, advances, costs, and expenses made or incurred by Mortgagee described in this Section 5.11 shall be immediately due and payable by Mortgagor, shall be paid by Mortgagor promptly following Mortgagee's written demand therefor with interest thereon at the Post-Default Rate, and shall be secured by this Security Instrument.

**5.11.2 Exculpation.** Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following, and Mortgagor expressly waives and releases all liability of the types described below, and agrees not to assert or impose any such liability against or upon Mortgagee:



5.11.2.1 Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Security Instrument or any of the other Loan Documents;

5.11.2.2 Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Security Instrument, including any of the Leases or Contracts; or

5.11.2.3 Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after Mortgagee exercises its rights, remedies or powers under the Loan Documents during the continuance of an Event of Default, unless the loss is caused solely by the willful misconduct or gross negligence of Mortgagee.

~~5.11.3 Indemnification. MORTGAGOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY MORTGAGEE FROM AND AGAINST ALL ACTUAL OUT-OF-POCKET LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, REASONABLE ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER REASONABLE OUT-OF-POCKET COSTS AND EXPENSES THAT MORTGAGEE ACTUALLY SUFFERS OR ACTUALLY INCURS (EXCEPT TO THE EXTENT ARISING FROM MORTGAGEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT):~~

5.11.3.1 In performing any act required or permitted by this Security Instrument or any of the other Loan Documents or by law or in equity;

5.11.3.2 Arising out of or resulting from the assignment of Leases and Rents as set forth above, including claims or demands for security deposits from Tenants deposited with Mortgagor, and from and against any and all claims and demands whatsoever that may be asserted against Mortgagee to satisfy any obligations of the landlord under the Leases;

5.11.3.3 Arising out of or resulting from the assignment of Contracts as set forth above, including the exercise or enforcement of any of the rights of Mortgagor thereunder;

5.11.3.4 Because of any failure of Mortgagor to perform any of its obligations under the Loan Documents;

5.11.3.5 Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents;

5.11.3.6 By reason of (a) suspension, revocation, cancellation, or termination of any Project License or (b) any alleged obligation or undertaking on the part of

Mortgagee to perform or discharge any of the terms of, or any agreements or laws pertaining to, the Project Licenses; or

**5.11.3.7** By reason of Mortgagee's security interest in the Project Licenses.

Such indemnity shall include all reasonable out-of-pocket costs, expenses and attorneys' fees actually incurred by Mortgagee in connection with such matters, together with interest on the indemnified liabilities at the Post-Default Rate from the date paid or incurred by Mortgagee until repaid by Mortgagor, and shall be immediately due and payable to Mortgagee by Mortgagor, and shall be paid by Mortgagor to Mortgagee promptly following Mortgagee's written demand therefor, and shall be secured by this Security Instrument. This agreement by Mortgagor to hold harmless, indemnify, and defend Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations, the full or partial release of this Security Instrument, and any foreclosure or other enforcement of this Security Instrument, or transfer by deed in lieu thereof.

**5.11.4 Payment by Mortgagor.** Mortgagor shall satisfy all obligations to pay money arising under this Security Instrument and the other Loan Documents promptly following written demand therefor by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest at the Post-Default Rate from the date the obligation arises.

**5.12 Defense and Notice of Claims and Actions.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Security Instrument and the rights and powers of Mortgagee created under it, against all adverse claims (other than Permitted Liens). Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted that does or could reasonably be expected to affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

**5.13 Subrogation.** Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Mortgagee in accordance with this Security Instrument or with the proceeds of any loan secured by this Security Instrument.

**5.14 [Intentionally omitted]**

**5.15 Books and Records.** Mortgagor agrees to maintain full and accurate records and books of account prepared in a manner reasonably acceptable to Mortgagee covering any of the Property and to deliver to Mortgagee, promptly following Mortgagee's written request therefor, such of the books as relate to the Property, including all invoices, shipping documents, contracts, orders, order acknowledgments, correspondence and other instruments and papers in Mortgagor's possession. Mortgagee shall at all reasonable times have free access to Mortgagor's ledgers, books of account and other written records evidencing or relating to the Property and the right to make and retain copies or memoranda of the same.

