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**BIRMINGHAM AL SENIOR PROPERTY LLC**, as mortgagor (Mortgagor)

to

**BMO BANK N.A.**, as Administrative Agent for the benefit of Lender, as mortgagee  
(Administrative Agent)

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

**(ALABAMA – SHELBY COUNTY)**

Dated: March 20, 2026  
Location: 200 One Nineteen Blvd.  
Birmingham, AL 35242  
County: Shelby

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF § 7-9A-502(c) PURSUANT TO THE CODE OF ALABAMA.

THIS INSTRUMENT WAS PREPARED BY AND UPON  
RECORDATION RETURN TO:

Attention: Matthew B. Ginsburg, Esq.  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, Pennsylvania 19104-2808

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

This **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this “**Security Instrument**”) is made as of this 20th day of March, 2026 by **BIRMINGHAM AL SENIOR PROPERTY LLC**, a Delaware limited liability company (“**Mortgagor**”), having its principal place of business at 1000 Legion Place, Suite 1600, Orlando, Florida 32801, as mortgagor, to **BMO BANK N.A.**, a national banking association, having an address at 320 South Canal Street, 15<sup>th</sup> Floor, Chicago, Illinois 60606, in its capacity as administrative agent (together with its successors and assigns in such capacity, “**Administrative Agent**”) for the lenders from time to time party to the Loan Agreement (as defined herein) (individually or collectively, as the context may require, together with their respective successors and assigns, “**Lender**”), as mortgagee.

**W I T N E S S E T H:**

**WHEREAS**, this Security Instrument is given to secure a loan (the “**Loan**”) in the original principal amount of up to \$1,000,000,000.00 advanced by Lender pursuant to that certain Loan Agreement, dated as of the date hereof, among Mortgagor and the other parties from time to time identified on the signature pages thereof as borrower (individually or collectively, as the context may require, “**Other Borrower**”, and together with Mortgagor, individually or collectively, “**Borrower**”), Administrative Agent and Lender (as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by the Note (as defined in the Loan Agreement);

**WHEREAS**, Mortgagor desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of the obligations of Borrower under the Note, the Loan Agreement and the other Loan Documents (as herein defined); and

**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its respective obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are intended to be, and are hereby, secured by this Security Instrument (the Loan Agreement, the Note, this Security Instrument and all other documents executed or delivered in favor of Administrative Agent and/or Lender in connection with the Loan, except as expressly excluded in this Security Instrument, are hereinafter referred to collectively as the “**Loan Documents**”).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## ARTICLE 1 - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Administrative Agent for the benefit of Lender and their respective successors and assigns all of Mortgagor's right, title and interest in and to the following property, rights, interests and estates, whether now owned or hereafter acquired by Mortgagor (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights (to the extent assignable), in each instance, hereafter acquired by Mortgagor for use in connection with the Land and the development thereof and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights (to the extent assignable), and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, and the reversion and reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor in and to the Land and the Improvements, and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants or Residents under Leases (as hereinafter defined), any Manager under any Management Agreement, or guests or invitees at the Property except to the extent that Mortgagor shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which

the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"; the Land, the Improvements and the Fixtures are collectively referred to as the "**Real Property**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which Tenants or Residents are entitled to remove pursuant to Leases, any Manager is permitted to remove under any Management Agreement, except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, kitchen and dining room supplies, keys or other entry systems, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical supplies and equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), food and beverages, automobiles and other vehicles, marketing and sales databases, resident files, records and service plans, housekeeping supplies, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other customary senior housing equipment and personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all

proceeds and products of the above. Notwithstanding the foregoing, “Personal Property” shall not include any personal property belonging to Tenants or Residents under Leases, any Manager under any Management Agreement, or guests or invitees at the Property except to the extent that Mortgagor shall have any right or interest therein;

(h) Leases and Rents. All leases, operating leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, together with all credits, deposits, options, privileges, right, title and interest of Mortgagor and their respective successors and assigns under any of the aforesaid agreements (collectively, the “**Leases**”) whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”), and all right, title and interest of Mortgagor, and its respective successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits arising from the Leases and any extension, renewal or replacement thereof, together with all rents, rent equivalents, income, fees, receivables, receipts, accounts, deposits, profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Mortgagor or their respective agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Property, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising from or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Mortgagor or any other operator or manager or any commercial space located in the Improvements or acquired from others by Mortgagor or any other operator or manager of the Property (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease, sub-sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, movie rentals, telephone service, if any, from business interruption or other loss of income insurance from the Land and the Improvements whether paid or accrued before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds, to the extent assignable, from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt. This assignment of present and future Leases shall be effective without further or supplemental assignment;

(i) Condemnation Awards. All Awards which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari or any appeals, applications or proceedings for reduction thereof;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Administrative Agent and/or Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses (including, without limitation, any healthcare licenses, in each case, to the extent permitted by applicable law), plans, specifications and other documents, now or hereafter entered into, and in each case all rights therein and thereto (subject to any restrictions on assignment), respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuation of an Event of Default, to receive and collect any sums payable to Mortgagor thereunder, provided that, unless an Event of Default has occurred and is continuing, Mortgagor shall be entitled to act in connection with any of the foregoing in accordance with the applicable requirements of the Loan Agreement and other Loan Documents and provided such actions do not violate any covenant contained herein or therein;

(o) Trademarks. To the extent assignable, all tradenames, patents, trademarks, servicemarks, logos, copyrights, goodwill, licenses, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to (i) the Cash Management Agreement and (ii) the Lockbox Agreement; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Interest Rate Protection Agreement. The Interest Rate Protection Agreement, including, but not limited to, all “accounts”, “chattel paper”, “general intangibles” and “investment property” (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing; and

(t) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (t) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Mortgagor each expressly grants to Administrative Agent, for the benefit of Lender, as secured party, a security interest in the portion of the Property owned by Mortgagor, which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate subject to this Security Instrument and mortgaged hereby.

