

20241216000383460
12/16/2024 09:00:58 AM
MORT 1/47

This instrument prepared by, and
upon recording return to:

Laura L. McClellan, Esq.
FisherBroyles, LLP
8150 N. Central Expressway, Suite 1000
Dallas, Texas 75206

STATE OF ALABAMA)
COUNTY OF SHELBY)

**MORTGAGE,
SECURITY AGREEMENT
AND
FIXTURE FINANCING STATEMENT**

DATED AS OF

December 13, 2024

GRANTED BY

VALLEYDALE VILLAGE LLC, a Delaware limited liability company

TO

MINNESOTA LIFE INSURANCE COMPANY, a Minnesota corporation

Recording requested by and return to:
Old Republic Title
National Commercial Division
11055 Wayzata Blvd, Suite 250
Minnetonka, MN 55305
File ORTE750252 - HH

Security Instrument
VALLEYDALE VILLAGE, Hoover, AL
Loan No. 3032

TABLE OF CONTENTS

1.	REPRESENTATIONS AND WARRANTIES.....	4
1.1	Title to Property; Encumbrances	4
1.2	Organization	4
1.3	Authorization.....	4
1.4	Legal Control.....	4
1.5	Enforceability	4
1.6	Bankruptcy, Litigation, Liens.....	5
1.7	Full and Accurate Disclosure	5
1.8	No Payment Defaults.....	5
1.9	Mechanics' Liens	5
1.10	Premises Use Compliance	5
1.11	General Compliance	5
1.12	No Condemnation.....	5
1.13	No Agricultural Use	6
1.14	No Casualty; Condition of Premises	6
1.15	Solvency; Fraudulent Conveyance	6
1.16	ERISA	6
1.17	ADA	6
1.18	Anti-Terrorism.....	6
1.19	USA Patriot Act.....	7
1.20	Separate Tax Parcel	7
1.21	Independence of Premises	7
1.22	Utilities and Access	7
1.23	Business Purpose Loan.....	7
1.24	Continuing Obligation	7
2.	COVENANTS AND AGREEMENTS	8
2.1	Payment of Indebtedness; Observance of Covenants	8
2.2	Legal Control; Management of Premises	8
2.3	Maintenance; Repairs	8
2.4	Payment of Operating Costs, Liens, and Other Indebtedness.....	9
2.5	Payment of Impositions.....	9
2.6	Contest of Liens and Impositions; Protection of Security	9
2.7	Financial and Property Reporting.....	10
2.8	Additional Acts.....	11
2.9	Due On Sale Or Encumbrance.....	11
2.10	Due On Sale or Encumbrance Exceptions.....	11
2.11	Maintenance of Existence.....	14
2.12	Compliance with Laws	14
2.13	Compliance with Controlled Substances Laws	14
2.14	Continuance as Single Asset and Special Purpose Entity.....	15
2.15	Building Use.....	16
3.	INSURANCE AND ESCROWS.....	17
3.1	Insurance Policies.....	17
3.2	Policy Requirements.....	18
3.3	Insurance-Related Loan Terms.....	19
3.4	Escrows	20
4.	UNIFORM COMMERCIAL CODE	21
4.1	Security Agreement.....	21

4.2	Fixture Filing.....	21
4.3	Representations and Agreements.....	21
5.	INSURANCE PROCEEDS AND CONDEMNATION AWARDS	22
5.1	Damage or Destruction of the Premises	22
5.2	Condemnation	23
5.3	Disbursement of Insurance and Condemnation Proceeds.....	23
5.4	Lender Use of Net Proceeds	24
5.5	Lender Costs.....	24
5.6	Borrower's Failure to Restore	25
6.	ASSIGNMENT OF LEASES AND RENTS.....	25
7.	RIGHTS OF LENDER	25
7.1	No Claim Against Lender.....	25
7.2	Inspection	25
7.3	Waivers, Releases, Resort to Other Security, Etc.....	26
7.4	Subsequent Agreements	26
7.5	Waiver of Appraisement, Homestead, Marshaling.....	26
7.6	Dishonored Payments.....	26
8.	EVENTS OF DEFAULT AND REMEDIES.....	26
8.1	Events of Default.....	26
8.2	Remedies of Lender.....	28
8.3	Rights Under Uniform Commercial Code.....	30
8.4	Right to Discontinue Proceedings	30
8.5	Receiver.....	30
8.6	Application of Proceeds	31
8.7	Right to Cure Defaults.....	31
8.8	Default Interest and Late Charges	31
8.9	Rights Cumulative; Borrower Not Released	31
8.10	Waivers.....	32
8.11	No Release by Delay or Partial Acceptance	32
9.	HAZARDOUS MATERIALS	32
9.1	Definitions	32
9.2	Environmental Representations and Warranties.....	32
9.3	Environmental Covenants	33
9.4	Lender's Right to Inspect and Test.....	34
9.5	Environmental Indemnification.....	34
9.6	Liability of Borrower.....	35
10.	MISCELLANEOUS	35
10.1	Release of Security Instrument.....	35
10.2	Choice of Law	35
10.3	Jurisdiction	35
10.4	Successors and Assigns	35
10.5	Severability.....	36
10.6	Headings; Construction of Plurality	36
10.7	Notices.....	36
10.8	Indemnity	36
10.9	Modification	37
10.10	No Oral Agreements.....	37
10.11	Lender's Expenses.....	37

10.12 Consent by Lender.....37

10.13 Lender’s Right to Counsel.....38

10.14 Other Representations and Warranties38

10.15 Limitation of Interest.....38

10.16 Time of the Essence.....39

10.17 Survival of Representations, Warranties and Covenants.....39

10.18 Waiver of Jury Trial39

10.19 Disclosure to Other Persons39

10.20 Non-Recourse Loan and Recourse Obligations.....40

**MORTGAGE,
SECURITY AGREEMENT
AND
FIXTURE FINANCING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (the “**Security Instrument**”) is made and delivered as of the 13th day of December 2024 by VALLEYDALE VILLAGE LLC, a Delaware limited liability company (the “**Borrower**”), whose mailing address is 40 East 69th Street, New York, New York 10021, for the benefit of MINNESOTA LIFE INSURANCE COMPANY, a Minnesota corporation (the “**Lender**”), whose mailing address is c/o Securian Asset Management, Inc., 400 Robert Street North, St. Paul, Minnesota 55101-2098, Attention: Mortgage Servicing Dept.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 7-9A-102(a)(40) AND 7-9A-502 OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, the Borrower is indebted to the Lender, as evidenced by that certain Promissory Note of even date herewith (the “**Note**”), in the original principal sum of Eight Million Five Hundred Thousand and 00/100 Dollars (\$8,500,000.00) (the “**Loan**”), both principal and interest of the Note being payable to the Lender as more specifically set forth therein.

WHEREAS, the Borrower and the Lender desire and intend that the Note be secured by (1) this Security Instrument; and (2) that certain Assignment of Leases and Rents dated of even date herewith assigning any leases, rents and profits of the Premises, from the Borrower, as assignor, in favor of the Lender, as assignee (the “**Assignment of Leases**”).

WHEREAS, the Loan is also supported and guaranteed pursuant to (1) that certain Guaranty from Jonathan P. Rosen, an adult resident of New York (together with any person or entity that expressly assumes liability under the Guaranty or a replacement guaranty during the term of the Loan, the “**Guarantor**”), dated of even date herewith in favor of the Lender (the “**Guaranty**”); and (2) that certain Environmental Indemnity Agreement by the Borrower and the Guarantor to the Lender dated of even date herewith (the “**Environmental Indemnity Agreement**”).

WHEREAS, the Note, the Assignment of Leases, this Security Instrument, the Guaranty, the Environmental Indemnity Agreement and all other documents, financing statements and agreements given as security for the Note or evidencing the Loan are referred to collectively as the “**Loan Documents**” and singularly as a “**Loan Document**.”

NOW, THEREFORE, in consideration of and as security for (a) payment of the Loan advanced to the Borrower under the Note, in hand paid by the Lender, the receipt and sufficiency of which is hereby acknowledged, and payment of all interest and any premium on the Note, the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions, renewals or replacements thereof, due and payable with interest thereon as provided therein, the balance of said principal sums together with interest thereon being due and payable in any event on the Maturity Date, as defined in the Note (the “**Maturity Date**”), (b) payments of all sums advanced in protecting the lien of this Security Instrument together with interest thereon at the Default Rate, as defined in the Note (the “**Default Rate**”), (c) payment of all other sums which are or which may become owing and performance of all other

obligations under the Loan Documents, except to the extent a Loan Document expressly states that it is not so secured; (d) performance of all of the Borrower's other obligations under the Loan Documents, except to the extent a Loan Document expressly states that it is not so secured; and (e) payment of the principal and interest on all other future loans or advances made by the Lender to the Borrower when the promissory note evidencing the loan or advance specifically states that it is secured by this Security Instrument, including all modifications, extensions, renewals, and replacements of any such future loan or advance (the Note and all such sums, together with interest thereon, being collectively referred to as the "**Indebtedness**"), the Borrower has granted, bargained, sold, pledged, assigned, warranted, transferred and conveyed and does hereby irrevocably GRANT, BARGAIN, SELL, PLEDGE, ASSIGN, WARRANT, TRANSFER AND CONVEY unto the Lender, its successors and assigns, WITH POWER OF SALE, forever, AND GRANTS TO THE LENDER A SECURITY INTEREST IN the following assets to secure payment of the Indebtedness and performance of the obligations set forth herein (all of the following being collectively referred to as the "**Premises**"):

GRANTING CLAUSES

A. Real Property. All the tracts or parcels of real property lying and being in the County of Shelby, State of Alabama, all as more fully described in Exhibit "A" attached hereto and made a part hereof, together with all the estates and rights in and to the real property, water, mineral or oil rights and in and to lands lying in streets, alleys and roads or gores of land adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property and all proceeds and products derived therefrom whether now owned or hereafter acquired by the Borrower.

B. Improvements, Fixtures, Equipment and Personal Property. All buildings, equipment (including the Borrower's interest in any lease of such equipment), fixtures, improvements, building supplies and materials and personal property owned by the Borrower now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the Premises including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants and including but not limited to the specific articles of property set forth in Exhibit "B" attached hereto (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts and fittings, together with all interest of the Borrower in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of the Borrower at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

C. Rents, Leases and Profits. All rents, issues, income, revenue, receipts, fees, accounts receivable and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of the Borrower in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security

deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to the Borrower to collect the rents, income and other normal income benefits arising under any agreements in the absence of an Event of Default (as defined in Subsection 8.1 below). The Lender shall have the right, not as a limitation or condition hereof but as a personal covenant available only to the Lender, at any time and from time to time, to notify any lessee of the rights of the Lender hereunder.

Together with all right, title and interest of the Borrower in and to any and all contracts for sale and purchase of all or any part of the property described in Granting Clauses (A), (B) and (C) hereof, and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

D. Judgments, Condemnation Awards, Insurance Proceeds, and Other Rights. All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including but not limited to any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of the Borrower against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of Hazardous Materials (as defined in Subsection 9.1 below).

E. Licenses, Permits, Equipment Leases and Service Agreements. All right, title and interest of the Borrower in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, tradenames, any and all other intangibles, including general intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law (and the Borrower represents that no such licenses, permits, equipment leases, and service agreements for the use of the Premises are held by another party).

F. Proceeds. All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the property described in Granting Clauses A. through E. above, together with all products, proceeds, replacements, substitutions and appurtenances thereto.

THE BORROWER GRANTS THE PREMISES ABOVE, TO HAVE AND TO HOLD THE SAME, together with the rights hereby granted for the use, benefit, and behoof of the Lender and its successors and assigns, including the possession and right of possession of the Premises, unto Lender, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if the Borrower, or the Borrower's successors or assigns, shall pay to the Lender, its successors or assigns, the Indebtedness as and when due and in full, and shall keep and perform all of the covenants and agreements herein contained, then this Security Instrument shall be terminated, cancelled or released at the Borrower's expense, otherwise this Security Instrument to remain in full force and effect.

AND IT IS FURTHER COVENANTED AND AGREED AS FOLLOWS:

1. REPRESENTATIONS AND WARRANTIES

The Borrower represents, warrants and covenants to the Lender, its successors and assigns, that, as of the date hereof:

1.1 TITLE TO PROPERTY; ENCUMBRANCES

The Borrower represents to the Lender, its successors and assigns, that the Borrower is lawfully seized of the Premises and has good right to grant a security interest in the same. The Borrower is aware of no encumbrances to the Premises except as may be set forth in Schedule B of that certain ALTA Mortgagee Policy of Title Insurance issued to the Lender by Old Republic National Title Insurance Company and insuring the first lien position of this Security Instrument (the “**Permitted Encumbrances**”).