## 6. BUILDING LAWS.

### 6.1 Definitions.

6.1.1 "**Building Laws**" means the Fair Housing Act of 1968, as amended from time to time, the Americans With Disabilities Act of 1990, as amended from time to time, all government and private covenants, conditions, and restrictions relating to the Site (hereinafter defined), building code requirements and laws affecting construction or renovation of improvements on the Site, and all other laws relating to construction, operation, and maintenance of the Improvements and the marketing and use of the Premises and Improvements in a non-discriminatory manner.

6.1.2 "**Remedial Work**" means all actions necessary to modify the Site or marketing materials to comply with applicable laws, including Building Laws.

6.1.3 "**Site**" means, for the purposes of this Section, the Premises and all improvements, fixtures, and personal property (excluding Contents) now or hereafter located thereon, the soil and groundwater thereof, any streams crossing or abutting the Premises, and any aquifer underlying the Premises.

6.2 **Representations and Warranties.** Mortgagor makes the following representations and warranties to Mortgagee as of the date hereof:

6.2.1 Except for any non-compliance that has been disclosed in writing by Mortgagor to Mortgagee, Mortgagor has no knowledge of any failure of the Site or the plans and specifications for any improvements on the Site to comply in all material respects with all applicable Building Laws.

6.2.2 Except for any non-compliance that has been disclosed in writing by Mortgagor to Mortgagee, to Mortgagor's knowledge, Mortgagor's intended uses of the Site, including any construction and any plan for marketing the Improvements constructed on the Site, comply in all material respects with all applicable Building Laws.

6.3 **Obligation to Comply with Building Laws.** Mortgagor shall construct, operate, and maintain the Site in compliance in all material respects with any and all applicable laws relating to public safety and applicable Building Laws. Mortgagor covenants that, so long as Mortgagor owns any interest in the Property, (a) Mortgagor and Mortgagor's agents, contractors, authorized representatives, and employees shall not engage in any activities upon or concerning the Property that would result in a violation of any applicable Building Laws or require any alterations or improvements to be made on the Site under any of the applicable Building Laws, and (b) Mortgagor shall use commercially reasonable efforts to assure that Mortgagor's invitees and Tenants, and such Tenant's employees, agents, and invitees shall not suffer or permit any other act upon or concerning the Property that would result in a violation of any applicable Building Laws or require any alterations or improvements to be made on the Site under any of the applicable Building Laws.

#### **6.4 Obligation to Cure Non-Compliance.**

**6.4.1 Notice.** If Mortgagor at any time has actual knowledge of (a) any failure of the Site or the Improvements, or the marketing efforts and other operations undertaken with respect thereto, to materially comply with any Building Laws, or (b) any lien, action, or notice resulting from a violation of any Building Laws, Mortgagor shall promptly notify Mortgagee, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition and provide all notices that applicable laws require.

**6.4.2 Remediation.** If, upon giving any notice required by law or for any other reason, one or more Governmental Authorities having jurisdiction over the Site requires the making of alterations to the Site (including any Improvements) to conform to Building Laws, or such alteration is required by Building Laws, Mortgagor will: (a) perform or cause to be performed any Remedial Work necessary to comply with Building Laws and/or (b) attempt, through appropriate legal or administrative proceedings, to appeal, contest, or obtain a stay of enforcement proceedings if Mortgagor believes in good faith that Mortgagor is not required by law to make alterations to comply with Building Laws.

#### **6.5 Remedial Work.**

**6.5.1** All Remedial Work shall be conducted:

**6.5.1.1** in a diligent and timely fashion by licensed contractors acting under the supervision of an environmental, building or other applicable engineer or consultant;

**6.5.1.2** pursuant to a detailed written plan for the Remedial Work approved by any public or private agencies or persons with a legal or contractual right to such approval;

**6.5.1.3** with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and

**6.5.1.4** only following receipt of any required permits, licenses or approvals.

**6.5.2** The selection of the Remedial Work contractors and environmental, building or other applicable engineer or consultant, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work, and the written plan for the Remedial Work (and any changes thereto) shall each be subject to Mortgagee's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. In addition, Mortgagor shall submit to Mortgagee, promptly following receipt or preparation thereof, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, contracts and similar information prepared or received by Mortgagor in connection with any Remedial Work.