**Section 1.2 Assignment of Leases and Rents**. Mortgagor each hereby absolutely and unconditionally assigns (to the extent permitted by applicable law) to Administrative Agent for the benefit of Lender all of Mortgagor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute and irrevocable assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Cash Management Agreement and Section 7.1(h) of this Security Instrument, Administrative Agent grants to Mortgagor a revocable license to (and Mortgagor shall have the express right to): (a) collect, receive, use and enjoy, but not prior to the accrual, the Rents and Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt and for use in accordance with the terms of the other Loan Documents and (b) otherwise deal with and enjoy the rights of lessor or lessee, as applicable, under the Leases.

**Section 1.3 Security Agreement**. This Security Instrument is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor each hereby grants to Administrative Agent for the benefit of Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures (including in any event all “fixtures” (as defined in Article 9 of the Uniform Commercial Code) located on the Land), the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Administrative Agent, in addition to any other rights and remedies which it may have, shall have and may exercise

immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Administrative Agent after the occurrence and during the continuance of an Event of Default, Mortgagor each shall, at its expense, assemble the Collateral and make it available to Administrative Agent at a convenient place (at the Land if tangible property) reasonably acceptable to Administrative Agent. Mortgagor shall pay to Administrative Agent within ten (10) Business Days after written demand therefor any and all out of pocket expenses, including reasonable third party legal expenses and attorneys' fees of outside counsel, incurred or paid by Administrative Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Administrative Agent to the payment of the Debt in such priority and proportions as Administrative Agent in its discretion shall deem proper. The principal place of business of Mortgagor (each, as debtor) is as set forth on page one hereof and the address of Administrative Agent (secured party) is as set forth on page one hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Mortgagor hereby authorizes Administrative Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property for purposes of evidencing the security interests granted to Administrative Agent hereunder. For purposes of such filings, Mortgagor agrees to furnish any information requested by Administrative Agent promptly upon request by Administrative Agent. Mortgagor also ratifies its authorization for Administrative Agent to have filed any like initial financing statements, amendments thereto and continuation statements. Mortgagor hereby irrevocably constitutes and appoints Administrative Agent and any officer or agent of Administrative Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to, upon the occurrence and during the continuation of an Event of Default, execute in Mortgagor's name any documents and otherwise to carry out the purposes of this Section 1.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

**Section 1.5 Pledges of Monies Held.** Mortgagor hereby pledges to Administrative Agent for the benefit of Lender all of its respective right, title and interest in and to any and all monies now or hereafter held by Administrative Agent or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Lockbox Account, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied or distributed as provided in this Security Instrument.

**Section 1.6 Assignment of Contracts.** Mortgagor hereby absolutely and unconditionally assigns to Administrative Agent for the benefit of Lender all of Mortgagor's right, title and interest in and to the Contracts (defined below), to the extent assignable, it being intended that this assignment be an absolute assignment from Mortgagor to Administrative Agent and not merely the granting of a security interest. Mortgagor may retain, use and enjoy the benefits of the Contracts; provided that upon the occurrence and during the continuance of an Event of Default (other than the Event of Defaults described in Section 8.1(a)(vii) and Section 8.1(a)(viii) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license described in the preceding sentence shall, upon Administrative Agent's election, be automatically revoked, and Administrative Agent may elect to exercise any and all of Administrative Agent's rights and remedies hereunder. After such a revocation, Administrative Agent shall provide Mortgagor with notice of same. As used herein, "**Contracts**" means, collectively, (a) all contracts between Mortgagor and third parties in connection with the management, construction, repair, renovation, use, operation or maintenance of the Property, including without limitation, any franchise agreements, any agreements regarding parking facilities for the Property, any architect's agreements, construction contracts, licensing agreements, subcontracts, service and supply agreements, any other agreements with design professionals, all agreements, allocations, and rights with all utility services serving the Property and all development agreements, reservation agreements, agreements of sale, options to purchase, rights of first refusal or any other preferential right and permits, which have heretofore been or will hereafter be executed by or on behalf of Mortgagor or Manager with respect to the Property, or which have been or will hereafter be assigned to or acquired by Mortgagor with respect to the Property, in each case as the same may thereafter from time to time be supplemented, amended, modified or extended by one or more written agreements supplemental thereto applicable to the Property, but expressly excluding the Management Agreement (the counterparties to such agreements (other than Mortgagor or Manager) are hereinafter collectively referred to as the "**Contractors**"); and (b) all warranties, guarantees, and other rights of Mortgagor or Manager, direct and indirect, against manufacturers, dealers, suppliers, Contractors, and others in connection with the work done or to be done and the materials supplied or to be supplied to or for the Property.

## **CONDITIONS TO GRANT**

**TO HAVE AND TO HOLD** the above granted and described Property unto Administrative Agent for the benefit of Lender and to the use and benefit of Administrative Agent for the benefit of Lender and their respective successors and assigns, forever, pursuant to the terms and conditions set forth herein and in the Loan Documents;

**PROVIDED, HOWEVER**, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, and Borrower shall perform the Other Obligations (hereinafter defined) as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; and Administrative Agent will provide, at Mortgagor's sole cost and expense, a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Mortgagor; provided, however, that Mortgagor's obligation to indemnify and hold harmless Lender and Administrative Agent pursuant to the provisions hereof shall survive any such payment or release except as set forth in the last sentence of Section 9.5.

## **ARTICLE 2 - DEBT AND OBLIGATIONS SECURED**

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

**Section 2.2 Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (collectively, the "**Other Obligations**"):

(a) the performance by Mortgagor of their respective obligations contained herein;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.3 Debt and Other Obligations.** Borrower's obligations for the payment of the Debt and the performance by each Borrower of the Other Obligations that it is obligated to perform shall be referred to collectively herein as the "**Obligations**."

**Section 2.4 Future Advances.** In addition to the indebtedness evidenced by the Note and all other Debt, this Security Instrument shall secure also and constitute a lien on the Property for all future advances made by Administrative Agent to Borrower and future obligations incurred by Borrower to Administrative Agent in connection with the Property to the same extent as if such future advances were made or such future obligations incurred on the date of the execution of this Security Instrument.