1.2 ORGANIZATION

The Borrower is duly organized, validly existing and in good standing under the laws of the state or commonwealth of its organization, is duly qualified to do business in all states and any commonwealth in which it is required to be so qualified, and has complied with all certifications, filings, and requirements necessary to qualify and do business in such state or commonwealth.

1.3 AUTHORIZATION

The Borrower has all requisite power and authority to enter into this Security Instrument and to perform its obligations hereunder, to own and operate the Premises, to enter into the Note, this Security Instrument and the other Loan Documents and to borrow the monies and otherwise assume and perform the obligations on its part to be assumed and performed as contemplated thereunder, and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it. Neither the borrowing of the monies nor the execution and delivery of the Loan Documents nor the performance of the provisions of the agreements therein contained on the part of the Borrower will contravene, violate or constitute a default under the organizational and other governing instruments of the Borrower or result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement or other instrument which the Borrower or the Premises is subject or result in the violation of any law, ordinance, rule, regulation, judgment or decree to which the Borrower is a party or by which the Borrower or the Premises are subject. No consent or approval of any regulatory authority having jurisdiction over the Borrower is necessary or required by law as a prerequisite to the execution, delivery and performance of the terms of the Loan Documents.

1.4 LEGAL CONTROL

The Borrower is under the Legal Control (as defined in Subsection 2.2 below) of the Guarantor.

1.5 ENFORCEABILITY

The Loan Documents have been duly executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, except as to enforcement of remedies, as may be limited by bankruptcy, insolvency or similar laws affecting generally the enforcement of creditor’s remedies.

1.6 BANKRUPTCY, LITIGATION, LIENS

There are no (i) bankruptcy or dissolution proceedings involving the Borrower or any affiliate of the Borrower, and none are contemplated; (ii) unsatisfied judgments of record against the Borrower or any affiliate of the Borrower; or (iii) tax liens filed against the Borrower or any affiliate of the Borrower. There are no judgments, suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the Borrower's knowledge, threatened against the Borrower or its properties, or both, nor has any judgment, decree or order been issued against the Borrower or its properties, or both, which would have a material adverse effect on the Premises or the financial condition of the Borrower.

1.7 FULL AND ACCURATE DISCLOSURE

No written statement of fact made by or on behalf of the Borrower in the Loan Documents or in any other document or certificate delivered to the Lender by the Borrower contained, as of the date such statement, document or certificate was furnished, any untrue statement of fact or omitted to state any material fact necessary to make statements contained herein or therein not misleading. Any and all balance sheets, net worth statements and other financial statements and data furnished by the Borrower to the Lender in connection with the Loan are fair and accurate as of the date thereof, and, since the effective date of such materials, there has been no material adverse change in the financial condition of the Borrower.

1.8 NO PAYMENT DEFAULTS

The Borrower is not, as of the date hereof, in default in the payment of any of the Borrower's obligations.

1.9 MECHANICS' LIENS

The Premises are free from any mechanics' or materialmen's liens or claims. There has been no labor or materials furnished to the Premises by or on behalf of the Borrower and, to the Borrower's knowledge, by or on behalf of others, that has not been paid for in full.

1.10 PREMISES USE COMPLIANCE

The Borrower has no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation or restriction, or any judicial, administrative, governmental or quasi-governmental action, or any action by adjacent landowners, or natural or artificial condition existing upon the Premises which would limit, restrict or prevent the contemplated or intended use and purpose of the Premises. To the best of the Borrower's knowledge, the Premises complies with all zoning ordinances, energy and environmental codes, building, parking and use restrictions and codes, and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Premises.

1.11 GENERAL COMPLIANCE

The Borrower and the Premises are in compliance with all other state and federal laws, including but not limited to the Federal Controlled Substances Act (21 U.S.C. § 801 et seq.) and all other applicable federal, state and local laws, ordinances, codes, rules, regulations and orders.

1.12 NO CONDEMNATION

There is no pending condemnation or similar proceeding affecting the Premises, or any portion thereof nor, to the best knowledge of the Borrower, is any such action being presently contemplated.

1.13 NO AGRICULTURAL USE

No part of the Premises is being used or will be used principally, or at all, for agricultural or farming purposes.

1.14 NO CASUALTY; CONDITION OF PREMISES

The Premises is undamaged by fire, windstorm or other casualty. To the Borrower's knowledge and except as disclosed in the engineering report(s) delivered to the Lender in connection with the Loan, the Premises is free of material structural defects and all building systems contained therein are in good working order in all material respects subject to ordinary wear and tear.

1.15 SOLVENCY; FRAUDULENT CONVEYANCE

Except as disclosed to the Lender in writing, neither the Borrower nor any affiliate of the Borrower has been the subject of foreclosure or insolvency proceedings. The Borrower is not presently insolvent, and the execution and delivery of the Loan Documents will not render the Borrower insolvent. As used herein, the word "**insolvent**" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all of such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors. After the execution and delivery of the Loan Documents, the Borrower shall have sufficient working capital, including cash flow from the Premises or other sources, not only to adequately maintain the Premises, but also to pay all of the Borrower's outstanding debts as they become due. The Borrower has not entered into this Loan transaction or any of the Loan Documents with the intent to hinder, delay or defraud any creditor, and has received reasonably equivalent value in exchange for the transfers made and its obligations incurred under the Loan Documents.

1.16 ERISA

Neither the Borrower nor any affiliate of the Borrower is (a) an "employee benefit plan" as defined under Section 3(3) of the Employee Retirement Income Security Act of 1974, as now or hereafter amended ("**ERISA**") or (b) a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the Premises do not constitute "plan assets" within the meaning of the Department of Labor Regulation Section 2510.3-101 (as now or hereafter amended) or assets of an employee benefit plan subject to ERISA.

1.17 ADA

To the best of the Borrower's knowledge, the Borrower has complied with all requirements of the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213, as the same may be amended from time to time (the "**Americans with Disabilities Act**").

1.18 ANTI-TERRORISM

The Borrower and its affiliates are not and will not become a Person described by Section 1 of The Anti-Terrorism Executive Order 13,224 of September 23, 2001 blocking property and prohibiting transactions with Persons who commit, threaten to commit, or support terrorism, 66 Fed. Reg. 49,049 (2001), or described in any rule or regulation implementing the same and, to the best knowledge and belief of the Borrower after due and adequate diligence, neither the Borrower nor any affiliate of the Borrower engages or will engage in any dealings or transactions, or be otherwise associated with, any such Persons.

1.19 USA PATRIOT ACT

The Borrower and all affiliates of the Borrower are in compliance, and will remain in compliance, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “**USA Patriot Act**”). No Borrower, affiliate of the Borrower, or person owning an interest in the Borrower or in any affiliate of the Borrower are on the United States Treasury’s Office of Foreign Asset Control (“**OFAC**”) list of Specially Designated Nationals and Blocked Persons or on any state list of persons that engage in prohibited activities in Iran or any other country that is subject to OFAC or other state law sanctions (each such list, an “**OFAC List**”).

1.20 SEPARATE TAX PARCEL

The Premises is comprised of one or more parcels, each of which constitutes a tax parcel which pertains to the Premises only and not to any property which is not subject to this Security Instrument.

1.21 INDEPENDENCE OF PREMISES

The Premises may be operated independently from other land and improvements not included within or located on the Premises, and it is not necessary to own or control any property other than the Premises in order to meet the obligations of the landlord under any lease, or in order to comply with all applicable law, statutes, regulations, ordinances, or permits.

1.22 UTILITIES AND ACCESS

The Premises has adequate access to public ways and is served by all utilities required for the current use thereof. To the best of the Borrower’s knowledge, the heating, electrical, sanitary sewer plumbing, storm sewer plumbing, potable water plumbing and other building equipment, fixtures and fittings at the Premises are in good condition and working order, are adequate in quantity and quality for normal and usual use.

1.23 BUSINESS PURPOSE LOAN

The Indebtedness evidenced by the Note is a business loan transacted solely for the purpose of carrying on the business of the Borrower and not a consumer transaction. No portion of the Premises constitutes the homestead or dwelling place of the Borrower at the time this Security Instrument is executed and, further, this Security Instrument does not encumber property principally improved or to be improved by one or more structures containing in the aggregate fewer than six residential dwelling units.

1.24 CONTINUING OBLIGATION

The Borrower further warrants and represents that all statements made hereunder are true and correct and that all financial statements, data and other information provided to the Lender by the Borrower relating to or provided in connection with this transaction have not and does not contain any statement which, at the time and in the light of the circumstances under which it was made, would be false or misleading with respect to any material fact, or would omit any material fact necessary in order to make any such statement contained therein not false or misleading in any material respect, and since such statement, data or information was provided there has been no material change thereto or to the condition of the Borrower. Should the Borrower subsequently obtain knowledge that such representation was or is untrue, the Borrower shall immediately notify the Lender as to the untrue nature of said representation and agrees to take action as may be necessary to cause such representation to become true.

The term “affiliate,” as used herein, shall mean as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity or is a director, partner, member or officer of such person or entity or of an affiliate of such person or entity. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting interests, by contract or otherwise.

2. COVENANTS AND AGREEMENTS

The Borrower covenants and agrees for the benefit of the Lender, its successors and assigns, as follows:

2.1 PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS

The Borrower will duly and punctually pay each and every installment of principal, premium, if any, and interest on the Note, all deposits required herein, and all other Indebtedness, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein or in any other Loan Documents, as such instrument may be amended, modified, restated and in effect from time to time. For the avoidance of doubt, any reference to the term “**business days**” used herein or in the other Loan Documents shall mean all calendar days other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business.

2.2 LEGAL CONTROL; MANAGEMENT OF PREMISES

The Guarantor and the Immediate Family Members (as defined in Subsection 2.10(c) below) of the Guarantor shall have Legal Control of the Borrower at all times. “**Legal Control**” means the power, indefeasible except for cause, to direct or to cause the direction of the management and policies of the owner of the Premises through the direct or indirect holding of (i) equity interests in the Borrower, (ii) rights under a voting trust, (iii) the position of general or managing general partner of a partnership, (iv) the position of manager or managing member of a limited liability company or (v) other contractual rights conferring such power. The Borrower, the Guarantor or a qualified property manager approved by the Lender in writing shall manage the Premises at all times in a manner that is consistent with good commercial practices for institutional owners of like property types.

2.3 MAINTENANCE; REPAIRS

The Borrower will keep and maintain the Premises in good operating condition, and repair, free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises, which may become damaged or destroyed, to their condition prior to any such damage or destruction. Without the prior written consent of the Lender, which consent will not be unreasonably withheld, the Borrower will not remove or expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, adversely affect the market value or change the existing architectural character of the Premises, and agrees that any other buildings, structures and improvements now or hereafter constructed on or in the Premises or repairs made to the Premises shall be completed in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations, requirements and permits and in accordance with plans and specifications previously delivered to, and approved in advance and in writing by the Lender. All future maintenance, renovation, repair and construction conducted on the Premises shall all be completed in accordance with the Americans with Disabilities Act. The Borrower agrees that it will maintain, clean, repair and

adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways, curb cuts and sidewalks and sufficient paved areas for ingress and right-of-way to and from the adjacent public thoroughfare necessary or desirable for the use thereof and maintain all landscaping thereon.

2.4 PAYMENT OF OPERATING COSTS, LIENS, AND OTHER INDEBTEDNESS

The Borrower will pay all operating costs and expenses of the Premises; keep the Premises free from mechanics' liens, materialmen's liens, judgment liens and other liens (including but not limited to a lien created by a Property Assessed Clean Energy program loan or any similar financing), executions, attachments or levies ("**Liens**"); and will pay when due all permitted indebtedness which may be secured by a lien or charge on the Premises, whether prior to, subordinate to or of equal priority with the lien hereof, and upon request will exhibit to the Lender satisfactory evidence of such payment and discharge. The Borrower shall cease making any payments to any affiliates upon the occurrence and during the continuance of an Event of Default.

2.5 PAYMENT OF IMPOSITIONS

The Borrower will pay when due and before any penalty or interest attaches because of delinquency in payment, all taxes, installments of assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or the Indebtedness (the "**Impositions**"); and will upon demand furnish to the Lender proof of the payment of any such Impositions.