**6.6 Remedies on Default.** A default by Mortgagor under any of the covenants, representations, or warranties set forth in this Article shall, upon the expiration of any applicable notice, grace and/or cure period, constitute an Event of Default entitling Mortgagee to exercise all of the rights and remedies available to Mortgagee under the Loan Documents; *provided, however,* that such Event of Default shall not form the basis for any claim for damages or indemnification hereunder by Mortgagee against Mortgagor except to the extent of sums actually advanced by Mortgagee pursuant to the terms of this Security Instrument as a consequence of such default prior to the date on which this Security Instrument is fully and finally foreclosed (judicially or non-judicially) or a conveyance in lieu thereof has become effective and has been recorded in the county where the Premises are located.

**6.7 Indemnification.** Mortgagor shall hold harmless, indemnify, and defend Mortgagee (with counsel selected by Mortgagee in its sole discretion) from and against any and all actual out-of-pocket losses, damages, claims, demands, liens, liabilities, penalties, fines, lawsuits, and other proceedings and reasonable out-of-pocket costs and expenses (including reasonable legal expenses) that result in actual cost and expense to Mortgagee to maintain and protect Mortgagee's security hereunder prior to the date on which this Security Instrument is fully and finally foreclosed (judicially or non-judicially) or a conveyance in lieu thereof has become effective and has been recorded in the county where the Premises are located, and arise directly or indirectly from or out of, or in any way are connected with (except to the extent arising from Mortgagee's gross negligence or willful misconduct):

6.7.1 the inaccuracy of the representations contained herein; and

6.7.2 any alleged or actual failure of any Improvements now or hereafter constructed on the Site to continuously comply with all Building Laws for any reason whatsoever, or any modification or correction of any of the Improvements so as to comply fully with Building Laws.

**6.8 Scope.** Mortgagor acknowledges that, as between Mortgagor and Mortgagee, Mortgagor will be solely responsible for all costs and expenses relating to the modification and correction of any of the Improvements to comply fully with all Building Laws.

## **7. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.**

### **7.1 Accelerating Transfers.**

7.1.1 "*Accelerating Transfer*" means any sale, conveyance, transfer, assignment, pledge, or encumbrance of all or any part of the Property or any legal or beneficial interest therein, whether committed voluntarily by Mortgagor or by operation of law, that is prohibited under the Loan Documents.

7.1.2 Mortgagor acknowledges that Mortgagee is making one or more advances under the Credit Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service

contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer without Mortgagee's prior express written consent to the particular transaction and the transferee. Mortgagee may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Mortgagee, in its sole discretion, may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by this Security Instrument and any of the other Loan Documents.

**7.2 Events of Default.** Mortgagor will be in default under this Security Instrument upon the occurrence of any one or more of the following events (each an "*Event of Default*" and some or all, collectively, "*Events of Default*").

**7.2.1** An "Event of Default" occurs under the Credit Agreement or any other Loan Document.

~~**7.3 Remedies.** At any time during the continuance of an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee under the Loan Documents, at law, or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.~~

**7.3.1 Acceleration.** Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

**7.3.2 Additional Advances.** Mortgagee may terminate any commitment to make any additional advances under the Loan or any other loan secured by this Security Instrument.

**7.3.3 Receiver.** Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under, or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then-value of the Property or any other collateral for the Secured Obligations, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable laws, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, the right and power to sell the Property, such rights and powers as Mortgagee would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Mortgagor hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.

**7.3.4 Entry; Protection of Security.**

**7.3.4.1** Mortgagee, in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, may do the following: (a) enter, take possession of, manage, and operate all or any part of the Property, including taking possession of

the then-owner's Books and Records; (b) terminate Mortgagor's right and license to collect the Rents and administer the Leases, and thereafter collect the Rents, enter into, enforce, modify, or cancel Leases on such terms and conditions as Mortgagee may consider appropriate, evict Tenants, fix and modify Rents, and employ managers and other personnel to administer the Leases; (c) exercise all of Mortgagor's rights with respect to the Contracts, and employ managers and other personnel to administer the Contracts; (d) complete construction on and make repairs, replacement and alterations to the Premises and Improvements and to the fixtures, equipment and personal property (excluding Contents) located in or on the Premises or Improvements; (e) purchase and pay for such additional furniture and equipment as in the reasonable discretion of Mortgagee may be necessary to maintain a proper rental income from the Property; (f) otherwise care for and incur expenses to protect any and all of the Property; (g) take any action permitted under Section 5.9 hereof; (h) take any other action Mortgagee may, in its reasonable discretion, consider necessary and appropriate to protect the security of this Security Instrument; and (i) employ counsel, accountants, contractors and other appropriate persons to assist Mortgagee in any of the foregoing.