### ARTICLE 3 - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that for so long as the Debt is outstanding:

**Section 3.1 Payment of Debt.** Borrower will pay, or cause to be paid, the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Insurance.** Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Mortgagor shall cause the Property to be maintained in good working order and repair, in all material respects, normal wear and tear excepted as provided for and governed by the provisions of the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Administrative Agent or as otherwise permitted pursuant to the Loan Agreement. Subject to and in accordance with the terms and conditions of the Loan Agreement, Mortgagor shall (a) promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated and (b) complete and pay for any structure at any time in the process of construction or repair on the Land; in the case of each of (a) and (b) hereof as, and to the extent, provided for and governed by the provisions of the Loan Agreement.

**Section 3.5 Waste.** Mortgagor shall not commit or suffer any material waste of the Property or make any change in the use of the Property which reasonably might be expected to materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that reasonably might be expected to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that reasonably might be expected to in any way materially impair the security of this Security Instrument. Mortgagor will not, without the prior written consent of Administrative Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.6 Payment for Labor and Materials.** (a) Except as otherwise provided in the Loan Agreement and subject to Section 3.6(b) hereof, Mortgagor will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien (except for the Permitted Encumbrances).

(b) After prior written notice to Administrative Agent, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) except with respect to a Permitted Encumbrance or Permitted Debt, such proceeding shall suspend the collection of the Labor and Material Costs from Mortgagor and from the Property or Mortgagor shall have paid all of the Labor and Material Costs under protest or Mortgagor shall have furnished security as provided in clause (vi) below, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) except with respect to a Permitted Encumbrance or Permitted Debt, Mortgagor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender or Administrative Agent and required pursuant to the Loan Agreement, to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

**Section 3.7 Performance of Other Agreements.** Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8 Title.** Mortgagor has good and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority Lien on the Property, subject only to Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents, to the extent a security interest may be perfected therein by the recording of this Security Instrument and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. To Mortgagor's knowledge, except as otherwise disclosed in the Title Insurance Policy, there are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of the Loan Agreement or this Security Instrument.

**Section 3.9 Letter of Credit Rights.** If during the continuance of an Event of Default, Mortgagor is at any time a beneficiary under a letter of credit relating to any lease or any of the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument

now or hereafter issued in favor of Mortgagor, then Mortgagor shall promptly notify Administrative Agent thereof and, at the request and option of Administrative Agent or Mortgagor shall use commercially reasonable efforts to, pursuant to an agreement in form and substance reasonably satisfactory to Administrative Agent, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Administrative Agent (for the benefit of Lender) of the proceeds of any drawing under the letter of credit or (ii) arrange for Administrative Agent (for the benefit of Lender) to become the transferee beneficiary of the letter of credit, with Administrative Agent agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.

#### **ARTICLE 4 - OBLIGATIONS AND RELIANCES**

**Section 4.1 Relationship of Mortgagor and Lender.** The relationship between Mortgagor (or any Other Borrower) and Lender is solely that of debtor and creditor, and neither Administrative Agent nor Lender has any fiduciary or other special relationship with Mortgagor (or any Other Borrower), and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor (or any Other Borrower) and Lender or Mortgagor (or any other Borrower) and Administrative Agent to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Administrative Agent or Lender.** The general partners, members, principals and (if Mortgagor is a trust) beneficial owners and Affiliates of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor, Administrative Agent and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Administrative Agent's or Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Administrative Agent and/or Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or Policy, neither Administrative Agent nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Administrative Agent and/or Lender.

**Section 4.4 Reliance.** Mortgagor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Administrative Agent and Lender are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by

Administrative Agent or Lender; that such reliance existed on the part of Administrative Agent and Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## **ARTICLE 5 - FURTHER ASSURANCES**

**Section 5.1 Recording of Security Instrument, etc.** Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Administrative Agent (on behalf of Lender) in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all reasonable out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Administrative Agent or Lender, do, execute, acknowledge and deliver all further acts, deeds, conveyances, deeds of trust, deeds to secure debt, mortgages, assignments, notices of assignments, transfers and assurances as Administrative Agent shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Administrative Agent, for the benefit of Lender, the Property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Administrative Agent, for the benefit of Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, on written demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Administrative Agent to file in the name of Mortgagor to the extent Administrative Agent may lawfully do so, one or more financing statements to evidence more effectively the security interest of Administrative Agent in the Property, for the benefit of Lender. Such financing statements may describe the collateral in the same manner as described in this Security Instrument or may contain an indication or description of collateral that describes such property in any other manner, including, without limitation, all assets of the Mortgagor, as Administrative Agent may determine, in its sole discretion, is necessary or prudent to ensure the perfection of the security interest in the collateral granted to Administrative Agent, for the benefit

of Lender, in connection herewith. Mortgagor grants to Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent at law and in equity upon the occurrence and during the continuance of an Event of Default, including without limitation such rights and remedies available to Administrative Agent and/or Lender pursuant to this Section 5.2. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Administrative Agent shall not execute any documents as attorney-in-fact for Mortgagor unless (a) Mortgagor shall have failed or refused to execute the same within five (5) Business Days after Administrative Agent shall have given notice requesting execution thereof, or (b) an Event of Default has occurred and is continuing and in Administrative Agent's good faith determination it would be materially prejudiced by the delay involved in making such request.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Administrative Agent's or Lender's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any (provided that nothing hereunder shall require Mortgagor to pay any income tax imposed on Administrative Agent or Lender by reason of its interest in the Property). If Administrative Agent is advised in writing by counsel chosen by it that the payment of tax by Mortgagor and/or Borrower would be unlawful or taxable to Administrative Agent and/or Lender or unenforceable or provide the basis for a defense of usury then Administrative Agent shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable, provided, however, no Spread Maintenance Premium or other prepayment premium or penalty shall be due or payable in connection therewith and, provided further, that Administrative Agent shall not exercise such option if, within one hundred eighty (180) days of receipt by Mortgagor of such written notice, Mortgagor shall prepay the outstanding principal balance of the Loan in an amount equal to the Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.6 of the Loan Agreement (provided that Section 2.6.1(a)(v) of the Loan Agreement shall not be applicable). No Spread Maintenance Premium or other prepayment premium or penalty shall be due or payable in connection with the foregoing prepayment.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Administrative Agent shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable provided, however, no Spread Maintenance Premium or other prepayment premium or penalty shall be due or payable in connection therewith and, provided further, that Administrative Agent shall not exercise such option if, within one hundred eighty (180) days of receipt by Mortgagor of such written notice, Mortgagor shall prepay the outstanding principal balance of the Loan in an amount equal to the Release Amount for the Property and otherwise in accordance with the terms and conditions of Section 2.6 of the Loan Agreement (provided that Section 2.6.1(a)(v) shall not be applicable). No Spread Maintenance Premium or prepayment premium or penalty shall be due or payable in connection with the foregoing prepayment.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any, provided that Mortgagor will have the right to contest such amounts in accordance with the terms and conditions of the Loan Agreement.