2.6 CONTEST OF LIENS AND IMPOSITIONS; PROTECTION OF SECURITY

The Borrower shall have the right to contest in good faith the validity or amount of any Imposition or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested or the sale or forfeiture of the Premises (or any part thereof or interest therein) to satisfy the same, (ii) the Borrower giving the Lender written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanics' lien claim, shall mean within thirty (30) days after the Borrower receives actual notice of the filing thereof, (iii) the Borrower making and thereafter maintaining with the Lender or such other depository as the Lender may designate, a deposit of cash (or United States government securities, in discount form, or other security as may be acceptable to the Lender in its sole discretion, and in either case having a present value equal to the amount herein specified) in an amount no less than one hundred twenty-five percent (125%) of the amount which, in the Lender's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to the Borrower or in the event the Borrower fails to prosecute such contest as herein required, or in lieu thereof, the Borrower providing to the Lender title insurance over such matters in form and substance reasonably acceptable to the Lender, and (iv) the Borrower diligently prosecuting such contest by appropriate legal proceedings. If the Borrower shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, the Lender may, at its option, liquidate the securities deposited with the Lender, and apply the proceeds thereof and other monies deposited with the Lender in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon. Any such contest shall be prosecuted in accordance with the laws and rules pertaining to such contests and in all events with due diligence and the

Borrower shall promptly after final determination thereof pay the amount of any such Liens or Impositions so determined, together with all interest and penalties, which may be payable in connection therewith. Notwithstanding the provisions of this Subsection, the Borrower shall (and if the Borrower shall fail so to do, the Lender, may but shall not be required to) pay any such Liens or Impositions notwithstanding such contest if in the opinion of the Lender, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. The Borrower agrees to promptly notify the Lender of and appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness or the rights or interest of the Lender hereunder. The Lender may elect to appear in or defend any such action or proceeding and the Borrower agrees to indemnify and reimburse the Lender from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and reasonable attorneys' fees.

2.7 FINANCIAL AND PROPERTY REPORTING

(a) Annual Statements

Within one hundred twenty (120) days after the end of each of its fiscal years during the term of this Security Instrument, the Borrower will furnish to the Lender (i) annual financial statements of the Borrower (including a balance sheet and income statement), (ii) annual operating statements of the Premises, which shall include at least gross income (itemized as to source), operating expenses (itemized), depreciation charges, and net income before and after federal income taxes; and (iii) a certified rent roll of all tenants having leases on the Premises in the form of that delivered to the Lender along with this Security Instrument, and such additional information as the Lender may reasonably request from time to time. The Borrower shall provide certified financial statements of the Guarantor no later than October 31 of each year. The financial statements of the Borrower and the operating statements of the Premises shall be certified by an authorized officer of the Borrower, shall be reasonably satisfactory in form and content to the Lender, shall conform to commercially acceptable accounting principles consistently applied and shall be prepared at the Borrower's expense. The financial statements of the Guarantor shall be certified personally by the Guarantor, shall be reasonably satisfactory in form and content to the Lender, shall be prepared according to commercially accepted accounting principles consistently applied and shall be prepared at the expense of the Borrower.

(b) Other Reporting

In addition, as the Lender may reasonably request upon learning of an event or circumstance that may adversely impact the Lender or the Premises, the Borrower shall deliver year-to-date operating statements and an organizational chart displaying the ownership of the Borrower within five (5) business days of the Lender's request. From time to time upon the reasonable request of the Lender, the Borrower shall furnish the Lender with a current and certified rent roll of the Premises within five (5) business days of the Lender's request.

(c) Lender Audit

The Borrower covenants that it shall keep true and accurate records of the operation of the Premises. In the event that the Borrower fails to furnish any of the above statements or upon the occurrence of an Event of Default hereunder, the Lender may cause an audit to be made of the applicable books and records of the Borrower at the sole cost and expense of the Borrower. The Lender shall also have the right during normal business hours and

with reasonable advance notice to the Borrower to examine at their place of safekeeping all books, accounts and records relating to the operation of the Premises and make copies thereof or extracts therefrom and to discuss the affairs, finances or accounts with the principals and employees of the Borrower and its independent accountants. Said examination shall be at the Lender's expense unless the Borrower's statements are found to contain significant discrepancies, in which case the examination shall be at the Borrower's expense.

2.8 ADDITIONAL ACTS

The Borrower, its successors and assigns will WARRANT AND DEFEND the title to the Premises against all lawful claims not specifically excepted in this Security Instrument (including, but not limited to, the Permitted Encumbrances). The Borrower agrees upon request by the Lender to execute and deliver such further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Security Instrument and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. The Borrower agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incidental to the filing, the issuance and delivery of the Note, the filing or recording of this Security Instrument or the delivery and recording of such further assurances and instruments as may be required pursuant to the terms of this Security Instrument.

2.9 DUE ON SALE OR ENCUMBRANCE

The Borrower covenants and agrees with the Lender that the Borrower shall not (1) sell, convey, transfer, divide, further encumber, mortgage, assign, pledge, grant option with respect to or grant any other interest in the Premises, or any part thereof (including any legal, beneficial or economic interest in the Borrower), directly or indirectly, except as permitted in Subsection 2.10 or leases entered into in accordance with the Loan Documents or (2) create, incur, assume or suffer to exist any lien on any direct or indirect interest in the Borrower or on any portion of the Premises without the Lender's prior written consent except for Permitted Encumbrances; whether any such event described in (1) or (2) above is voluntary, involuntary or by operation of law. Upon the occurrence of an event prohibited by this Subsection 2.9, the Lender, at its sole option, may declare the Indebtedness immediately due and payable in full and call for payment of the same at once, which shall include (without limitation) the "**Reinvestment Charge**" or "**Default Premium**" then in effect under the terms of (and as defined in) the Note, unless such transaction constitutes a Due on Sale Exception described in Subsection 2.10 below.

2.10 DUE ON SALE OR ENCUMBRANCE EXCEPTIONS

Notwithstanding the restrictions contained in Subsection 2.9 above, and provided the additional requirements in Subsection 2.10(d) are satisfied, the following transfers and encumbrances shall constitute "**Due on Sale Exceptions**":

(a) Permitted Transfer of the Premises

The Borrower shall have the right, on one occasion during the term of the Loan, to transfer the Premises in a transaction approved by the Lender. The Lender agrees that a transfer satisfying the following requirements shall not be deemed a violation of Subsection 2.9:

- (i) The Lender shall have received a written request for its approval at least sixty (60) days prior to the proposed sale together with a review fee of

Three Thousand and 00/100 Dollars (\$3,000.00) payable to Securian Asset Management, Inc. or the Lender's designee. The request shall specify the proposed transferee, the purchase price and other terms of the transaction, and shall include a copy of the proposed contract of sale as well as the financial statements, tax returns and organizational documents of the proposed transferee and the proposed replacement guarantor(s).

- (ii) The Lender shall have determined in its sole discretion (exercised in good faith) that the proposed transferee of the Premises and the proposed replacement guarantor(s) are creditworthy, have sufficient financial strength, and have proven commercial real estate experience (considering the type, size and quality of the Premises) or have retained a professional commercial real estate leasing agent and property manager for the Premises satisfactory to the Lender in its reasonable discretion. In addition, the Borrower shall have provided evidence satisfactory to the Lender in its reasonable discretion that the proposed transferee, replacement guarantor(s) and any principals of either have not (x) been subject to any bankruptcy or insolvency proceeding or (y) been charged with fraud or any other financial crime.
- (iii) The Borrower and the transferee shall have executed an assumption agreement (to be recorded) in form and content acceptable to the Lender together with any guarantees, consents or other documents reasonably required by the Lender.
- (iv) The transferee must acquire the entire Premises.
- (v) The Lender shall have received a transfer fee equal to one percent (1%) of the then-outstanding principal balance of the Loan.
- (vi) The transferee shall have acknowledged that future transfers or encumbrances, except if otherwise permitted under the Loan Documents, will be subject to the Lender's approval, which may, at the Lender's sole discretion, be withheld or conditioned upon payment of a fee and modification of the Loan terms.
- (vii) The Lender shall be provided an endorsement to the Lender's title policy insuring the first lien position of this Security Instrument, such endorsement to insure that the transferee is the owner of the Premises, subject to no liens or encumbrances other than Permitted Encumbrances, encumbrances approved by the Lender in writing after the date hereof, and current taxes not yet due and payable. If an endorsement is not available in the state where the Premises is located, a new title policy meeting all of the Lender's requirements will be provided to the Lender.
- (viii) The transferee and the replacement guarantor(s) approved by the Lender shall have assumed liability for the payment and performance obligations under the Loan Documents, including the Recourse Obligations (as defined in the Note) that arise in connection with, on or after the date of the assumption of the Loan. The Borrower and each Guarantor shall be released from liability for the payment and performance obligations under the Loan Documents, including the Recourse Obligations, that arise after

the date of the assumption of the Loan. The Borrower and each Guarantor shall have acknowledged and affirmed their continuing liability under the Loan assumption documents for all liabilities and obligations that the transferee proves existed, accrued or arose under the Loan Documents prior to the date of the assumption of the Loan, all of which shall survive the consummation of the transfer and Loan assumption.

- (ix) The Borrower (and any transferee or guarantor, as applicable) shall have executed, delivered and recorded (when necessary) such amendments, supplements, corrections and replacements to the Loan Documents as the Lender may reasonably require.

(b) Permitted Transfers of Passive Interests

A transfer of a direct or indirect interest in the Borrower that meets the following requirements shall not be deemed a violation of Subsection 2.9:

- (i) The Borrower shall have delivered written notice to the Lender at least thirty (30) days in advance of the proposed transfer (unless a transfer upon death, in which case the Lender shall be notified within sixty (60) days of such transfer), together with a review fee of Five Hundred and 00/100 Dollars (\$500.00) payable to Securian Asset Management, Inc. (or the Lender's designee) and evidence reasonably satisfactory to the Lender that the proposed transfer would meet the requirements of this Subsection 2.10(b). Such evidence shall include a description of the proposed transfer(s) and detailed pre- and post-transfer organizational charts of the Borrower.
- (ii) The proposed transfer shall not result in any violation of the covenants of the Loan Documents relating to the management of the Premises and the Legal Control of the Borrower.

(c) Estate Planning Transfers

A transfer of a direct or indirect ownership interest in the Borrower made solely for estate planning purposes to a parent, sibling, spouse or child of a Guarantor (each an "**Immediate Family Member**" and collectively "**Immediate Family Members**"), or to a grandchild or great grandchild of the Guarantor (the "**Extended Family Members**"), or to a trust or a legal entity for the benefit of Immediate Family Members or Extended Family Members shall not be deemed a violation of Subsection 2.9 provided in each case the following requirements are satisfied:

- (i) The Borrower shall have delivered written notice to the Lender at least thirty (30) days in advance of the proposed transfer (unless a transfer upon death, in which case the Lender shall be notified within sixty (60) days of such transfer), together with evidence reasonably satisfactory to the Lender that the proposed transfer would meet the requirements of this Subsection 2.10(c). Such evidence shall include a description of the proposed transfer(s) and detailed pre- and post-transfer organizational charts of the Borrower.

- (ii) The proposed transfer shall not result in any violation of the covenants of the Loan Documents relating to the management of the Premises and the Legal Control of the Borrower.

(d) Additional Requirements

Additional requirements applicable to all Due on Sale Exceptions include:

- (i) No Event of Default shall exist, and no act, omission or circumstance shall exist which, if uncured following notice and the passage of time, would become an Event of Default.
- (ii) Any transferee, replacement guarantor or principal of either shall not appear on any OFAC List or any state list of persons that engage in prohibited activities in any country that is subject to OFAC or any state law sanctions, as confirmed by the Lender.
- (iii) The Borrower shall pay all out-of-pocket expenses (including reasonable attorneys' fees) actually incurred by the Lender (if any) in the review and processing of a proposed Due on Sale Exception, regardless of whether such Due on Sale Exception is carried out.

The permitted Due on Sale Exceptions and related rights granted by the Lender to the Borrower are personal to the Borrower, and shall not inure to the benefit of any subsequent assignee, owner or transferee of the Premises.

2.11 MAINTENANCE OF EXISTENCE

The Borrower (i) agrees to maintain its existence in good standing and to remain duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so may have a material adverse effect on the assets or financial condition of the Borrower, and (ii) agrees not to dissolve, liquidate, windup, consolidate, divide or merge during the term hereof, without, in each instance, the prior written consent of the Lender. Further, the Borrower shall not become an "employee benefit plan" as defined under ERISA or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the Borrower shall not cause or permit any part of the Premises to constitute a "plan asset" within the meaning of the Department of Labor Regulation Section 2510.3-101 or under ERISA.