7.3.4.2 If Mortgagee so requests, Mortgagor shall assemble all of the Property not then located at the Premises and make all of it available to Mortgagee at the site of the Premises.

7.3.4.3 Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

7.3.4.4 Mortgagee may take any of the actions permitted under this Section either with or without giving notice to any person.

### **7.3.5 Lawsuits; Foreclosure.**

7.3.5.1 Mortgagee may commence and maintain an action or actions, at law or in equity, in any court of competent jurisdiction, to enforce the payment and/or performance of the Secured Obligations (including to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy).

7.3.5.2 Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially (to the extent permitted by applicable law) foreclose the lien hereof upon the Property or any part thereof (each such proceeding, a "*Foreclosure Sale*"), for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable laws.

7.3.5.3 In addition to the right to appoint a receiver during the continuance of an Event of Default, Mortgagee may also, at any time after the filing of a complaint to foreclose this Security Instrument, through and/or during the period of redemption,

request appointment of a receiver of the Property by the court in which such complaint is filed. Mortgagor hereby consents to and agrees that at any time after commencement of a judicial action of foreclosure, through and including the period of redemption, the court having jurisdiction of the case shall, at the request of Mortgagee, appoint a receiver to take possession of the Property and of the Leases, Rents, or Contracts and to rent and operate the same, and Mortgagor hereby waives its right to possession, statutory or otherwise. Mortgagee agrees, and this Security Instrument gives to Mortgagee, the right to possession before sale and termination of the right of redemption, pledges the Leases, Rents, or Contracts, creates in favor of Mortgagee a lien upon and interest in the right of possession given by Iowa statute, and upon the Leases, Rents, or Contracts which arises from it, waives the right to challenge the appointment of a receiver and agrees such receiver shall be liable to account to Mortgagor only for the net profits, after application of the Leases, Rents, and Contracts upon the costs and expenses of the receivership and foreclosure and upon the Secured Obligations.

**7.3.5.4** If this Security Instrument is foreclosed by judicial action, and the Property sold at a Foreclosure Sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises and to the Improvements as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon at the Post-Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

**7.3.5.5** To the maximum extent permitted by applicable laws, Mortgagee will be entitled to a judgment providing that, if the Foreclosure Sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

**7.3.6 Power of Sale.** Mortgagee shall have the right to invoke the power sale to the extent permitted by, and pursuant to, applicable laws.

**7.3.7 Other Remedies.** In addition to, but not in lieu of, any other rights and remedies hereunder, Mortgagee shall have the right to institute suit and obtain a protective or mandatory injunction against Mortgagor to prevent an Event of Default, as well as the right to actual damages incurred by Mortgagee as a result of any Event of Default. Mortgagee may exercise all rights and remedies contained in this Security Instrument (including all rights and remedies with respect to the assignments of Leases and Contracts provided for herein) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a Mortgagee under applicable laws, and shall have the benefit of all of the provisions of such applicable laws, including all amendments thereto that may become effective from time to time after the date hereof.

**7.3.8 Sale of Personal Property.** Mortgagee shall have the discretionary right to cause some or all of the Property that constitutes personal property (excluding Contents) to be



sold or otherwise disposed of in any combination and in any other manner permitted by applicable laws.

**7.3.8.1** For purposes of this power of sale, Mortgagee may elect to treat as personal property (excluding Contents) any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property (excluding Contents) in any manner permitted by Article 9 of the Project State UCC, including any public or private sale, or in any manner permitted by any other applicable laws.

**7.3.8.2** In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

### **7.3.9 Single or Multiple Foreclosure Sales.**

**7.3.9.1** If the Property consists of more than one lot, parcel or item of property, Mortgagee may (a) designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and (b) elect to dispose of the lots, parcels and/or items through a Foreclosure Sale or multiple Foreclosure Sales.