**Section 5.4 Severing of Security Instrument.** The provisions of Section 8.2(c) of the Loan Agreement are hereby incorporated by reference herein.

**Section 5.5 Replacement Documents.** Upon receipt of an affidavit of an officer of Administrative Agent as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Mortgagor, will issue, in lieu thereof, a replacement Note or other Loan Document to which it was originally a party, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## **ARTICLE 6 - DUE ON SALE/ENCUMBRANCE**

**Section 6.1 Administrative Agent and Lender Reliance.** Mortgagor acknowledges that Administrative Agent and Lender have examined and relied on the experience of Mortgagor and its respective general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Administrative Agent and Lender have a valid interest in maintaining the value of the Property so as to ensure that should an Event of Default under the Loan Agreement be continuing with respect to the repayment of the Debt or the performance of the Other Obligations beyond any applicable notice and cure periods in the Loan Documents, Administrative Agent, on behalf of Lender, can recover the Debt, or part thereof, by a sale of the Property.

**Section 6.2 No Sale/Encumbrance.** Neither Mortgagor nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to and in accordance with the terms of the Loan Agreement.

## **ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1 Remedies.** To the extent and in the manner provided by applicable law, upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Administrative Agent may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, 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 Administrative Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Administrative Agent or Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) to the extent permitted by applicable law, institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale (if applicable under the laws of the State in which the Property is located), or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor and/or any Other Borrower, any guarantor or indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;
- (h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Administrative Agent shall immediately be entitled to possession of all Rents, whether or not Administrative Agent enters upon or takes control of the Property and, subject to applicable law and the rights of any Tenant or Resident under any Lease, Administrative Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise (except for any damages caused by the gross negligence, willful misconduct, fraud or illegal acts of Administrative Agent, its agents, nominees or employees) and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Administrative Agent, for the benefit of Lender, upon demand, and thereupon Administrative Agent (for the benefit of Lender) may, subject to applicable law, (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Administrative Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights

and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict Tenants or Residents (subject to any non-disturbance agreements that Administrative Agent may have entered into with such Tenants, if any), and demand, sue for, collect and receive all Rents; (v) require Mortgagor to pay monthly in advance to Administrative Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Administrative Agent or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Administrative Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees of outside counsel) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Administrative Agent, Lender and their respective counsel, agents and employees to the extent provided for in the Loan Agreement;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures (to the extent held to be personal property), the Equipment, the Personal Property or any part thereof, and to take such other measures as Administrative Agent for the benefit of Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Administrative Agent at a convenient place acceptable to Administrative Agent. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Fixtures, the Equipment and the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) subject to any express terms of the Loan Documents including, without limitation, Article VII of the Loan Agreement and the Cash Management Agreement, apply any sums then deposited or held in escrow or otherwise by or on behalf of Administrative Agent for the benefit of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document (collectively, the "**Escrow Deposit**") to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; or
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents,

including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

provided that any Escrow Deposits remaining on deposit with Administrative Agent following application of the Escrow Deposits by Administrative Agent as provided above shall be returned to Mortgagor in accordance with and subject to the terms and provisions of the Loan Agreement and the other Loan Documents;

(k) pursue such other remedies as Administrative Agent and/or Lender may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Administrative Agent on behalf of Lender shall deem to be appropriate in its discretion.

In the event of a sale under this Section 7.1, by foreclosure, power of sale (if applicable under the laws of the State in which the Property is located) or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.2 Application of Proceeds.** Subject to the terms of the Loan Agreement and applicable law, upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Administrative Agent and/or Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Administrative Agent to the payment of the Debt in such priority and proportions as Administrative Agent, on behalf of Lender, in its discretion shall deem proper.

**Section 7.3 Right to Cure Defaults.** To the extent and in the manner provided by applicable law, upon the occurrence and during the continuance of any Event of Default, Administrative Agent on behalf of Lender may remedy such Event of Default in such manner and to such extent as Administrative Agent on behalf of Lender may deem necessary to protect the security hereof, but without any obligation to do so and without notice to or demand on Mortgagor or any Other Borrower, and without releasing Mortgagor from any obligation hereunder. Administrative Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees of outside counsel to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon written demand. All such costs and expenses incurred by Administrative Agent and/or Lender in remedying such 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 written notice from Administrative Agent to Mortgagor or any Other Borrower that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Administrative Agent and/or Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and

the other Loan Documents and shall be immediately due and payable upon written demand by Administrative Agent therefor.

**Section 7.4 Actions and Proceedings.** Subject to the terms of the Loan Agreement, Administrative Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and, provided that, if no Event of Default has occurred and is continuing, Administrative Agent shall endeavor to cooperate with Mortgagor and its legal counsel with respect to any defense by Administrative Agent of any such action. Subject to the terms of the Loan Agreement, Administrative Agent shall also have the right to bring any action or proceeding, in the name and on behalf of Mortgagor, which Administrative Agent, in its discretion, decides should be brought to protect its interest in the Property, provided that Administrative Agent shall notify Mortgagor that it intends to bring such action at least ten (10) Business Days prior to Administrative Agent instituting any such action (unless (a) an Event of Default has occurred and is continuing or (b) the provision of such notice by Administrative Agent reasonably threatens to materially prejudice Administrative Agent's or Lender's rights or materially adversely affect Administrative Agent's or Lender's interest in the Property or Administrative Agent's or Lender's rights and remedies under the Loan Documents, in either of which events such notice shall not be required), and Administrative Agent shall endeavor to provide to Mortgagor and its legal counsel reasonable periodic status updates as to any such action brought by Administrative Agent.