2.12 COMPLIANCE WITH LAWS

The Borrower and the Premises will at all times during the term of this Security Instrument be in compliance with all state and federal laws, including but not limited to the Americans with Disabilities Act, and all other federal, state or local ordinances, codes, rules, regulations and orders that may impact the Borrower or the Premises or any part thereof (collectively, and as they may be amended from time to time, "**Laws**"). The Borrower shall also undertake commercially reasonable efforts to cause all tenants or subtenants to use the Premises in compliance with the Laws.

2.13 COMPLIANCE WITH CONTROLLED SUBSTANCES LAWS

For the purposes of this Subsection 2.13, (i) "**Controlled Substances Laws**" means the Federal Controlled Substances Act (21 U.S.C. §801 *et seq.*) or any other similar or related federal, state or local law, ordinance, code, rule, regulation or order; and (ii) "**Controlled Substances Use**" means any cultivation, growth, creation, production, manufacture, sale, distribution, storage, handling, possession or other use of marijuana, cannabis, hemp or any other controlled substance as and to

the extent defined as such in the Federal Controlled Substances Act or that otherwise is illegal under any of the Controlled Substances Laws.

- (a) The Borrower shall not engage in, enter into, consent to or permit any lease, sublease, license or other agreement relating to, or otherwise permit the use or occupancy of, the Premises for a Controlled Substances Use in any manner that violates any Controlled Substances Laws, including, without limitation, any business, communications, financial transactions or other activities related to a Controlled Substances Use that violate any Controlled Substances Laws (collectively, “**Drug-Related Activities**”).
- (b) The Borrower shall not make any payments to the Lender from funds derived from Drug-Related Activities.
- (c) The Borrower shall include in all future leases and other agreements for use and occupancy of the Premises, provisions that (i) prohibit any Drug-Related Activities on the Premises and (ii) permit the Lender (or its designee) to make physical inspections of the Premises upon the request of the Lender.
- (d) The Borrower and the Lender acknowledge that, pursuant to the Agricultural Improvement Act of 2018, certain hemp-derived products may, based on composition of the product and levels of Tetrahydrocannabinol (“**THC**”) below 0.3%, presently be excluded from the Controlled Substances Act as a controlled substance, (subject to certain regulatory approvals at the federal and state levels), and that such products may be sold, stored, or otherwise present at the Premises without violating Controlled Substances Laws. Notwithstanding such exclusion from the Controlled Substances Laws, to the extent the presence, sale, production or other use or manner of use of such excluded substances on or about the Premises (i) is nevertheless later deemed to be unlawful under any of the Laws, including Controlled Substances Laws, or (ii) results in any liability, loss, or prejudice to the Lender’s rights and interests under any Loan Document, the rights and remedies of the Lender under the Loan Documents shall apply and be fully enforceable.
- (e) The Borrower shall obtain the Lender’s prior written consent before (i) entering into any new lease with a tenant whose business includes a Controlled Substances Use, (ii) modifying an existing lease to permit a Controlled Substances Use, or (iii) otherwise permitting or consenting to the use or occupancy of the Premises for a Controlled Substances Use.

2.14 CONTINUANCE AS SINGLE ASSET AND SPECIAL PURPOSE ENTITY

The sole and exclusive purpose of the Borrower shall be limited to acquiring, owning, developing, managing, operating, and maintaining the Premises (and incidental assets, such as bank accounts, related to the Premises) as is owned by the Borrower on the date hereof, and to conduct activities incidental to the foregoing with respect to the Premises. In furtherance of such purpose, the Borrower covenants and agrees that it shall not:

- (a) engage in any business or activity other than (i) the acquisition, ownership, development, operation and maintenance of the Premises and activities incidental thereto, or (ii) entering into and performing the obligations of the Borrower under the Loan Documents;

- (b) acquire or own any material asset other than its interest in the Premises, and such incidental personal property as may be necessary for the operation of the Premises;
- (c) (i) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the Lender's consent, or (ii) exercise any right of division available at law or otherwise, in whole or in part;
- (d) without the prior written consent of the Lender (which consent as to amendments or modifications shall not be unreasonably withheld or delayed), amend, modify, terminate or fail to comply with the provisions of the Borrower's organizational documents;
- (e) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity;
- (f) commingle its assets with the assets of any of its owners, affiliates or any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the Borrower properly accounted for;
- (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Premises in such amounts as are normal and reasonable under the circumstances;
- (h) allow any person or entity to pay its debts and liabilities (except a Guarantor who is responsible for repayment of any obligations of the Borrower in connection with the Loan secured by this Security Instrument) or fail to pay its debts and liabilities solely from its own assets;
- (i) fail to maintain its records, books of account and bank account (to which Loan proceeds shall be wired) separate and apart from those of the principals and affiliates of the Borrower, and any other person or entity or fail to prepare and maintain its own financial statements in accordance with commercially acceptable accounting principles;
- (j) enter into any contract or agreement with any direct or indirect owner, principal or affiliate of the Borrower or any guarantor of all or a portion of the Indebtedness except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such owner, principal or affiliate of the Borrower or any guarantor of all or a portion of the Indebtedness; or
- (k) seek dissolution or winding up, in whole or in part, or fail to qualify to do business and remain in good standing under the laws of the state in which it was formed.

2.15 BUILDING USE

During the entire term of the Note and this Security Instrument, except with the prior written consent of the Lender, the Borrower covenants not to (a) convert the Premises to condominium or cooperative units of any kind; (b) convert the Premises to any use other than the existing use (as of the effective date of this Security Instrument); or (c) acquiesce in any rezoning classification,

modification or restriction affecting the Premises. The sale of condominium or cooperative units or recording of condominium or cooperative documents on the Premises or any part thereof shall constitute an Event of Default hereunder. The Borrower shall not abandon or vacate the Premises.

3. **INSURANCE AND ESCROWS**

3.1 INSURANCE POLICIES

The Borrower shall obtain and keep in full force and effect during the term of this Security Instrument at its sole cost and expense the following insurance:

(a) Property Insurance

Property insurance on a Cause of Loss – Special Form in an amount not less than one hundred percent (100%) of the replacement cost of all insurable elements of the Premises (as specified in the cost approach section of the appraisal delivered in accordance with the Loan’s closing requirements), which shall include sprinkler coverage, an agreed-amount endorsement, a building law and ordinance endorsement (including all coverages A, B and C) and a waiver of subrogation endorsement.

(b) Commercial General Liability

Commercial general liability insurance in a minimum amount not less than Three Million and 00/100 Dollars (\$3,000,000.00) per occurrence. The personal injury contractual liability exclusion shall be deleted.

(c) Broad Form Boiler and Machinery

If there are pressure-fired vessels within the Premises, broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance, and providing for full repair and replacement cost coverage.

(d) Flood

Flood insurance in the maximum amount obtainable at any time during the term of this Security Instrument and which complies with the current guidelines of the Federal Emergency Management Agency (as set forth by the Federal Insurance and Mitigation Administration or its successor (“FIMA”)), unless (i) evidence is provided throughout the term of this Security Instrument that no part of the Premises is located in an area identified as a special hazard flood area as indicated on a Flood Insurance Rate Map maintained by FIMA and (ii) the Premises are not designated as being within a flood plain during the term of this Security Instrument.

(e) Earthquake

Earthquake insurance in the maximum amount available (but in no event less than the outstanding principal balance of the Note) if at any time during the term of this Security Instrument it is determined that (i) the Premises is located in an area where the peak horizontal ground acceleration is determined to equal or exceed 0.15g (based on a 10% probability of exceedance due to the specified ground motion of the scenario considered during a 50-year exposure period) using either the most recent United States Geological Society (USGS) National Seismic Hazard Map or the USGS Interactive Deaggregations, and (ii) the Probable Maximum Loss (determined using the Scenario Upper Loss methodology as defined in ASTM E2557-16a, or a current replacement of such standard) is greater than twenty percent (20%). The Lender shall have the right to require that the

Borrower furnish the Lender with such engineering data as it may require regarding the risk of earthquake to the Premises, at the Borrower's expense, in the event that the Lender shall reasonably conclude that such risk may exist.

(f) Rents/Business Interruption

Rent and rental value or business interruption insurance covering risk of loss due to the occurrence of any hazards insured against under the policies required in subsections (a), (b) and (c) hereof in an amount equal to: (i) rent for a twelve (12) month period, plus (ii) real estate taxes, special assessments, insurance premiums and other expenses required to be paid by the tenants under each lease of the Premises for such twelve (12) month period.

(g) Windstorm

Windstorm insurance satisfactory to the Lender if not included within the property policy required in Subsection 3.1(a) above, and if applicable for the location of the Premises, a separate special windstorm policy may be required.

(h) Builder's Risk

Builder's risk insurance during the making of any alterations, restorations, or improvements to the Premises. Such coverage shall be written in a completed value form or equivalent coverage, including permission to occupy the Premises, in an amount equal to one hundred percent (100%) of the total costs of the repair, alteration or restoration on a non-reporting basis against all risks as the Lender may reasonably request.

(i) Worker's Compensation

Worker's compensation insurance during any period of restoration, alteration, or improvement to the Premises and where the Borrower maintains one or more employees. This insurance shall cover anyone for whom the Borrower may be liable for worker's compensation claims.

(j) Other Coverages

Such other insurance coverages or endorsements appropriate to the property type and site location as the Lender may require in its commercially reasonable discretion, or as may be required by law.

3.2 POLICY REQUIREMENTS

- (a) The insurance policies required in the above Subsection shall be written by insurance companies licensed to do business in the state in which the Premises is located, having a minimum rating in Best's Casualty Reports of A, with a financial class size of X or better and otherwise satisfactory to the Lender;
- (b) Such insurance policies and endorsements shall: (1) be electronically or physically signed by an authorized officer; (2) be satisfactory in form and content to the Lender; (3) name as the insured parties the Borrower and the Lender as their interests may appear; (4) be in amounts sufficient to prevent the Borrower from becoming a co-insurer of any loss thereunder; (5) name the Lender as "first mortgagee" under a standard mortgagee clause and as "loss payee" under a loss payee endorsement or a Lenders Loss Payable endorsement for all property insurance policies, and name the Lender as an "additional insured" on the

commercial general liability policy and any umbrella/excess liability policies; (6) contain an endorsement that no act or negligence of the Borrower or any occupant and no occupancy or use of the Premises will affect the validity or enforceability of such insurance as against the Lender; and (7) contain such other endorsements as the Lender may require in its commercially reasonable discretion.

- (c) Required insurance policies shall provide that the Lender receive at least ten (10) days' prior written notice of cancellation or amendment for nonpayment of premium and a minimum of thirty (30) days' notice of cancellation or nonrenewal, or as required pursuant to state law.
- (d) No insurance policies shall be subject to any premium financing arrangement and no creditor other than the Lender shall have any rights to insurance proceeds generated from policies required hereunder.

3.3 INSURANCE-RELATED LOAN TERMS

(a) Failure to Maintain Insurance; Lender Rights

Failure to maintain insurance as required by the Loan Documents shall constitute an automatic Event of Default. In the event of a foreclosure of this Security Instrument or any acquisition of the Premises by the Lender, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of the Lender to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, the Borrower empowers the Lender to effect insurance upon the Premises at the Borrower's expense and for the benefit of the Lender in the amounts and types aforesaid for a period of time covering the time of redemption from foreclosure sale, and if necessary therefor, to cancel any or all existing insurance policies.

(b) Renewals; Borrower Deliverables

The Borrower shall, within fifteen (15) days prior to the expiration of any such policy, deliver to the Lender copies of the required insurance policies or certificates acceptable to the Lender evidencing the renewal of such insurance together with evidence of the payment of current premiums. If the Borrower satisfies the immediately preceding obligation by delivering a certificate of insurance, the Borrower shall also deliver a copy of the full policy no later than five (5) business days after the expiration of such policy's previous term. The Borrower shall at its expense furnish evidence of the replacement value of the improvements on the Premises in form satisfactory to the Lender on renewal of insurance policies or upon request of the Lender. The Borrower agrees to furnish the Lender copies of all inspection reports and insurance recommendations received by the Borrower from any insurer.

(c) No Lender Representation

The Lender makes no representations that the insurance required by the Loan Documents are adequate protection for a prudent company.

(d) Tenant Insurance Policies

If a tenant of the Borrower is required to maintain insurance pursuant to a lease of the Premises entered into in accordance with the Loan Documents, the Lender will accept any such policy or policies that satisfy the requirements of this Section. In the event that the

tenant fails to maintain such insurance, the Borrower will obtain the policy or policies required herein.

