MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Prepared by and

When Recorded Return to**:**

[THIS INSTRUMENT IS A CONSTRUCTION MORTGAGE WITHIN THE MEANING OF TENNESSEE CODE ANNOTATED SECTION 47-9-334(h) AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF IMPROVEMENTS UPON REAL ESTATE.]

**THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER TENNESSEE UNIFORM COMMERCIAL CODE PURSUANT TO TENNESSEE CODE ANNOTATED, SECTION 47-9-502. GRANTEE desires THIS FIXTURE FILING TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN. this instrument secures obligatory advances and is made for commercial purposes.**

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,

SECURITY AGREEMENT AND FIXTURE FILING

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_ (together with any amendments or modifications hereto in effect from time to time, the "**Security Instrument**"), from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Grantor**"), to **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, having as an address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Tennessee \_\_\_\_\_\_, a resident of the City/County of \_\_\_\_\_\_\_, Tennessee, as trustee (together with his/her successors and assigns as trustee hereunder, the "**Trustee**"), and **TRUIST BANK**, a North Carolina banking corporation, as administrative agent (the “**Administrative Agent**”) for itself and the lenders (the “**Lenders**”) from time to time party to the Loan Agreement (as defined below) having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Tennessee \_\_\_\_.

WITNESSETH:

A. This Security Instrument is given to secure loans (collectively, the "**Loan**") in the aggregate principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AND NO/100 DOLLARS ($\_\_\_\_\_\_\_\_\_\_\_\_\_) or so much thereof as may be advanced pursuant to that certain **[Construction / Term]** Loan Agreement dated as of the date hereof between Grantor, Administrative Agent and the Lenders (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by one or more Promissory Notes dated as of the date hereof made by Grantor to each Lender and having a maturity of \_\_\_\_\_\_\_\_\_\_20\_\_\_ (such promissory notes, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "**Notes**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.[[1]](#footnote-1)

B. Grantor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to Administrative Agent and the Lenders in respect of the Loan and the Loan Documents (the "**Debt**") and the performance of all of its obligations under the Notes, the Loan Agreement and the other Loan Documents.

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Grantor of its obligations thereunder and under the other Loan Documents are secured hereby.

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

# ARTICLE I

# GRANTING CLAUSES

##  Section 1.1 Property Conveyed. Grantor has granted and conveyed and by these presents DOES HEREBY GRANT, BARGAIN, SELL, CONVEY, TRANSFER AND ASSIGN TO TRUSTEE, in trust with power of sale and right of entry and possession, all of Grantor's estate, right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"):[[2]](#footnote-2)

###  (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 hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, be expressly made subject to the security title and lien of this Security Instrument;

###  (c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements owned by Grantor 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, 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, remainder 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, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

###  (e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land and is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, electronic data-processing and other office equipment, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, 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 Grantor'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), 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 under Leases (as hereinafter defined) except to the extent that Grantor shall have any right or interest therein;

###  (f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor 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, 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 (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Grantor shall have any right or interest therein;

###  (g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, interest rate hedging agreements, and, to the extent assignable: (i) licenses, (ii) certificates and (iii) permits, and all other 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 Grantor 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 Grantor 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 any of the above;

###  (h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Grantor 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") (collectively, the "Leases") and all right, title and interest of Grantor, its 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 (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt;

###  (i) Condemnation Awards. All awards or payments, including interest thereon, 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 such 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 proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

###  (k) Tax Certiorari. Grantor's interest in all refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction of taxes or assessments charged against the Property, in each case, irrespective of the time period to which they relate;

###  (l) Rights. The right, in the name and on behalf of Grantor, 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 the Lenders in the Property;

###  (m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof to the extent assignable and in the possession of Grantor and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the happening of an Event of Default, to receive and collect any sums payable to Grantor thereunder;

###  (n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

###  (o) Accounts. All operating, security deposit, reserve, escrow and lockbox accounts maintained by Grantor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement[, the Cash Management Agreement, the Lockbox Agreement] or any other Loan Document, 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, dividends and/or substitutions thereon and thereof;

###  (p) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

###  (q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash, or in liquidation or other claims or otherwise; and

###  (r) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by Applicable Law, Grantor expressly grants to Administrative Agent, for the benefit of itself and the Secured Parties, as secured party, a security interest in the portion of the Property 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 (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") 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 and conveyed hereby.

Section 1.2 Assignment of Rents.

(a) Grantor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Administrative Agent, for the benefit of itself and the Secured Parties, all of Grantor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Grantor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not more than one (1) month prior to accrual, the Rents. Grantor shall receive and hold such Rents in trust as a fund to be applied, and Grantor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property, including, without limitation, the payment of taxes and insurance, and the payment of interest, principal and other sums becoming due under the Debt, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Grantor shall automatically, without notice or any other action by Administrative Agent, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Grantor shall be held in trust by Grantor for the sole and exclusive benefit of Administrative Agent and the Lenders as security for satisfaction of the Obligations. Nothing contained in this Section 1.2, and no collection by Administrative Agent of Rents, shall be construed as imposing on Administrative Agent any of the obligations of the lessor under the Leases.

(b) Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (i) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made.