**Section 7.5 Recovery of Sums Required to Be Paid.** Subject to the terms of the Loan Agreement, Administrative Agent on behalf of Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Administrative Agent or Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Mortgagor existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** Subject to the terms of the Loan Agreement, at reasonable times and upon reasonable prior notice, Administrative Agent, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Mortgagor which reflect its financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Administrative Agent and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, subject to the terms of the Loan Agreement at reasonable times and upon reasonable prior notice, but no more often than twice in any calendar year (unless there shall occur an Event of Default, in which event the aforementioned limitation shall no longer apply), Administrative Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor (or of any Other Borrower) where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7 Other Rights, etc.** (a) The failure of Administrative Agent or Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Administrative Agent or Lender to comply with any

request of Mortgagor, any Other Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents upon the occurrence and during the continuance of an Event of Default, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof except as provided in the Loan Agreement, or (iii) any agreement or stipulation by Administrative Agent or Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and neither Administrative Agent nor Lender shall have any liability whatsoever for decline in value of the Property, except arising solely as a result of Administrative Agent's or Lender's gross negligence, willful misconduct, fraud or illegal acts, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Administrative Agent or Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or Collateral not in Administrative Agent's or Lender's possession.

(c) During the continuance of an Event of Default, Administrative Agent may resort for the payment of the Debt to any other security held by Administrative Agent in connection with the Loan in such order and manner as Administrative Agent on behalf of Lender, in its discretion, may elect. During the continuance of an Event of Default, Administrative Agent may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Administrative Agent thereafter to foreclose this Security Instrument. The rights of Administrative Agent under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Administrative Agent shall be construed as an election to proceed under any one provision herein or in any other Loan Documents to the exclusion of any other provision. Neither Administrative Agent nor Lender shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Subject to the terms and conditions of the Loan Agreement, Administrative Agent may release any portion of the Property from the lien of this Security Instrument for such consideration as Administrative Agent on behalf of Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent on behalf of Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property. Subject to the terms and conditions of the Loan Agreement, Administrative Agent on behalf of Lender may take or release from the liens created by the Loan Documents other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Security Instrument.

**Section 7.9 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, other than, Section 9.2 of the Loan Agreement, Administrative Agent, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Mortgagor or any Other Borrower contained in Sections 8.2 and 8.3 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property through foreclosure, exercise of a power of sale, or acceptance of a deed in lieu of foreclosure or otherwise upon the occurrence and during the continuation of an Event of Default, and in the event Administrative Agent commences a foreclosure action against the Property, subject to Section 9.2 of the Loan Agreement, Administrative Agent is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor (but not any partner, member, shareholder, officer, director or agent of Mortgagor) or any Other Borrower. The provisions of Sections 8.2 and 8.3 herein are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Mortgagor and any Other Borrower are fully and personally liable for their respective obligations pursuant to Sections 8.2 and 8.3 herein. The liability of Mortgagor or any Other Borrower with respect to the Loan pursuant to Sections 8.2 and 8.3 herein is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Administrative Agent from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Mortgagor pursuant to Sections 8.2 and 8.3 herein, whether or not action is brought against any Other Borrower or other Person or whether or not any Other Borrower or other Person is joined in the action or actions. In addition, Administrative Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 8 herein.

**Section 7.10 Right of Entry.** Subject to the rights of Tenants and subject to the express terms of the Loan Agreement, upon reasonable prior written notice to Mortgagor, Administrative Agent and its agents shall have the right to enter and inspect the Property at all reasonable times during the business day.

**Section 7.11 Administrative Agent's Remedies against Multiple Parcels.** The Debt and the Obligations hereby secured are also secured by other properties, lots and parcels (each an "**Other Property**" and collectively, the "**Other Properties**") covered by other mortgages, deeds to secure debt and deeds of trust (collectively, the "**Other Mortgages**") within and/or outside the state where the Property is located. If this Security Instrument or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations secured hereby, or if Administrative Agent exercises its power of sale (if applicable under the laws of the State in which the Property is located), execution may be made upon or Administrative Agent on behalf of Lender may exercise its remedies (including any power of sale (if applicable under the laws of the State in which the applicable Other Property is located)) against any one or more of the Other Properties and not upon the other Other Properties, or upon all of such Other Properties, either together or separately, and at different times or at the same time, and the exercise of such remedies, execution sales or sales under the power of sale herein granted (if applicable under the laws of the state in which the Property is located) may likewise be conducted separately or concurrently, in each case at Administrative Agent's (on behalf of Lender) election. No event of

enforcement taking place against any Other Property, and no failure to prosecute any such other enforcement, shall in any way stay, preclude or bar enforcement of this Security Instrument, and Administrative Agent and Lender may pursue any or all of Administrative Agent's and/or Lender's rights and remedies under this Security Instrument until the Debt and the Obligations are paid and discharged in full.

## ARTICLE 8 - INDEMNIFICATION

**Section 8.1 General Indemnification.** Except to the extent caused by the gross negligence, fraud, illegal acts or willful misconduct of the Indemnified Parties, Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, actual out-of-pocket costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement, punitive damages, foreseeable damages, of whatever kind or nature (including, but not limited, to reasonable third party attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents (other than in connection with a securitization pursuant to Section 9.1 of the Loan Agreement), each to the extent required or requested by Borrower; (c) any and all lawful action that may be taken by Administrative Agent and/or Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with Mortgagor, any Other Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to, or death of, persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) the failure of any Borrower or Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (h) any failure of the Property to be in compliance with any Legal Requirements; (i) the enforcement by any Indemnified Party of the provisions of this Article 8; (j) any and all claims and demands whatsoever which may be asserted against Administrative Agent and/or Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (k) the payment of any commission, charge or brokerage fee to anyone claiming through Mortgagor or any Other Borrower which may be payable in connection with the funding of the Loan; in each case except to the extent such Losses were caused solely as a result of the gross negligence, fraud, illegal acts or willful misconduct of any

Indemnified Party. The foregoing indemnification shall not cover liability incurred in connection with a Securitization except as provided in the Loan Agreement. Any amounts payable to Administrative Agent and/or Lender by reason of the application of this Section 8.1 shall become due and payable upon Administrative Agent's written demand and delivery of reasonable backup documentation therefor, and any such amounts that are not paid when due shall bear interest at the Default Rate from the date such amounts become due and payable until paid. For purposes of this Article 8, the term "**Indemnified Parties**" has the meaning ascribed to the term "Indemnified Parties" in the Loan Agreement.