3.4 ESCROWS

The Borrower shall deposit with the Lender, or at the Lender's request, with its servicing agent, on the day of each month on which payment on the Indebtedness is due, commencing with the date the first payment of interest or principal and interest shall become due on the Indebtedness, a deposit to pay the Impositions and insurance premiums (collectively, the "**Charges**") in an amount equal to:

- (a) One-twelfth (1/12) of the annual Impositions next to become due upon the Premises; provided that, with the first such deposit, there shall be deposited in addition an amount as estimated by the Lender which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to the Lender's satisfaction that there will be sufficient funds on deposit to pay the Impositions as they come due; plus
- (b) One-twelfth (1/12) of the annual premiums on each policy of insurance required to be maintained hereunder; provided that with the first such deposit there shall be deposited, in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits shall be based upon the Lender's estimate as to the amount of Impositions and premiums of insurance next to be payable and may require that the full amount of such payment will be available to the Lender at least one month in advance of the due date. The amounts held by the Lender or its servicing agent shall be held without interest. The Lender will, upon timely presentation to the Lender by the Borrower of the bills therefor, pay the Charges from such deposits prior to delinquency. The Borrower agrees to cooperate and assist in obtaining of tax bills when requested by the Lender. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then the Borrower shall immediately pay to the Lender on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited towards subsequent Charges.

If an Event of Default shall occur under the terms of this Security Instrument, the Lender may, at its option, without being required so to do, apply any deposits on hand to the payment of Charges whether then due or not or to the Indebtedness, in such order and manner as the Lender may elect. When the Indebtedness has been fully paid any remaining deposits shall be returned to the Borrower as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness, shall be held for the purposes for which made as herein provided, may be held by the Lender or its servicing agent, may be commingled with other funds of the Lender or its servicing agent, shall be held without allowance of interest thereon and without fiduciary responsibility on the part of the Lender or its agents and shall not be subject to the direction or control of the Borrower. Neither the Lender nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, the Lender or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, the Lender shall be under no duty to seek a tax division or apportionment of the tax bill, and any payment of taxes based on a larger parcel shall be paid by the Borrower and the Borrower shall expeditiously cause a tax subdivision to be made.

4. **UNIFORM COMMERCIAL CODE**

4.1 SECURITY AGREEMENT

This Security Instrument shall constitute a security agreement as defined in the Uniform Commercial Code in effect in the state in which the Premises is located, as amended from time to time (the “Code”), and, to secure payment of the Note and all amounts due and owing under the terms of the Note and the other Loan Documents, the Borrower hereby grants to the Lender a security interest within the meaning of the Code in favor of the Lender on the improvements, fixtures, equipment, personal property, rents, leases, profits, judgments, condemnation awards, insurance proceeds, licenses, permits, equipment leases, service agreements, proceeds and accounts receivable, general intangibles and other rights, all as described in Granting Clauses (other than Granting Clause A) of this Security Instrument (the “Collateral”). The Collateral as of the date hereof includes (but shall not be limited to) the specific articles of property described in Exhibit “B” attached hereto.

4.2 FIXTURE FILING

As to those items of Collateral described in this Security Instrument that are, or are to become fixtures related to the Premises and owned by the Borrower, and all products and proceeds thereof, it is intended as to those items that PURSUANT TO SECTIONS 7-9A-102(a)(40) AND 7-9A-502 OF THE CODE OF ALABAMA, THIS SECURITY INSTRUMENT SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the Probate Court of the County where the Premises are situated. The name of the record owner of said real estate is the Borrower as set forth in Page 1 to this Security Instrument. Information concerning the security interest created by this instrument may be obtained from the Lender, as secured party, at its address as set forth in Page 1 of this Security Instrument. The address of the Borrower, as debtor, is as set forth in Page 1 to this Security Instrument. This document covers goods which are or are to become fixtures. The Borrower is a limited liability company organized under the laws of the state of Delaware. The Borrower’s organizational identification number is 5627889. The real property to which the Collateral relates is described in Exhibit “A” attached hereto.

4.3 REPRESENTATIONS AND AGREEMENTS

Except as specifically disclosed in writing by the Borrower to the Lender prior to the execution of this Security Instrument, during the five (5) years and six (6) months prior to the date of this Security Instrument, the Borrower has not been known by any legal name different from the one set forth in the first paragraph of this Security Instrument, nor has the Borrower been the subject of any merger, divisional merger, consolidation or other organizational reorganization during such period of time. The Borrower hereby authorizes the Lender to cause any financing statement or fixture filing (and amendments thereto and continuations thereof) to be filed or recorded without the necessity of any signature of the Borrower on such financing statement or fixture filing. The Borrower irrevocably authorizes the Lender to file such financing statements describing the collateral as “all of the Debtor’s personal property” or “all of the Debtor’s assets.”

The Borrower represents and agrees that: (a) the Collateral includes all of the equipment, appliances and personal property owned by the Borrower and required for the proper management, maintenance and operation of the Premises and the Borrower authorizes the Lender to describe the Collateral as “all assets of the Borrower and all proceeds thereof, and all rights and privileges with respect thereto” or words of similar effect in any financing statement or fixture filing; (b) the Borrower is and will be the true and lawful owner of the Collateral, subject to no liens, Charges,

security interest and encumbrances other than the lien hereof and the Permitted Encumbrances; (c) the Collateral is to be used by the Borrower solely for business purposes being installed upon the Premises for the Borrower's own use or as the equipment and furnishings leased or furnished by the Borrower, as landlord, to tenants of the Premises; (d) the Collateral will not be removed from the Premises without the consent of the Lender other than the removal of obsolete equipment or furniture that is replaced by the Borrower with items of equivalent quality, value, and utility in the ordinary course of operation of the Premises as a prudent owner; (e) unless stated otherwise in this Security Instrument the only persons having any interest in the Collateral are the Borrower and the Lender and no financing statement covering any such property and any proceeds thereof is on file in any public office except pursuant hereto; (f) the remedies of the Lender hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of the Lender including having such Collateral deemed part of the realty upon any foreclosure thereof; (g) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to the Lender; (h) the Borrower will from time to time provide the Lender on request with itemizations of all such Collateral on the Premises; (i) the filing of a financing statement pursuant to the Code shall never impair the stated intention of this Security Instrument that all Improvements, Fixtures, Equipment and Personal Property described in Granting Clause B hereof are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement; (j) the Borrower shall give at least thirty (30) days written notice of any proposed change in the Borrower's name, identity, state of registration for a registered organization, principal place of business, or structure; and (k) the Lender or its agent may file such financing statements, amendments or continuations, either before, on or after the date hereof, as the Lender determines necessary or desirable to perfect the lien of the Lender's security interest in the Collateral, and the Borrower shall pay all costs, including recording fees, of such statements, amendments or continuations.

5. INSURANCE PROCEEDS AND CONDEMNATION AWARDS

5.1 DAMAGE OR DESTRUCTION OF THE PREMISES

(a) Notice of Casualty; Adjustment of Claims

The Borrower will give the Lender prompt notice of damage to or destruction of the Premises. In the case of a loss covered by policies of insurance, the Lender may settle and adjust any claim arising out of such policies and collect, receive and give receipts for the proceeds payable therefrom. Notwithstanding the foregoing, if no Event of Default exists, the Borrower may adjust and settle any such insurance claim pertaining to an amount not in excess of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**De Minimis Threshold**").

(b) Availability of Insurance Proceeds

Insurance proceeds received in connection with a casualty shall be paid to the Lender for any use permitted in Subsection 5.4 below. Notwithstanding the foregoing, if the insurance proceeds are less than or equal to the De Minimis Threshold, and there is no Event of Default, the Borrower may collect such proceeds solely for use in the repair of the

Premises. Where such proceeds exceed the De Minimis Threshold but are less than the outstanding principal balance of the Loan, the Lender shall release them to the Borrower for the repair of damage to the Premises subject to the provisions of Subsection 5.3 below. If the insurance proceeds exceed the outstanding principal balance of the Loan, the insurance proceeds or any part thereof may be used by the Lender in accordance with Subsection 5.4 below.

5.2 CONDEMNATION

(a) Notice of Taking; Adjustment of Awards

The Borrower will give the Lender prompt notice of any action, actual or threatened, of condemnation or eminent domain. The Lender is hereby authorized to intervene in any such action and to collect awards from the condemning authorities and give proper receipts and acquittances for such proceeds. The Borrower will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises unless prior written consent of the Lender is obtained.

(b) Availability of Awards

The Borrower shall direct the condemning authority to deliver the condemnation proceeds to the Lender or its designee. The Borrower shall deliver all condemnation proceeds received by the Borrower to the Lender within five (5) days of receipt thereof. The condemnation proceeds or any part thereof shall be used by the Lender in accordance with Subsection 5.4 below.

5.3 DISBURSEMENT OF INSURANCE AND CONDEMNATION PROCEEDS

With respect to (i) any insurance proceeds in an amount exceeding the De Minimis Threshold and less than the outstanding principal balance of the Loan or (ii) any condemnation proceeds which the Lender has elected be applied to the restoration or repair of the Premises in accordance with this Subsection (the “**Proceeds**”), the restoration or repair shall be done under the supervision of an architect reasonably acceptable to the Lender and pursuant to site and building plans and specifications approved by the Lender. Such Proceeds, after payment of costs and expenses of collection (the “**Net Proceeds**”), shall be held by the Lender (or its designee) for such purposes and will from time to time be disbursed by the Lender through a title company or other servicing agent acceptable to the Lender in a manner reasonably acceptable to the Lender, as such restoration or repairs are completed, to defray the costs of such restoration or repair under such safeguards and controls as the Lender may reasonably require and in accordance with customary construction loan disbursement procedures. All out-of-pocket costs and expenses (including reasonable attorneys’ fees) associated with the disbursement of such Proceeds shall be paid by the Borrower. Prior to making Net Proceeds available for the payment of costs of repair or restoration of the improvements upon the Premises, the Lender shall have confirmed that there is no Event of Default or existing condition that with the giving of any required notice and the passage of time would result in an Event of Default if left uncured, and shall have received each of the following:

- (a) A written certification from the Borrower that no Event of Default exists under any of the terms, covenants and conditions of the Loan Documents.
- (b) Evidence reasonably satisfactory to the Lender that such improvements have been fully restored, or that the expenditure of Net Proceeds (together with any funds deposited by the Borrower with a title company approved by the Lender) will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens,

except the lien of this Security Instrument (i) to substantially the same condition as existed as of the date hereof (or as otherwise approved by the Lender in writing in its sole discretion), and (ii) so that the Premises can be operated for the purpose of which the Premises were used as of the date hereof (or as otherwise approved by the Lender in writing in its sole discretion).

- (c) An M.A.I. appraisal or other evidence in form and content acceptable to the Lender which indicates a loan-to-value ratio upon completion of seventy-five percent (75%) or less.
- (d) A statement of the Borrower's architect or engineer, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date (and will continue to be performed until completion) in conformity with the plans and specifications approved by the Lender, together with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments, such that no mechanics' or other liens of any nature shall exist or be created, except those that are escrowed for or bonded over.
- (e) A waiver of subrogation from any insurer who claims that it has any claim as to the Borrower or the then owner or other insured under the policy of insurance in question.
- (f) To the extent any deficiency is not escrowed, such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are reasonably required by the Lender.
- (g) Evidence that zoning, building and other necessary permits and approvals have been obtained.

Further, as additional conditions to distributing Net Proceeds pursuant to this Subsection 5.3, the casualty or condemnation shall not have occurred during the final Loan Year, as defined in the Note, and the Borrower shall have paid all out-of-pocket fees and expenses (including any reasonable attorneys' fees) actually incurred by the Lender in connection with the repair or restoration, including the disbursement of Net Proceeds.

5.4 LENDER USE OF NET PROCEEDS

Except where the Borrower has the right to use Net Proceeds pursuant to this Section, the Lender may, in its sole discretion, either apply such Net Proceeds to reduce the Indebtedness then most remotely to be paid, or disburse them for repair or restoration in accordance with Subsection 5.3 above. The Lender's use of Net Proceeds to pay the Indebtedness under this Subsection shall occur without application of a Reinvestment Charge or Default Premium. Furthermore, the Lender may direct the Net Proceeds or any part thereof to be held by the servicer of the Loan in an escrow account (as additional security for the Loan) on behalf of the Lender until the full impact of a condemnation or casualty can be assessed.