**7.3.9.2** If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee, at its option, may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Security Instrument on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

### **7.4 Purchase at Foreclosure Sale.**

**7.4.1** At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable laws.

**7.4.2** To the fullest extent not prohibited by applicable laws, the sales price of any Property sold at a Foreclosure Sale shall include all costs and expenses that may be paid or incurred by or on behalf of Mortgagee in connection with such Foreclosure Sale and enforcement of this Security Instrument and the other Loan Documents, including reasonable attorneys' fees

and other legal expenses, survey charges, appraiser's fees, inspecting engineer's or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication and recording costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title. To the fullest extent not prohibited by applicable laws, the foregoing costs and expenses may be estimated as to items to be expended after entry of any sale decree or judgment or recording or publication of any notice of sale.

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**7.4.3** Instead of paying cash for such Property, Mortgagee may credit the sales price of the Property against the Secured Obligations in such order as Mortgagee in its sole discretion may choose.

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**7.4.4** Mortgagor hereby covenants to warrant and defend the title of any purchaser at a Foreclosure Sale.

**7.5 Fair Value.** To the extent the applicable laws require that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Mortgagor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by applicable laws and the additional factors set forth below, and Mortgagor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

**7.5.1** The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the Foreclosure Sale.

**7.5.2** An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges that are incurred by the seller of real property.

**7.6 Tenants.** Mortgagee shall have the right, at its option, to foreclose this Security Instrument subject to the rights of any Tenant of the Property.

**7.7 Application of Foreclosure Sale Proceeds.** Mortgagee may apply the proceeds of any Foreclosure Sale in any manner and in any order permitted by applicable laws.

## **8. MISCELLANEOUS PROVISIONS.**

**8.1 Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Security Instrument. The Loan Documents also grant further rights to Mortgagee and contain

further agreements and affirmative and negative covenants by Mortgagor that apply to this Security Instrument and to the Property.

## **8.2 No Waiver or Cure.**

**8.2.1** Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

**8.2.2** If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Security Instrument or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Security Instrument; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Security Instrument; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Security Instrument.

**8.2.2.1** Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

**8.2.2.2** Termination of the License to collect Rents and administer the Leases.

**8.2.2.3** Mortgagee exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

**8.2.2.4** Mortgagee exercises any of its rights under the assignment of Contracts provided for herein or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

**8.2.2.5** Mortgagee takes any action to preserve its security hereunder or cure any default of Mortgagor under the Leases or Contracts.

**8.2.2.6** Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under this Security Instrument.

8.2.2.7 Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Documents.

8.2.2.8 Mortgagee receives any sums under this Security Instrument or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

8.2.2.9 Mortgagee or any receiver invokes any right or remedy provided under this Security Instrument.

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### 8.3 Powers of Mortgagee.

8.3.1 If Mortgagee performs any act that it is empowered or authorized to perform under this Security Instrument, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Security Instrument on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

8.3.2 Mortgagee may take any of the actions permitted under this Security Instrument regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Security Instrument.

8.3.3 From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Security Instrument. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 **Assignment.** All rights of Mortgagee hereunder shall inure to the benefit of its successors and assigns, and all obligations of Mortgagor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Mortgagee in, to and under this Security Instrument shall pass to and may be exercised by any assignee of such rights of Mortgagee. Mortgagor hereby agrees that if Mortgagee gives notice to Mortgagor of an assignment of said rights, upon such notice, the liability of Mortgagor to the assignee of Mortgagee shall be immediate and absolute. Mortgagor will not set up any claim against Mortgagee or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Mortgagee or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents, or Contracts.

**8.5 No Offset.** Mortgagor's obligation to timely pay and perform all obligations under the Note, this Security Instrument, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Mortgagor or any guarantor may have or claim against Mortgagee or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Mortgagor or any guarantor may have in damages or otherwise against Mortgagee or any other person or entity if Mortgagor maintains a separate action thereon.

**8.6 Imposition of Mortgage Tax.** Mortgagor shall pay the cost of any Mortgage Tax due in connection with this Security Instrument or the indebtedness secured hereby. For purposes of this Section, "**Mortgage Tax**" means: (a) a specific tax on mortgages or other security instruments or on all or any part of the indebtedness secured by a mortgage or other security instrument; or (b) a specific tax on the owner of the Property covered by a mortgage or security instrument which the taxpayer is authorized or required to deduct from payments on debt secured by the mortgage or security instrument; or (c) a tax on property covered by a mortgage or security instrument chargeable against a Mortgagee, beneficiary or trustee or the holder of the note secured by the security instrument; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Secured Obligations or on payments of principal and interest made by a grantor under a security instrument. If any Mortgage Tax is enacted subsequent to the date of this Security Instrument, enactment of the Mortgage Tax shall constitute an Event of Default, and Mortgagee may exercise any or all of the remedies available to it during the continuance of any Event of Default, unless the following conditions are met: (i) Mortgagor can lawfully pay the Mortgage Tax without causing any resulting economic disadvantage or increase of tax to Mortgagee; and (ii) Mortgagor pays the Mortgage Tax (including any tax on the payment made) within thirty (30) days after notice from Mortgagee that the tax law has been enacted.