**Section 8.2 Mortgage and/or Intangible Tax**. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

**Section 8.3 ERISA Indemnification**. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees of outside counsel and reasonable and documented out-of-pocket costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any non-exempt prohibited transaction and in obtaining any individual non-exempt prohibited transaction exemption under ERISA that may be required, in Administrative Agent's reasonable discretion) that Administrative Agent may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1.9 of the Loan Agreement.

**Section 8.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses**. In connection with any indemnification obligations of Mortgagor hereunder, upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties (and attorneys and other professionals selected by Mortgagor's insurance carrier shall be deemed approved by the Indemnified Parties). Notwithstanding the foregoing, if the defendants in any such claim or proceeding include Mortgagor and/or any Other Borrower and any Indemnified Party, and Mortgagor, any such Other Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Persons or Indemnified Parties that are different from or additional to those available to Mortgagor or any Other Borrower, then such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Mortgagor's consent, which consent shall not be unreasonably withheld. Upon written demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and out of pocket disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE 9 - WAIVERS

**Section 9.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Mortgagor each hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Administrative Agent and/or Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations (provided, however, that the foregoing shall not be deemed a waiver of Mortgagor's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Mortgagor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Administrative Agent and/or Lender in any separate action or proceeding).

**Section 9.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Mortgagor each hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor each hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

**Section 9.3 Waiver of Notice.** To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Administrative Agent or Lender except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provides for the giving of notice by Administrative Agent to Mortgagor, and except with respect to matters for which Administrative Agent or Lender is required by applicable law to give notice, and Mortgagor each hereby expressly waives the right to receive any notice from Administrative Agent or Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Administrative Agent or Lender to Mortgagor.

**Section 9.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 9.5 Survival.** The indemnifications made pursuant to Section 8.3 and the waivers made pursuant to Sections 9.1, 9.2, 9.3 and 9.4 herein, shall continue until the Debt is paid in full and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Administrative Agent's or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Administrative Agent's or Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents,

any transfer of all or any portion of the Property (whether by Mortgagor or by Administrative Agent or Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto. Notwithstanding the provisions of this Security Instrument to the contrary, the liabilities and obligations of Mortgagor shall not apply to the extent such liability and obligations arise after any Indemnified Party or its nominee acquired title to the Property, whether by foreclosure, deed in lieu of foreclosure, exercise of power of sale or otherwise.

#### **ARTICLE 10 - EXCULPATION**

The provisions of Section 9.2 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### **ARTICLE 11 - NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

#### **ARTICLE 12 - APPLICABLE LAW**

**Section 12.1 Governing Law.** THIS SECURITY INSTRUMENT SHALL BE GOVERNED IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 10.3 OF THE LOAN AGREEMENT; PROVIDED THAT ARTICLE 17 AND THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

**Section 12.2 Usury Laws.** Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Mortgagor, any Other Borrower and Administrative Agent and/or Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Administrative Agent or Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

**Section 12.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the

extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

### ARTICLE 13 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the term “**Mortgagor**” shall mean “Mortgagor” and any subsequent owner or owners of the Property or any part thereof or any interest therein, and shall be deemed to refer to each and every Person comprising a Mortgagor from time to time, jointly and severally, and to include the successors and assigns of each such Person, the term “**Borrower**” shall be deemed to refer to each and every Person comprising a Borrower from time to time, jointly and severally, and to include the successors and assigns of each such Person, the term “**Other Borrower**” shall mean “each other Borrower and any subsequent maker or makers of the Note,” jointly and severally, and to include the successors and assigns of each such Person, the term “**Lender**” shall mean “Lender and any subsequent holder of the Note,” the term “**Administrative Agent**” shall mean “Administrative Agent and any subsequent administrative agent for Lender who was appointed in accordance with the terms and provisions of the Loan Agreement,” the term “Mortgagor” shall mean “each Mortgagor and any subsequent owner(s) or operator(s) of the Property or any part thereof or any interest therein”, the term “**Note**” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” the term “**Property**” shall include any portion of the Property and any interest therein, and the phrases “**attorneys’ fees**”, “**legal fees**” and “**counsel fees**” shall include any and all reasonable attorneys’, paralegal and law clerk fees and disbursements of outside counsel, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Administrative Agent and/or Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

### ARTICLE 14 - MISCELLANEOUS PROVISIONS

**Section 14.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor, Administrative Agent or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought or by repayment of the Debt in full in accordance with the Loan Agreement.

**Section 14.2 Joint and Several Liability.** Notwithstanding anything to the contrary contained in this Security Instrument or any other Loan Document, nothing contained herein shall in any way alter or modify Mortgagor’s obligations as a joint and several obligor (with Other Borrowers) for the repayment of the Debt and performance of the Obligations.

**Section 14.3 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Mortgagor, Administrative Agent and Lender and their permitted respective successors and assigns forever.

**Section 14.4 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 14.5 Headings, etc.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.6 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 14.7 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Administrative Agent on behalf of Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Administrative Agent on behalf of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's and each Other Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations, except as otherwise agreed to or accepted by Administrative Agent of behalf of Lender.

**Section 14.8 Entire Agreement.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement among Mortgagor (or Borrower, as applicable), Administrative Agent and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements among Mortgagor (or Borrower, as applicable), Administrative Agent and Lender with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Administrative Agent or Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 14.9 Limitation on Administrative Agent's and Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Administrative Agent or Lender, nor shall it operate to make Administrative Agent or Lender responsible or liable for any waste committed on the Property by the Tenants, Residents or any other Person, or for any

dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, Resident, licensee, employee or stranger, other than as a result of actions of Administrative Agent or Lender that constitute gross negligence or willful misconduct. Nothing herein contained shall be construed as constituting Administrative Agent or Lender a “mortgagee in possession.”