5.5 LENDER COSTS

Any expense incurred by the Lender in the adjustment or collection of insurance proceeds or condemnation awards (including the cost of any independent appraisal of the loss or damage on behalf of the Lender) shall be reimbursed to the Lender out of any such Proceeds prior to any other disbursement.

5.6 BORROWER'S FAILURE TO RESTORE

In the event the Borrower shall fail to commence and diligently pursue the restoration, repair or rebuilding of the Premises within a reasonable time after the Lender makes the Net Proceeds available to the Borrower following a casualty or condemnation, then such failure shall constitute an Event of Default and the Lender, at its option, and upon not less than thirty (30) days written notice to the Borrower, may in addition to its remedies in Section 8 hereof (i) commence to restore, repair or rebuild the said improvements for or on behalf of the Borrower and its tenants, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding or (ii) apply all or any part of Net Proceeds on account of the last maturing installment of the Indebtedness whether then due or not. In the event Net Proceeds shall exceed the amount necessary to complete the repair, restoration or the rebuilding of the improvements upon the Premises, such excess shall be returned to the Borrower upon the complete restoration or rebuilding of the improvements to the Lender's reasonable satisfaction.

6. ASSIGNMENT OF LEASES AND RENTS

The Borrower does hereby unconditionally and absolutely sell, assign and transfer unto the Lender all of the leases, rents, issues, income, security deposits and profits (which includes proceeds from settlements relating to terminations of leases or claims for damages arising from rejection of any lease under the bankruptcy laws) now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, whether now existing or entered into at any time during the term of this Security Instrument, all guaranties of any lessee's obligations under any such lease, all as more particularly set forth in the Assignment of Leases, the terms of which are incorporated herein.

Under the Assignment of Leases, the Borrower has assigned to the Lender (and its successors and assigns), all of the Borrower's interests in and title to the Leases (as defined in the Assignment of Leases), including all rights under all Leases and all Rents (as defined therein) and other benefits to be derived from them. The rights assigned include all authority of the Borrower to modify or terminate Leases, or to exercise any remedies. The assignment is present and absolute; however, the Lender has granted the Borrower a revocable and conditional license to collect and use Rents derived from the Leases, and to exercise the rights assigned, in a manner consistent with the Loan Documents, as more particularly set forth in the Assignment of Leases. The Lender may terminate such license by written notice to the Borrower subject to the conditions set forth in the Assignment of Leases.

7. RIGHTS OF LENDER**7.1 NO CLAIM AGAINST LENDER**

Nothing contained in this Security Instrument shall constitute any consent or request by the Lender, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Borrower or any party in interest with the Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Lender in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Security Instrument.

7.2 INSPECTION

Subject to the rights of tenants, the Borrower will permit the Lender or its authorized representatives to enter the Premises at all times during normal business hours upon reasonable

advance notice (unless an emergency exists) for the purpose of inspecting the same; provided the Lender shall have no duty to make such inspections.

7.3 WAIVERS, RELEASES, RESORT TO OTHER SECURITY, ETC.

Without affecting the liability of any party liable for payment of any Indebtedness or performance of any obligation contained herein, and without affecting the rights of the Lender with respect to any security not expressly released in writing, the Lender may, at any time, and without notice to or the consent of the Borrower or any party in interest with respect to the Premises or the Note: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

7.4 SUBSEQUENT AGREEMENTS

Any agreement hereafter made by the Borrower and the Lender pursuant to this Security Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

7.5 WAIVER OF APPRAISEMENT, HOMESTEAD, MARSHALING

To the extent lawfully allowed, the Borrower on behalf of itself and all other persons or entities acquiring any interest in the Premises subsequent to the date of this Security Instrument hereby waives to the extent permitted by applicable law: (i) the benefit of any homestead, appraisement, evaluation, stay and extension laws now or hereinafter in force; (ii) any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require the Lender to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel; and (iii) any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure pursuant to rights herein granted.

7.6 DISHONORED PAYMENTS

In the event any funds for any two (2) or more monthly payments in any twelve (12) month period are not paid to the Lender when due, for any reason, the Lender shall have the right, in its sole option, to require that all future payments be made in a form other than as presently prescribed in the Note (such as by preauthorized automated clearinghouse transaction, certified check, wire transfer or other method of delivering immediately available funds).

8. EVENTS OF DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT

The occurrence of any of the following (including receipt of any applicable notice by the Borrower and the expiration of any applicable cure period) shall be deemed an “**Event of Default**” under this Security Instrument:

(a) Scheduled Payment Default

The Borrower or any co-maker, guarantor or surety shall fail to pay or the Lender does not receive any payments scheduled under the Note or any other Loan Document, as and when they become due thereunder, including without limitation payment of (i) any principal or interest installment on the Note, together with a deposit of the Charges (except to the extent Charges have been waived pursuant to this Security Instrument), on or before the fifth (5th) day of the calendar month in which the same becomes due; (ii) the entire Indebtedness at the stated maturity or at an accelerated payment date; and (iii) any Late Charge (as defined in the Note).

(b) Demand Payment Default

The Borrower shall fail to pay within seven (7) business days of the Lender's written demand any out-of-pocket expenses, protective advances or other Indebtedness payable under the Note or the other Loan Documents.

(c) General Non-Monetary Default

The Borrower shall fail to comply with or perform any other term, condition or covenant of the Note, this Security Instrument, the Assignment of Leases or any other Loan Documents other than as described elsewhere in this Subsection 8.1, inclusive, and the continuance of such default for thirty (30) calendar days after written notice; provided, however, that if such default is of a nature that it cannot be cured, in the Lender's good faith and reasonable discretion, within such thirty (30) day period, then the Borrower shall not be in default hereunder if it commences good faith efforts to cure the default within such thirty (30) day period, demonstrates continuous diligent efforts to cure the default in a manner satisfactory to the Lender and, within a reasonable time not to exceed ninety (90) days after the date of the original written notice of default, completes the cure of such default.

(d) Bankruptcy; Insolvency; Receivership

If (i) the Borrower or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of one hundred twenty (120) days; or (iii) there shall be commenced against the Borrower or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within one hundred twenty (120) days from the entry thereof, or (iv) the Borrower or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above;

or (v) the Borrower or any Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

(e) Material Misrepresentation

Any certification, representation or warranty made by or on behalf of the Borrower or any Guarantor herein, in the Note, in the other Loan Documents, or made in connection with the application for the Loan, or given as an inducement to the Lender to make the Loan, shall be false in any material respect, breached or dishonored; provided, however, that if a false representation is capable of being cured, it shall not constitute an Event of Default unless the Borrower fails to cure within thirty (30) days of the Lender providing notice to the Borrower, by placing the Lender in the risk position that would have existed had the false representation been true when made.

(f) Due on Sale; Required Insurance

The Borrower shall fail to comply with the terms of Subsections 2.9, 2.10, or 3.1 of this Security Instrument.

(g) Guarantor Death or Dissolution

Any Guarantor that is not a natural person shall be dissolved, liquidated or otherwise cease to legally exist without the prior written consent of the Lender; or any Guarantor that is a natural person shall die or become legally incapacitated and the Borrower either (i) has failed to notify the Lender of such death within sixty (60) days thereof or of such legal incapacity within thirty (30) days thereof or (ii) has failed to provide the Lender with an acceptable substitute guarantor, in the sole judgment of the Lender (exercised in good faith), who shall have executed a Guaranty and an Environmental Indemnity Agreement in the forms of those executed by the Guarantor, before the earlier to occur of (A) one hundred eighty (180) days from the date of such person's death or legal incapacity or (B) the date on which the first distribution of assets has been made from such person's estate to any devisee, heir or other beneficiary.

(h) Guarantor Default

Any Guarantor contests the validity or enforceability of the Guaranty or the Environmental Indemnity Agreement, any Guarantor fails to comply with any term, covenant or condition of the Guaranty or the Environmental Indemnity Agreement, which default shall have extended beyond any period of grace provided therein, or the Guaranty (or a replacement guaranty pursuant to and in accordance with Section 3 of the Guaranty) or the Environmental Indemnity Agreement shall no longer be in full force and effect.

8.2 REMEDIES OF LENDER

Upon the occurrence of an Event of Default, the Borrower agrees that the Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Borrower and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender:

- (a) declare the entire unpaid principal balance of the Note together with all accrued interest thereon, any Reinvestment Charge or Default Premium under the terms of

the Note and all other Indebtedness to be immediately due and payable, which sums shall bear interest at the Default Rate from the due date until paid;

- (b) foreclose this Security Instrument by judicial or nonjudicial proceedings, and sell the Premises to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Premises is located, either in person or by auctioneer, and will be held between the hours of 11 a.m. and 4 p.m., after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, the Lender or any person conducting the sale for the Lender is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. The Lender may bid at said sale and purchase the Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as the Lender may elect. The provisions of Subsection 8.2(b) of this Security Instrument shall also apply with respect to the Lender's enforcement of rights or interests in personal property which constitutes the Premises hereunder. Out of the proceeds arising from the sale and foreclosure, the Lender shall be entitled to retain the principal, Reinvestment Charge or Default Premium, if any, and interest due on the Note and all other Indebtedness together with all sums of money as the Lender shall have expended or advanced pursuant to this Security Instrument or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including reasonable attorneys' fees, with the balance, if any, to be paid to the persons entitled thereto by law;
- (c) as a matter of strict right, apply for the appointment of a receiver, trustee, liquidator or conservator of the Premises, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Borrower, any principal or any Guarantor or of any other person or entity liable for the payment of the Indebtedness in accordance with and in the manner prescribed by applicable law in the state where the Premises is located and in accordance with Subsection 8.5 below;
- (d) institute an action, suit or proceeding in equity for the specific performance of any obligation contained herein, in the Note or in the other Loan Documents;
- (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (f) to the fullest extent not prohibited by applicable law, enter into the Premises, either personally or by its agents, nominees or attorneys and dispossess the Borrower and its agents and servants therefrom without liability for trespass, damages or otherwise and exclude the Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and the Borrower agrees to surrender possession of the Premises and of such books, records and accounts to the Lender upon demand, and thereupon the Lender may exercise all rights and powers of the Borrower with respect to the Premises including, without limitation: (i) the right to use, operate, control, insure, maintain,

repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) the right to make or complete any construction, alterations, additions, replacements and improvements to or on the Premises as the Lender deems advisable in its reasonable discretion; and (iii) the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Premises; and

- (g) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code in accordance with the terms of Subsection 8.3 below, including, without limiting the generality of the foregoing: (i) the right to take possession of the Collateral or any part thereof, and to take such other measures as the Lender may deem necessary for the care, protection and preservation of the Collateral, and (ii) request the Borrower at its expense to assemble the Collateral and make it available to the Lender at a place acceptable to the Lender. Any notice of sale, disposition or other intended action by the Lender with respect to the Collateral sent to the Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to the Borrower.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Premises, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Premises unimpaired and without loss of priority. Notwithstanding the provisions of this Subsection 8.2 to the contrary, if any Event of Default as described in Subsection 8.1(d) shall occur, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or action by the Lender.

8.3 RIGHTS UNDER UNIFORM COMMERCIAL CODE

In addition to the rights available to a lender of real property, the Lender shall also have all the rights, remedies and recourse available to a secured party under the Code including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Security Instrument which may be included on the Premises or which may be deemed nonrealty in a foreclosure of this Security Instrument or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

8.4 RIGHT TO DISCONTINUE PROCEEDINGS

If the Lender shall have proceeded to invoke any right, remedy or recourse permitted under this Security Instrument and shall thereafter elect to discontinue or abandon the same for any reason, the Lender shall have the unqualified right to do so and in such event the Borrower and the Lender shall be restored to their former positions with respect to the Indebtedness in which case this Security Instrument and all rights, remedies and recourse of the Lender shall continue as if such action or exercise of a right had not been invoked. The Lender hereby waives the benefit of any statute or rule of law provided now or in the future which would produce a conflict with this paragraph.

8.5 RECEIVER

Upon the occurrence of an Event of Default, the Lender shall be entitled as a matter of strict right without notice and without regard to the solvency or insolvency of the Borrower, or the existence of waste of the Premises or adequacy of the security of the Premises, and without giving bond to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Premises so as to

prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Premises and perform the terms of this Security Instrument and apply the rents, issues, income and profits to the costs and expenses of the receivership, including reasonable attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Premises, including payment of taxes on the Premises and payments of premiums of insurance on the Premises and any other rights permitted by law. The Borrower hereby irrevocably consents to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove the Borrower or any other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Premises, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

8.6 APPLICATION OF PROCEEDS

The proceeds and avails of any disposition of the Premises, or any part thereof, or any other sums collected by the Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by the Lender to the payment of the Indebtedness in such priority and proportions as the Lender in its sole discretion shall deem proper.