**8.7 Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

**8.8 Joint and Several Liability.** If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Security Instrument.

**8.9 Successors in Interest.** The terms, covenants and conditions of this Security Instrument shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

**8.10 Interpretation.**

**8.10.1** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other

gender. The captions of the sections of this Security Instrument are for convenience only and do not define or limit any terms or provisions.

**8.10.2** The word “include(s)” means “include(s), without limitation,” and the word “including” means “including, but not limited to.”

**8.10.3** The word “or” has the inclusive meaning represented by the phrase “and/or.”

**8.10.4** No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Security Instrument. The Exhibits to this Security Instrument are hereby incorporated in this Security Instrument.

**8.11 In-House Counsel Fees.** Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys’ fees, those fees shall include the allocated costs for services of in-house counsel.

**8.12 Waiver of Statutory Rights.** To the fullest extent not prohibited by law:

**8.12.1** Mortgagor hereby agrees that it will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called “Moratorium Laws,” now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such laws.

**8.12.2** Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

**8.12.3** Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Security Instrument on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Security Instrument, and agrees to take any and all further actions as may be necessary to waive the right of redemption.

**8.12.4** Mortgagor hereby waives any defense of laches and all statutes of limitation with respect to enforcement of this Security Instrument.

**8.13 Severability.** If any provision of this Security Instrument is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum or has a material adverse effect on Mortgagee’s security for the Secured Obligations, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

**8.14 Notices.** Any notice, demand, request or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Credit Agreement.

**8.15 Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any Loan proceeds have been disbursed, this Security Instrument secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee not to exceed the maximum amount secured hereby.

**8.16 WAIVER OF TRIAL BY JURY.** MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS SECURITY INSTRUMENT, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS SECURITY INSTRUMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS SECURITY INSTRUMENT AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

**8.17 Inconsistencies.** In the event of any inconsistency between this Security Instrument and the Credit Agreement, the terms hereof shall be controlling to the extent necessary to create, preserve, and/or maintain a valid security interest upon the Property; otherwise the provisions of the Credit Agreement shall be controlling.

**8.18 Applicable Law.** The creation, perfection, and enforcement of the lien of this Security Instrument shall be governed by the laws of the state in which the Premises are located. In all other respects, this Security Instrument shall be governed by the substantive laws of the jurisdiction governing the Credit Agreement.

**8.19 State-Specific Provisions.** The following state-specific terms and conditions shall control over any inconsistent provisions of this Security Instrument:

**8.19.1 Redemption Period.**

**8.19.1.1** It is agreed that if this Security Instrument covers less than 10 acres of land, and in the event of the foreclosure of this Security Instrument and the sale of the Property by sheriff's sale in such foreclosure proceedings, the period of redemption shall be

reduced to six months provided Mortgagee, in such action, files an election to waive any deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings. If the redemption period is so reduced, for the first three months after the sale such right of redemption shall be exclusive to Mortgagor, and the time periods in Section 628.5, Section 628.15 and Section 628.16 of the Iowa Code shall be reduced to four months.

**8.19.1.2** It is further agreed that the period of redemption after a foreclosure of this Security Instrument shall be reduced to 60 days if all of the following three contingencies occur: (a) the Project is less than 10 acres in size, (b) the court finds affirmatively that the Project has been abandoned by the owners and those persons personally liable under this Security Instrument at the time of such foreclosure, and (c) in such foreclosure action Mortgagee files an election to waive any deficiency judgment against Mortgagor or Mortgagor's successors in interest in such action. If the redemption period is so reduced, Mortgagor or its successors in interest or the owner shall have the exclusive right to redeem for the first 30 days after such sale and the time provided for redemption in Section 628.5, Section 628.15 and Section 628.16 of the Iowa Code shall be reduced to 40 days.