**Section 14.10 WAIVER OF TRIAL BY JURY.** MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, ADMINISTRATIVE AGENT, EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS SECURITY INSTRUMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF ADMINISTRATIVE AGENT, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

**Section 14.11 Conflict of Terms.** In case of any conflict between the terms of this Security Instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail except that in all cases the terms and provisions of Article 17 of this Security Instrument shall prevail in the case of any conflict with any other terms and provisions hereof or of the Loan Agreement.

**Section 14.12 Release or Assignment of Security Instrument.** Notwithstanding anything to the contrary herein, if all of the Debt is indefeasibly paid or as may otherwise be permitted by the terms of the Loan Agreement, then and in that event only, all rights, except those indemnifications made pursuant to Sections 8.1, 8.2, 8.3 and 8.4 hereof, under this Security Instrument shall automatically terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Administrative Agent in due form. To the extent requested by Mortgagor, Administrative Agent agrees to assign the Note and this Security Instrument to such party as may be designated by Mortgagor upon the repayment (or purchase by another lender designated by Borrower) in full of the Debt or upon release of the Property as may otherwise be permitted under the Loan Agreement and Administrative Agent will cooperate in the preparation of all of the necessary documentation to effectuate an assignment of this Security Instrument and the indebtedness secured thereby, including the delivery of originals of the Loan Documents. All reasonable costs incurred by Administrative Agent under this paragraph, including, without limitation, reasonable third-party attorney’s fees and disbursements, promptly shall be reimbursed by Mortgagor.

**Section 14.13 No Merger of the Estates.** So long as any part of the Debt secured hereby remains unpaid and unperformed or undischarged, the fee and leasehold estates to the Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Administrative Agent, Lender, any lessee, or any third party purchaser or otherwise.

**ARTICLE 15 - INTENTIONALLY OMITTED****ARTICLE 16 - INTENTIONALLY OMITTED****ARTICLE 17 - STATE SPECIFIC PROVISIONS**

**Section 17.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 17 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 17 shall control and be binding.

**Section 17.2 Power of Sale.** In addition to the rights and remedies set forth in Article 7, if an Event of Default exists, this Security Instrument shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Administrative Agent shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Administrative Agent may from time to time elect to sell) under the power of sale which is hereby given to Administrative Agent, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Administrative Agent may bid at any sale held under this Security Instrument and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Administrative Agent, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Security Instrument shall have been terminated as provided herein.

**Section 17.3 Foreclosure Deeds.** To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Administrative Agent or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

**Section 17.4 Multiple Sales.** If an Event of Default exists, Administrative Agent shall have the option to proceed with foreclosure, either through the courts or by power of sale as

provided for in this Security Instrument, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Security Instrument shall remain in full force and effect as though no sale had been made under this Article 17. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

**Section 17.5 Amended Provisions.** Section 3.8 of this Security Instrument is hereby amended by deleting at the beginning thereof the text “Mortgagor has good and insurable fee simple title” and by inserting in lieu thereof the following text “Mortgagor has and is seized of good, marketable and insurable title”. Also, Section 1.1 of this Security Instrument is hereby amended by deleting at the beginning thereof the text “Mortgagor each do hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Administrative Agent for the benefit of Lender,” and by inserting in lieu thereof the following text “As security for the Obligations, Mortgagor each do hereby grant, bargain, sell, assign and convey unto the Administrative Agent for the benefit of Lender, and hereby grant to the Administrative Agent a security interest in, all of Mortgagor’s right, title and interest in, to and under”.

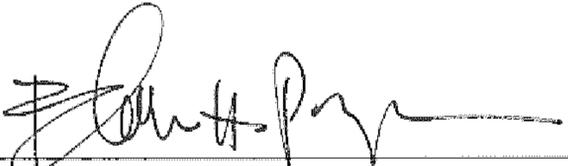
**Section 17.6 Additional Fixture Filing Language.** This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Property and is to be filed and recorded in, among other places, the real estate records of the county where the Property is located. For this purpose the following information is included: The Property is described by item or type in Section 1.1. Mortgagor is the debtor, and Administrative Agent is the secured party. The name of each debtor (Mortgagor) and the secured party (Administrative Agent) are given in the first paragraph of this Security Instrument. The mailing address of Administrative Agent set out in the first paragraph hereof is the address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in the first paragraph hereof is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in Section 1.1 and in this Section 17.6. The real estate to which the goods are or are to be affixed is described in Exhibit A. Mortgagor is the record owner of its respective portions of the Property.

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IN WITNESS WHEREOF, this Security Instrument has been executed by Mortgagor as of the day and year first above written.

**MORTGAGOR:**

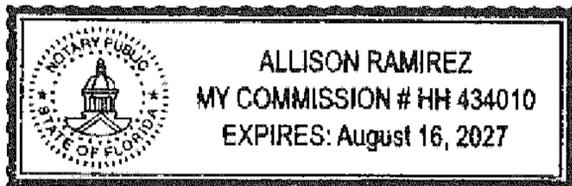
**BIRMINGHAM AL SENIOR PROPERTY LLC,**  
a Delaware limited liability company

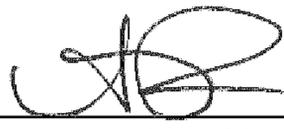
By:   
Name: Blake H. Peeper  
Title: Authorized Signatory

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 16 day of March 2026, by Blake H. Peeper, as Authorized Signatory of BIRMINGHAM AL SENIOR PROPERTY LLC, a Delaware limited liability company. He is  personally known to me or  has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)



  
Notary Public Signature

Allison Ramirez  
(Name typed, printed or stamped)

**Somerby St. Vincents**  
 200 One Nineteen Blvd.  
 Birmingham, AL  
 (Shelby County)

## EXHIBIT A

### Legal Description

The Land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

PARCEL ONE:

The following described real estate situated in Shelby County, Alabama, to-wit:

Lot 1-B, St. Vincents hospital highway NO. 119 survey, Map Book 39, Page 103 and being more particularly described as follows:

A part of Lot 1, GREYSTONE - 3RD sector as recorded in Map Book 14, Page 79 in the Office of the judge of probate of Shelby County, Alabama and situated in the Northwest 1/4 and the Northeast 1/4 of Section 32, Township 18 South, Range 1 West Shelby County, Alabama and being more particularly described as follows:

Begin at the Southeasterly corner of Lot 1, GREYSTONE - 3RD sector as recorded in Map Book 14, Page 79 in the Office of the judge of probate of Shelby County, Alabama, said point being on the Northerly right-of-way line of GREYSTONE way as recorded in Map Book 29, Page 123 in the Office of the judge of probate of Shelby County, Alabama, and run in a Northeasterly direction along the Southeasterly line of said Lot 1 a distance of 569.13 feet to a point; thence  $3^{\circ}53'00''$  to the left in a Northeasterly direction along the Southeasterly line of said Lot 1 and its prolongation a distance of 424.81 feet to a point; thence  $76^{\circ}04'07''$  to the left in a Northwesterly direction a distance of 352.05 feet to a point; thence  $58^{\circ}04'29''$  to the left in a Southwesterly direction a distance of 72.43 feet to a point on a curve to the right having a radius of 655.00 feet and a central angle of  $47^{\circ}12'36''$ ; thence  $78^{\circ}56'03''$  to the left (angle measured to tangent) in a Southeasterly, Southerly and Southwesterly direction along the arc of said curve a distance of 539.70 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 39.65 feet to a point; thence  $90^{\circ}00'00''$  to the right in a Northwesterly direction a distance of 25.00 feet to a point; thence  $90^{\circ}00'00''$  to the left in a Southwesterly direction a distance of 70.27 feet to the P.C. (point of curve) of a curve to the right having a radius of 517.00 feet and a central angle of  $24^{\circ}29'13''$ ; thence in a Southwesterly direction along the arc of said curve a distance of 220.95 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 370.50 feet and a central angle of  $23^{\circ}26'54''$ ; thence in a Southwesterly direction along the arc of said curve a distance of 151.63 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 72.81 feet to a point on the Northerly right-of-way line of GREYSTONE way; thence  $91^{\circ}09'24''$  to the left in a Southeasterly direction along the Northerly right-of-way line of GREYSTONE way a distance of 207.31 feet to the P.C. (point of curve) of a curve to the left having a radius of 410.00 feet and a central angle of  $43^{\circ}51'30''$ ;

thence in a Southeasterly, Easterly, and Northeasterly direction along the Northerly right-of-way line of GREYSTONE way and along the arc of said curve a distance of 313.84 feet to the Point of Beginning.

PARCEL TWO:

Beneficial easements set forth in Restrictive Covenant and Reciprocal Easement Agreement recorded as Instrument No. 20071228000583600, as amended by First Amendment recorded in Instrument No. 20111221000387420, and as further amended by Second Amendment recorded as Instrument No. 20170428000146960.

Tax Parcel Numbers:

03-9-32-0-001-005.005

8050-075-01-002

BEFORE THE ALABAMA DEPARTMENT OF REVENUE

In re:	)	A Proceeding Authorized
	)	by Section 40-22-2,
<b>BMO BANK N.A.</b>	)	Code of Alabama 1975
	)	
Petitioner.	)	

**MORTGAGE TAX ORDER**

Comes now **BMO BANK N.A.**, and in its Petition for Ascertainment of Mortgage Tax (the "Petition"), asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording tax due pursuant to Section 40-22-2, *Code of Alabama 1975*, for the privilege of recording three substantially similar mortgages in the Alabama counties listed below (collectively, the "Mortgage") executed by Mobile AL Senior Property LLC; Auburn AL I Senior Property LLC; Auburn AL II Senior Property LLC; Auburn AL III Senior Property LLC; Birmingham AL Senior Property LLC, each a Delaware limited liability company, in favor of MBO Bank N.A. that secures the indebtedness as described in the Petition (the "Indebtedness"), which along with other security documents (the "Security Documents"), cover property and fixtures located both inside and outside the State of Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. The Mortgage and the Security Documents secure a maximum principal indebtedness in the amount of \$1,000,000,000.00.
2. The value of the property and fixtures conveyed by the Mortgage and located inside the State of Alabama is \$124,800,000.00, and the value of all the property and fixtures described in and conveyed by the Mortgage and the Security Documents in all states (including the State of Alabama) is \$1,284,700,000.00.
3. The percentage of the property and fixtures conveyed by the Mortgage that is located inside the State of Alabama is 9.71%.
4. The amount of the Indebtedness secured by the Mortgage and subject to the Alabama mortgage recording tax is \$97,100,000.00.
5. The amount of recording tax to be paid at the rate of \$0.15 for each \$100 of Indebtedness or fraction thereof which is attributable to the property and fixtures located within the State of Alabama is \$145,650.00.
6. The Mortgages are to be recorded in the Alabama counties listed below.

7. The relative property values of the properties and fixtures lying within the State of Alabama are as follows:

<u>COUNTY</u>	<u>VALUE</u>	<u>PERCENTAGE</u>
Shelby	\$54,200,000.00	43.43%
Lee	\$19,300,000.00	15.46%
Mobile	\$51,300,000.00	41.11%
Total	\$124,800,000.00	100%

8. So long as the aggregate principal amount of Indebtedness at any one time outstanding as secured by the Mortgage does not exceed \$1,000,000,000.00, no additional mortgage recording tax will be due.

IT IS, THEREFORE, ORDERED that mortgage recording tax in the amount of \$145,650.00 plus any recording fees which may be due, shall be paid to the Judge of Probate of [Shelby] County, Alabama, and no additional mortgage recording tax will be due so long as the maximum principal amount of such indebtedness secured by the Mortgage does not exceed \$1,000,000,000.00.

DONE this 17<sup>th</sup> day of March, 2026.

DEPARTMENT OF REVENUE

By: Derrick Coleman  
Deputy Commissioner of Revenue

K. Elizabeth Jehle  
Legal Division: K. Elizabeth Jehle

Carroll  
as Secretary



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
03/26/2026 10:51:52 AM  
\$145777.00 JOANN  
20260326000086250

Allie S. Bayl