8.7 RIGHT TO CURE DEFAULTS

The Lender may, but without any obligation to do so and without notice to or demand on the Borrower and without releasing the Borrower from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as the Lender may deem necessary to protect the security hereof. The Lender is authorized to enter upon the Premises (to the fullest extent not prohibited by applicable law) for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Premises or to foreclose this Security Instrument or collect the Indebtedness, and the cost and expense thereof (including actual attorneys' fees to the extent permitted by law), with interest as provided in this Subsection 8.7, shall constitute a portion of the Indebtedness and shall be due and payable to the Lender upon demand. All such costs and expenses incurred by the Lender in remedying an Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from the Lender that such cost or expense actually was incurred to the date of payment to the Lender. All such costs and expenses actually incurred by the Lender, together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by the Lender therefor.

8.8 DEFAULT INTEREST AND LATE CHARGES

The Borrower acknowledges that, without limitation to any of the Lender's other rights or remedies set forth in this Security Instrument, the Lender has the right following an Event of Default to demand interest on the principal amount of the Note at the Default Rate and late payment charges in accordance with the terms of the Note.

8.9 RIGHTS CUMULATIVE; BORROWER NOT RELEASED

Each right, power or remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the Lender, at law or in equity, or under the Code, or under any other agreement, and each and every

right, power and remedy of the Lender herein set forth or otherwise so existing shall be cumulative to the maximum extent permitted by law and may be exercised from time to time as often and in such order as may be deemed expedient by the Lender and any such exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

8.10 WAIVERS

The Borrower waives the benefit of all laws now existing or that may hereinafter be enacted providing for (i) any appraisal before sale of any portion of the Premises, and (ii) in any way extending the time for the enforcement and collection of the Note or this Security Instrument or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent the Borrower may do so, the Borrower agrees that the Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, evaluation, stay, extension or redemption and the Borrower, to the extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of this Security Instrument and marshaling in the event of foreclosure of the liens hereby created.

8.11 NO RELEASE BY DELAY OR PARTIAL ACCEPTANCE

No delay or omission by the Lender in the exercise of any rights or remedies arising under the Security Instrument or the other Loan Documents at any time shall constitute a waiver of the right of the Lender to exercise such rights and remedies at a later time or otherwise impair any right, power or remedy arising under the Loan Documents. The Lender's acceptance of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the Lender's right to demand payment of the balance due, or any other rights of the Lender at that time or any subsequent time.

9. HAZARDOUS MATERIALS

9.1 DEFINITIONS

The term "**Hazardous Materials**" shall mean any hazardous or toxic substances, materials, wastes, pollutants, chemicals, or contaminants, including without limitation asbestos, polychlorinated biphenyls ("**PCBs**"), lead, lead paint, mold and petroleum products as defined, regulated by or identified as such in any Environmental Laws, as hereinafter defined. The term "**Environmental Laws**" means any present or future federal, state or local laws, ordinances, judicial or administrative orders or judgments, rules and regulations, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials or to industrial hygiene or the environmental conditions on, under, about or originating from the Premises or the cleanup of related contamination, or relating to liability for costs of other actual or threatened danger to human health or the environment. Environmental Laws include, without limitation, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto: (a) the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (1972); (b) the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (1970); (c) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (d) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; and (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*

9.2 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES

To the best of the Borrower's knowledge as a duly diligent property owner, and except as set forth in that certain Phase I Environmental Site Assessment dated September 26, 2024, Project No. 24-

70657.1, prepared by GRS Group an NV5 Company, the Borrower represents and warrants that: (a) no part of the Premises has ever been used either by previous owners or occupants or by the Borrower or current occupants to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Materials and no such Hazardous Materials currently exists on the Premises or in its soil or groundwater; (b) no portion of the improvements on the Premises has been constructed with asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical material or substance that may be a hazard to health or the environment; (c) there are no transformers, capacitors or other electrical or hydraulic equipment which have dielectric fluid-containing PCBs located in, on or under the Premises; (d) the Premises has never contained any underground storage tanks; (e) there is no material level of mold infestation in the improvements located on the Premises and the Borrower has not submitted a claim for mold in connection with any applicable insurance policies covering mold infestation; and (f) neither the Borrower nor its predecessor in interest has received nor has any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning (i) the existence of Hazardous Materials on the Premises or in the immediate vicinity, (ii) the non-compliance of the Premises with any Environmental Law or (iii) any releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Materials, whether intentional, unintentional or otherwise, onto the Premises or into waters or other lands at any time.

9.3 ENVIRONMENTAL COVENANTS

The Borrower covenants and agrees that: (a) all uses and operations on or of the Premises by the Borrower shall be in compliance with all Environmental Laws and permits issued pursuant thereto, and the Borrower shall use all commercially reasonable efforts to ensure that all uses and operations on or of the Premises by any other person or entity shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no releases of Hazardous Materials in, on, under or from the Premises by the Borrower or anyone controlled by, controlling or under common control with the Borrower; (c) the Borrower shall keep the Premises free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of the Borrower or any other person or entity ("**Environmental Liens**"); (d) the Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Premises, pursuant to any written request of the Lender (provided that such request is made upon (i) the Lender's reasonable belief that there are Hazardous Materials in or under the Premises which are not in compliance with Environmental Laws, or (ii) the occurrence of an Event of Default), and share with the Lender the reports and other results thereof, and the Lender and its successors, affiliates and assigns shall be entitled to rely on such reports and other results thereof; (e) the Borrower shall, at its sole cost and expense, comply with all written requests of the Lender to comply with any Environmental Laws and any proper directive from any governmental authority relating to any Environmental Laws; (f) the Borrower shall not do or allow any tenant or other user of the Premises to do any act that increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), impairs the value of the Premises, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Premises; and (g) the Borrower shall immediately notify the Lender in writing of (i) any presence or releases or threatened releases of Hazardous Materials in, on, under, from or migrating towards the Premises; (ii) any non-compliance with any Environmental Laws related in any way to the Premises; (iii) any actual or potential Environmental Liens; (iv) any required or proposed remediation of environmental conditions relating to the Premises; and (v) any written notice or other written communication of which the Borrower becomes aware from any source whatsoever (including, but

not limited to, a governmental entity) relating in any way to Hazardous Materials or remediation thereof, possible liability of any person or entity pursuant to any Environmental Laws in connection with the Premises, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Security Instrument.

Notwithstanding the foregoing, the covenants given above shall not be deemed to apply to Hazardous Materials which are household cleaning supplies used in the ordinary course of business on the Premises, and which are stored, used and disposed of in accordance with all applicable Environmental Laws (including obtaining any necessary permits).

9.4 LENDER'S RIGHT TO INSPECT AND TEST

The Lender and any other person or entity designated by the Lender (including, but not limited to, any receiver, representative of a government entity and any environmental consultant) shall have the right but not the obligation to enter upon the Premises at reasonable times during normal business hours and with reasonable advance notice to the Borrower unless an emergency exists to assess any and all aspects of the environmental condition of the Premises and its use including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in the Lender's reasonable discretion) and taking samples of soil, groundwater or other water, air or building materials, and conducting other invasive testing. The Borrower shall cooperate with and provide access to the Lender or its designees, as applicable. All such entry, access and testing will be conducted in a manner that does not unreasonably interfere with the rights of tenants under any leases or unreasonably disrupt their proper use of the Premises. All such environmental investigations shall be performed at the Borrower's sole expense and constitute part of the Indebtedness if and only if based upon either (i) the reasonable belief of the Lender (or its designee) that there are Hazardous Materials in or under the Premises which are not in compliance with Environmental Laws or permits issued pursuant thereto, or (ii) the occurrence of an Event of Default. Copies of any reports, audits, assessments and related materials will be promptly provided to the Borrower.

9.5 ENVIRONMENTAL INDEMNIFICATION

The Borrower covenants to defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns (together, the "**Indemnatee**") from and against any and all losses, claims, damages, liability, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and costs actually incurred in the investigation, defense and settlement of claims or remediation of contamination and any first party costs related to the investigation or remediation of contamination) suffered or incurred by the Indemnatee as a result of or in connection with any of the following: (a) the past, present or future presence, release, threatened release, or removal of Hazardous Materials upon, under, within, to or from the Premises; (b) any past, present or threatened non-compliance with or violations of any Environmental Laws or permits issued pursuant thereto in connection with the Premises or operations thereon; (c) any misrepresentation or inaccuracy in any representation or warranty contained in this Security Instrument or any other Loan Document which relate to Hazardous Materials or Environmental Laws; and (d) any material breach or failure to perform any covenants contained in this Security Instrument or any other Loan Document which relate to Hazardous Materials or Environmental Laws. The indemnity provided in this paragraph shall include any loss of value of the Premises suffered by the Indemnatee as a result of the foregoing (but limited to the extent of the Indebtedness), whether as holder of the Loan, as

mortgagee in possession or as successor-in-interest to the Borrower by foreclosure proceedings or deed in lieu of foreclosure.

9.6 LIABILITY OF BORROWER

This indemnification shall remain in full force and effect as long as the Lender retains an interest in the Premises or so long as the Lender shall have liability by reason of having held such interest in the Premises and shall survive the repayment of the Indebtedness and the satisfaction of the documents securing the same, as well as the exercise of any remedy by the Lender hereunder or under the other Loan Documents, including a foreclosure of this Security Instrument or the acceptance of a deed in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall have no liability to indemnify the Lender for loss, liability, damage or expense arising from or out of the activities of the Lender or its agents on the Premises on or after transfer of title of the Premises to the Lender or its designee pursuant to foreclosure proceedings or deed in lieu thereof.

10. MISCELLANEOUS

10.1 RELEASE OF SECURITY INSTRUMENT

Upon the Borrower's written request when all Indebtedness has been paid, this Security Instrument and all assignments herein contained shall, except as otherwise provided herein, terminate and shall be released by the Lender at the Borrower's expense.

10.2 CHOICE OF LAW

This Security Instrument is made and executed under the laws of the state in which the Premises are located, and the rights and obligations of all parties hereunder shall be governed by the laws of said state, exclusive of choice-of-law rules.

10.3 JURISDICTION

The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Security Instrument may be brought in a court of record in the state in which the Premises is located or in the courts of the United States of America located in such state, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained herein shall prevent the Lender from bringing any action or exercising any rights against any security given to the Lender by the Borrower, or against the Borrower personally, or against any property of the Borrower, within any other state. Commencement of any such action or proceeding in any other state or commonwealth shall not constitute a waiver of the agreement as to the laws of the state which shall govern the rights and obligations of the Borrower and the Lender.

10.4 SUCCESSORS AND ASSIGNS

This Security Instrument and each and every covenant, agreement, indemnity and other provision hereof shall be binding upon the Borrower and its successors and assigns, including, without limitation each and every person or entity that may, from time to time, be record owner of the Premises or any other person having an interest therein, shall run with the land and shall inure to the benefit of the Lender and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Security Instrument. Nothing in this Subsection 10.4 shall be construed to constitute consent by the Lender to assignment by the Borrower.

10.5 SEVERABILITY

The parties hereto intend and believe that each provision of this Security Instrument comports with all applicable local, state and federal laws and judicial decisions. It is the intent of the parties that, if any provision or any portion of any provision contained in this Security Instrument is held by a court of law to be illegal, void or unenforceable as written, then such portion or provision shall be given force to the fullest possible extent that is legal, valid and enforceable, and the remainder of this Security Instrument shall be construed as if such illegal, void or unenforceable portion or provision was not contained therein, and the rights, obligations and interests of the parties under the remainder of this Security Instrument shall continue in full force and effect.

10.6 HEADINGS; CONSTRUCTION OF PLURALITY

The captions and headings throughout this Security Instrument are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

10.7 NOTICES

Any notice which any party hereto may desire or may be required to give to any other party shall be delivered in writing to the receiving party's address as set forth on Page 1 of this Security Instrument (and the Lender shall endeavor to deliver to the following address a courtesy copy of all notices sent to the Borrower; however, the failure to do so shall not affect the validity of any notice or communication given to the Borrower: to the Borrower c/o Rosen Equities, LLC, 40 E. 69th Street, New York, New York 10021, Attn: General Counsel) or to such other address as such party may, by notice in writing, designate as its address. Notices may be (a) mailed by United States postage pre-paid certified mail, return receipt requested, (b) sent by a nationally recognized overnight carrier that provides for a return receipt and for which delivery charges are prepaid, or (c) delivered by hand. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail, one (1) day after the sending thereof by overnight carrier, and the day of delivery by hand. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been provided in accordance with this Section shall also constitute receipt.