**8.19.1.3** This Security Instrument shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code and any reduction of a redemption period provided for under this Security Instrument shall be consistent with the provisions of Chapter 628 of the Iowa Code.

**8.19.1.4** If the Property is not used for agricultural purposes, as defined in Iowa Code Section 535.13, and is either not the residence of Mortgagor or owner, or is such a residence but is not a single family or a two family dwelling, and Mortgagee waives its right to a deficiency judgment in the foreclosure action, the redemption period shall be reduced ninety (90) days, consistent with the provisions of Iowa Code Section 628.28.

**8.19.2** Copies. Mortgagor hereby acknowledges receipt of a copy of this Security Instrument at the time it was signed, together with a copy of each Note secured hereby, and all other Loan Documents at the time each was signed.

**8.19.3** Business Purpose and Business Loan. Mortgagor represents, warrants and covenants that none of the Property constitutes and none of the Secured Obligations will be used to purchase any: (a) real property which is a single-family or a two-family dwelling occupied or to be occupied by the Mortgagor; (b) agricultural products or property used for an agricultural purpose as defined in Iowa Code Section 535.13; (c) agricultural land as defined in Section 9H.1(2) or 9I.1 of the Iowa Code; (d) property used for an agricultural purpose as defined in Iowa Code Section 570A.1(2); or (e) agricultural property as defined in Iowa Code Section 654A.1(1). Further, Mortgagor represents, warrants and covenants that the provisions of Iowa Code Chapter 654A do not apply to the parties to this Security Instrument with respect to the Secured Obligations, the Secured Obligations do not constitute a consumer credit transaction as defined in Iowa Code Section 537.1301(12), the Secured Obligations are for business purposes as defined in Iowa Code Section 535.2(2)(a)(5) and will be used for business purposes in



Mortgagor's business and Mortgagor's business is a commercial enterprise carried on for the purpose of investment or profit.

**8.19.4 Foreclosure.** Mortgagee may, at its option, elect to foreclose this Mortgage by non-judicial procedures allowed by Iowa law, including without limitation, pursuant to Chapter 655A of the Iowa Code or Iowa Code Section 654.18. This Security Instrument may be foreclosed without redemption pursuant to Iowa Code Section 654.20.

**8.19.5 Surrender of Note.** In the event of foreclosure of this Security Instrument, Mortgagor hereby agrees that a court may, and requests the court to, enter a special order directing a Clerk of Court to enter and record the judgment contained in the foreclosure decree on each Note secured by this Security Instrument without requiring that any such Note be first filed with the Clerk of Court for cancellation. Mortgagor further agrees, because the Note or Notes secured by this Mortgage are also secured by other collateral, it will be necessary upon any realization upon such collateral, notwithstanding Iowa Rule of Civil Procedure 1.961, as presently enacted or as hereinafter amended or replaced, that the Clerk of Court may, in the event of foreclosure of this Security Instrument, enter and record such judgment contained in the foreclosure decree on each Note secured by this Security Instrument without the requirement that any such Note be first filed with the Clerk of Court for cancellation.

**8.19.6 Non-statutory Liens.** Mortgagor hereby represents, warrants and agrees that the liens and security interests granted hereby are not the type of lien referred to in Iowa Code Chapter 575, as now enacted or hereinafter modified, amended or replaced. Mortgagor, for itself and all persons claiming by, through or under Mortgagor, agree that it claims no lien or right to a lien of the type contemplated by Iowa Code Chapter 575 or any other Chapter of the Iowa Code and further waives all notices and rights pursuant to said law with respect to the liens and security interests hereby granted, and represents and warrants that it is the sole party entitled to do so and agrees to indemnify and hold harmless Mortgagee from any loss, damage or costs including attorney's fees, threatened or suffered by Mortgagee arising either directly or indirectly as a result of any claim of the applicability of said law to the liens and security interests hereby granted.

**8.19.7 After Acquired Property.** The lien of this Security Instrument shall automatically attach (without further act or note) to all after-acquired property of Mortgagor, of whatever kind, located in, on, or attached to, or used or intended to be used, in connection with, or in the operation of, the Property.

**8.19.8 Intentionally Omitted.**

**8.19.9 Iowa Code Chapter and Section References.** Each reference in this Security Instrument to a chapter or section of the Iowa Code shall include any revision, successor or recodification thereof.

**8.20 Counterparts.** This Security Instrument may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so

executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument with the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this Security Instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Security Instrument identical in form hereto but having attached to it one or more additional signature pages.

**8.21 Notice of Indemnification.** MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECURITY INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY MORTGAGOR OF MORTGAGEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MORTGAGEE'S OWN NEGLIGENCE.

**8.22 Incorporation of Exhibits.** The following Exhibits attached to this Security Instrument are incorporated herein and expressly made a part hereof by this reference:

**8.22.1** Exhibit A – Legal Description

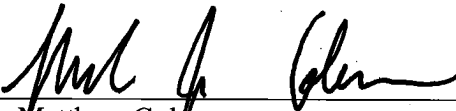
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

Executed as of the date of this Security Instrument.

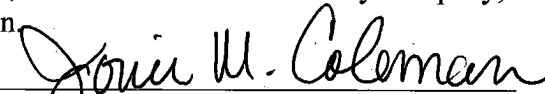
**MORTGAGOR/DEBTOR:**

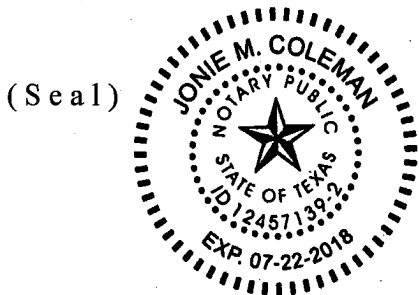
MOTHERSHIP MASTER PROPCO KB, LLC,  
a Delaware limited liability company

By:   
Name: Matthew Coleman  
Its: Vice President, Transactions

STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF TARRANT         )

This instrument was acknowledged before me on this 23rd day of February, 2018, by Matthew Coleman, in his capacity as Vice President, Transactions, on behalf of MOTHERSHIP MASTER PROPCO KB, LLC, a Delaware limited liability company, and for the purposes and consideration expressed therein.

  
Notary Public  
My Commission Expires: July 22, 2018



**EXHIBIT A**

Real property in the City of Winterset, County of Madison, State of Iowa, described as follows:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER (¼) OF THE NORTHWEST FRACTIONAL QUARTER (¼) OF THE NORTHWEST QUARTER (¼) OF SECTION THIRTY-ONE (31), TOWNSHIP SEVENTY-SIX (76) NORTH, RANGE TWENTY-SEVEN (27) WEST OF THE 5TH P.M., CITY OF WINTERSET, MADISON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST FRACTIONAL QUARTER (¼) OF THE NORTHWEST QUARTER (¼) OF SAID SECTION THIRTY-ONE (31), THENCE SOUTH 89°15½' EAST 50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 198.42 FEET; THENCE SOUTH 89°15½' EAST 94.23 FEET; THENCE NORTH 27.25 FEET; THENCE SOUTH 89°15½' EAST 162.27 FEET; THENCE NORTH 205.81 FEET; THENCE SOUTH 89°15½' EAST 195.32 FEET; THENCE SOUTH 00°03' EAST 306.48 FEET; THENCE NORTH 89°15½' WEST 66 FEET; THENCE SOUTH 00°03' EAST 125 FEET; THENCE NORTH 89°15½' WEST 386.20 FEET TO THE POINT OF BEGINNING, EXCEPT PARCEL "F" LOCATED THEREIN, CONTAINING 0.613 ACRES, AS SHOWN IN PLAT OF SURVEY FILED IN BOOK 2, PAGE 342 ON FEBRUARY 26, 1998 IN THE OFFICE OF THE RECORDER OF MADISON COUNTY, IOWA, AND EXCEPT PARCEL "E" LOCATED THEREIN, CONTAINING 0.014 ACRES, (621.3 SQUARE FEET), AS SHOWN IN PLAT OF SURVEY FILED IN BOOK 2, PAGE 343 ON FEBRUARY 26, 1998 IN THE OFFICE OF THE RECORDER OF MADISON COUNTY, IOWA; AND EXCEPT PARCEL "Q" LOCATED THEREIN, CONTAINING 0.579 ACRES, AS SHOWN IN PLAT OF SURVEY FILED IN BOOK 2013, PAGE 2472 ON AUGUST 21, 2013 IN THE OFFICE OF THE RECORDER, MADISON COUNTY, IOWA.