10.8 INDEMNITY

The Borrower agrees to indemnify, protect, hold harmless and defend the Lender from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including reasonable attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against the Lender by reason or on account of, or in connection with, (i) any willful misconduct of the Borrower or any default or Event of Default hereunder, (ii) the construction, reconstruction or alteration of the Premises, (iii) any negligence of the Borrower or any negligence or willful misconduct of any lessee of the Premises or any part thereof, or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licensees or invitees, or (iv) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or adjacent thereto, except to the extent that the same results directly from the gross negligence or willful misconduct of the Lender. Any amount payable to the Lender under this Subsection shall be due and payable in accordance with Subsection 8.1(b) of this Security Instrument, where the Lender's written demand shall include a statement setting forth in reasonable detail the amount claimed and the basis therefor. The

Borrower's obligations under this Subsection shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against the Lender which is subject to the indemnity set forth in this Subsection, the Borrower shall resist or defend against the same, in its own name or, if necessary, in the name of the Lender, by attorneys for the Borrower's insurance carrier (if the same is covered by insurance) approved by the Lender or otherwise by attorneys retained by the Borrower and approved by the Lender. Notwithstanding the foregoing, the Lender, in its discretion, if it disapproves of the attorneys provided by the Borrower or the Borrower's insurance carrier, may engage its own attorneys to resist or defend, or to assist therein, and the Borrower shall pay, or, on demand, shall reimburse the Lender for the payment of, all fees and disbursements of said attorneys.

10.9 MODIFICATION

Amendment, waiver or modification of any provision of this Security Instrument must be made in writing and signed by the Borrower and the Lender. No oral waiver, amendment, or modification may be implied.

10.10 NO ORAL AGREEMENTS

The Borrower affirmatively represents and warrants that the written terms of the Loan Documents, and each of them, accurately reflect the mutual understanding of the Borrower and the Lender, as to all matters addressed therein, and the Borrower further represents and warrants that there are no other agreements or understandings, written or oral, which exist between the Borrower and the Lender relating to the matters addressed in said documents.

10.11 LENDER'S EXPENSES

Should the Lender make any payments hereunder or under the Note or under any other Loan Documents or incur any liability, loss or damage under or by reason of this Security Instrument, the Note or any other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Indebtedness, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, reasonable attorneys' fees, and any and all costs and expenses actually incurred in connection with making, performing, or collecting the Indebtedness or exercising any of the Lender's rights under the Note, this Security Instrument or any other Loan Documents, including reasonable attorneys' fees, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, shall become part of the Indebtedness and shall be secured by this Security Instrument and the other Loan Documents and the Borrower hereby agrees to reimburse the Lender therefor in accordance with Subsection 8.1(b) of this Security Instrument. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and the Lender shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by the Borrower, for an accounting for the proceeds of a foreclosure sale or of insurance proceeds or for apportionment of an eminent domain damage award.

10.12 CONSENT BY LENDER

If the Borrower requests the Lender's review of, consent to or execution of documents in connection with (a) a subordination agreement with a tenant of the Premises, which subordination agreement is on a form other than the Lender's standard form, or (b) any other transaction for which the

Borrower seeks the Lender's consent except for lease approvals or transactions specifically provided for in the Loan Documents, the parties agree that: (i) the Borrower shall provide prior written notice of such request and copies of such documents and other information as the Lender may deem necessary, and which are satisfactory in all respects to the Lender; (ii) the Lender may charge a review fee in an amount determined by the Lender in good faith and payable by the Borrower as a condition to its consent; (iii) the Lender shall not unreasonably delay its review of the Borrower's request after receipt of all items in clause (i) and the review fee (if any) described in clause (ii) above; and (iv) the Borrower shall be responsible for all other costs and expenses related to such request, including the Lender's reasonable attorneys' fees, if any, as an additional condition to the Lender's consent.

10.13 LENDER'S RIGHT TO COUNSEL

If the Lender retains attorneys to enforce any of the terms of the Loan Documents or because of the breach by the Borrower of any of the terms hereof or of any of the other Loan Documents, or for the recovery of any Indebtedness, or to provide counsel to the Lender with regards to a modification request or other request for the Lender's approval, the Borrower shall pay the Lender reasonable attorneys' fees and all costs and expenses, whether or not an action is actually commenced and the right to such attorneys' fees and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation, bankruptcy and administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Security Instrument include all paralegal, electronic research, legal specialists and all other costs in connection with that performance of the Lender's attorneys.

If the Lender is, by reason of being the holder of this Security Instrument, made a party defendant of any litigation, action or proceeding (including without limitation any condemnation or insurance loss matters) concerning this Security Instrument or the Premises or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by the Borrower, then the Borrower shall indemnify, defend and hold the Lender harmless from and against all liability by reason of said litigation, including actual attorneys' fees and all costs and expenses actually incurred by the Lender in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

10.14 OTHER REPRESENTATIONS AND WARRANTIES

All statements contained in any loan application, commitment, certificate or other instrument delivered by or on behalf of the Borrower to the Lender or the Lender's representatives in connection with the Indebtedness shall constitute representations and warranties made by the Borrower hereunder. Such representations and warranties made hereunder and thereunder shall survive the delivery of this Security Instrument, and any misrepresentations thereunder shall be deemed as misrepresentations hereunder.

10.15 LIMITATION OF INTEREST

All agreements between the Borrower and the Lender are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Indebtedness or otherwise, shall the amount paid or agreed to be paid to the Lender for the use, forbearance, loaning or detention of the Indebtedness exceed the maximum permissible under applicable law. If from any circumstances whatsoever, fulfillment of any provision of the Note, this Security Instrument or any other Loan Documents at any time given shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall be automatically reduced to an amount

which complies with applicable law, and if from any circumstances the Lender should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest or returned to the Borrower if the Indebtedness has been paid in full. This provision shall control every other provision of all agreements between the Borrower and the Lender and shall be binding upon and available to any subsequent holder of the Note. All sums paid or agreed to be paid to the Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated and allocated, throughout the full stated term of the Note until payment in full such that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding.

10.16 TIME OF THE ESSENCE

The Borrower agrees that time is of the essence with respect to all of the covenants, agreements and representations under this Security Instrument.

10.17 SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

All representations, covenants and warranties contained herein, or in any of the other Loan Documents shall survive the delivery of the Note, this Security Instrument and all other Loan Documents executed in connection herewith and the provisions hereof shall continue to inure to the benefit of the Lender, its successors and assigns.

10.18 WAIVER OF JURY TRIAL

TO THE EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, THE PARTIES TO THIS SECURITY INSTRUMENT HEREBY VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEEDINGS ARISING OUT OF THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT OR RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES, REGARDLESS OF THE NATURE OF SUCH ACTION OR PROCEEDING. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SUBSECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THE BORROWER HAS BEEN REPRESENTED BY AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER. THE BORROWER ACKNOWLEDGES THAT THE LENDER WOULD NOT HAVE EXTENDED CREDIT TO THE BORROWER WITHOUT THIS JURY TRIAL WAIVER.

10.19 DISCLOSURE TO OTHER PERSONS

The Borrower recognizes that the Lender may provide information from or copies of any financial statements, operating statements and other documents delivered to the Lender, or any other information disclosed to the Lender by or on behalf of the Borrower in connection with or pursuant to the Loan Documents, subject to the Lender's commercially reasonable information protection policies and procedures, to (a) employees, agents, attorneys, accountants, auditor, or any person to which the Lender offers to sell or assign the Note or any interest therein, or (b) any person or entity in compliance with any law, rule, regulation, subpoena or order applicable to the Lender.

10.20 NON-RECOURSE LOAN AND RECOURSE OBLIGATIONS

The liability of the Borrower for the Indebtedness and for the performance of the other agreements, covenants and obligations contained in the Note, this Security Instrument and the other Loan Documents shall be limited as set forth in the Note. Nothing contained herein shall be deemed to release any obligor from their obligations under the terms of any separate Environmental Indemnity Agreement or Guaranty executed in connection with the Loan.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Borrower has caused this Security Instrument to be executed on the date of acknowledgment below, to be effective as of the date first above written.

BORROWER:

VALLEYDALE VILLAGE LLC,
a Delaware limited liability company

By: _____
Jonathan P. Rosen, Manager

STATE OF NEW YORK
COUNTY OF NEW YORK

I, David J. Koepfel, a notary public in and for said county in said state, hereby certify that Jonathan P. Rosen, whose name as Manager of Valleydale Village LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 1st day of December 2024.

DAVID J. KOEPPEL
Notary Public, State of New York
No. 02KO4876325

[NOTARIAL SEAL] Qualified in New York County
Commission Expires October 20, 2026

David J. Koepfel
Notary Public

My Commission Expires: 10/20/26

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 1 (Fee Simple):

Lot 1, according to the Survey of Regency Centers Valleydale Village Survey as recorded in Map Book 31, Page 69 and Lots 1 and 2 according to the Survey of Valleydale Village as recorded in Map Book 8, Page 141, all in the Office of the Judge of Probate, Shelby County, Alabama.

Less and except the property conveyed to Shelby County, Alabama and more particularly described in that certain Fee Simple Warranty Deed Tract No. TS 09 R dated May 4, 2017, and recorded May 25, 2017, as Instrument No. 20170525000182450, in the Office of the Judge of Probate, Shelby County, Alabama.

Parcel II (Easement Estate):

Easements created by and granted pursuant to that certain Reciprocal Easement Agreement dated June 30, 1995, by and between Valleydale Village Properties and McDonald's Corporation recorded July 28, 1995, in Instrument No. 1995-20164, Shelby County Judge of Probate, Alabama.

Parcel III (Easement Estate):

Non-exclusive perpetual easements created by and granted pursuant to that certain Declaration of Restrictions, Covenants, and Conditions and Grant of Easements (Valleydale) dated September 12, 2003, as recorded October 13, 2003, in Instrument No. 20031013000684130, Shelby County Judge of Probate, Alabama.

Parcel IV (Easement Estate):

Non-exclusive easements created by and granted pursuant to that certain Consent of Grant of Easement and Grant of Easement, dated February 3, 1986, and February 25, 1986, respectively, and recorded in Book 63, Page 23, all in the Office of the Judge of Probate, Shelby County, Alabama.

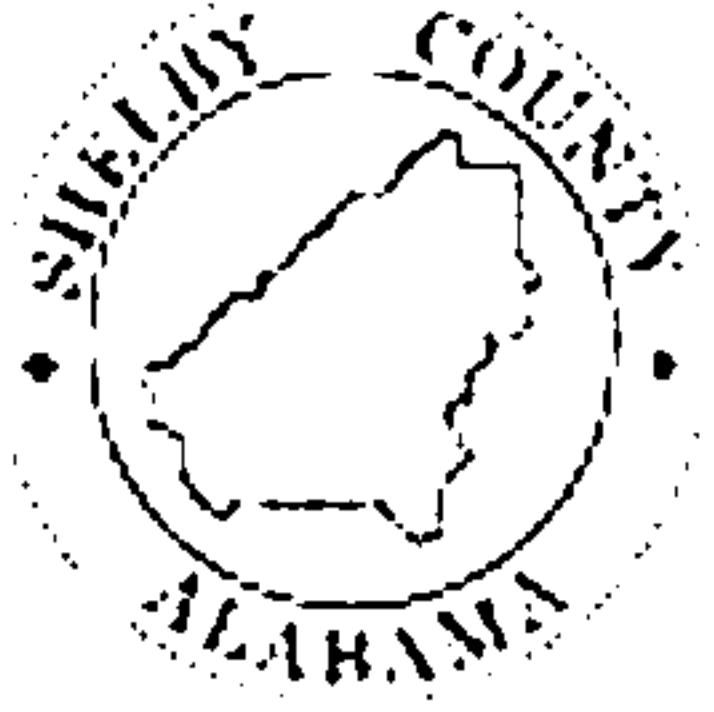
For informational purposes only:

Parcel ID Nos.: 10-5-15-0-001-010.000, 10-5-15-0-001-057.001 and 10-5-15-0-001-057.002

EXHIBIT "B"

SPECIFIC ARTICLES OF PROPERTY

None



**Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
12/16/2024 09:00:58 AM
\$12910.00 PAYGE
20241216000383460**

Allie S. Bevil