(c) Except as expressly permitted pursuant to the terms of the Loan Agreement, Grantor shall not: (i) enter into any lease of all or any portion of the Property; (ii) amend, modify, terminate or accept a surrender of any Lease; or (iii) collect or accept rent from any tenant of the Property for a period of more than one (1) month in advance. Any of the foregoing acts, if done, in each instance, shall be null and void.

##  Section 1.3 Security Agreement; Fixture Filing.

##  (a) This Security Instrument shall also be considered a security agreement under the Uniform Commercial Code. This Security Instrument is both a deed of trust 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 Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Administrative Agent, for the benefit of itself and the Secured Parties, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property 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"). Grantor hereby authorizes Administrative Agent to file financing statements, continuation statements and financing statement amendments in such form as Administrative Agent may require to perfect or continue the perfection of this security interest without the authorization or signature of Grantor. 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, Grantor 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. Grantor shall pay to Administrative Agent on demand any and all expenses, including reasonable legal expenses and attorneys' fees, 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 Grantor 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 reasonable notice to Grantor. 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.

## (b) From the date of its recording, this Security Instrument shall be effective as a "fixture filing" for the purposes of Tennessee Code Annotated Section 47-9-502 with respect to all of the Property which is or is to become fixtures. The addresses of Grantor (Debtor) and Administrative Agent (Secured Party) are set forth below. This Security Instrument is to be filed for recording with the Register’s Office of any county or counties where the Land (including such fixtures) is located. For this purpose, the following information is set forth:

### Name and Address of Debtor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### Name and Address of Secured Party:

Truist Bank

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### This document covers any portion of the Property that now is or later may become a fixture attached to the Land.

### Debtor is the record owner of the Property.

##  [Section 1.4 Pledges of Monies Held. Grantor hereby pledges to Administrative Agent, for the benefit of itself and the Secured Parties, any and all monies now or hereafter held by Administrative Agent or any Lender or on behalf of Administrative Agent or any Lender in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in the Cash Management Agreement), the Lockbox Agreement, the Lockbox Account (as defined in the Cash Management Agreement) and proceeds thereof, as additional security for the Obligations until expended or applied as provided in this Security Instrument.]

CONDITIONS TO GRANT

**TO HAVE AND TO HOLD** the above granted and described Property unto and to the use and benefit of Administrative Agent and its successors and assigns, for the benefit of itself and the Secured Parties, forever;

**PROVIDED ALWAYS,** these presents are upon the express condition, that if Grantor has paid the Debt in full and performed all of its obligations pursuant to this Security Instrument and the other Loan Documents, and no further advances are to be made under the Loan Agreement, and upon proof of the foregoing given to the Trustee to his (or her) reasonable satisfaction, the Trustee shall (upon the receipt of the written request of Administrative Agent and at the expense of Grantor), release and discharge this Security Instrument and the liens, security interests and assignments created hereby and Administrative Agent will provide a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Grantor. Grantor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 1.2 shall automatically terminate and become null and void. It is intended by the parties hereto that this Security Instrument shall operate as a deed of trust, and not as a mortgage, under the laws of the State of Tennessee.

# ARTICLE IIDEBT AND OBLIGATIONS SECURED

## Section 2.1 Obligations. This Security Instrument and the grants, conveyances, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

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

### (a) the performance of all other obligations of Grantor contained herein;

(b) the payment and performance of each other obligation of Grantor contained in the Loan Agreement and any other Loan Document; excluding, however, the debts, obligations and liabilities of Grantor under the that certain **[Environmental Indemnification Agreement]** dated on or about the date hereof, executed by Grantor and Guarantor for the benefit of Administrative Agent, for itself and the Secured Parties (the "**Environmental Agreement**").

### (c) the performance of each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Notes, the Loan Agreement or any other Loan Document; and

### (d) the payment and performance of all Hedging Obligations owed by Grantor[[3]](#footnote-3) to any Lender-Related Hedge Provider (other than Excluded Swap Obligations) and all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing.

This Security Instrument does not secure the Environmental Agreement or any other Loan Document that is expressly stated to be unsecured.

## Section 2.3 Debt and Other Obligations. Grantor's obligations for the payment of the Debt and the payment and performance of the Other Obligations may sometimes be referred to collectively herein as the "Obligations."

Section 2.4 Future Advances. Administrative Agent or the Lenders may from time to time, pursuant to the Loan Agreement and the other Loan Documents, make optional future or additional advances ("**Future Advances**") to or for the benefit of Grantor, which Future Advances shall be secured by this Security Instrument,including, without limitation: (a) principal, interest, late charges, fees and other amounts whichAdministrative Agentor any Lender may advance pursuant to the Loan Documents; (b) all advances by Administrative Agent to or for the benefit of Grantor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Administrative Agent for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, private assessments or maintenance costs, and costs incurred by Administrative Agent for the enforcement and protection of the Property or the lien and security title of this Security Instrument; and (d) all legal fees, costs and other expenses incurred by Administrative Agent by reason of any default or otherwise in connection with the Obligations. Grantor agrees that if, at any time during the term of this Security Instrument or following a foreclosure hereof, Grantor fails to perform or observe any covenant or obligation under this Security Instrument including, without limitation, payment of any of the foregoing, Administrative Agent may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All such amounts advanced by Administrative Agent or the Lenders shall be added to the amount secured by this Security Instrument and the other Loan Documents, and shall be due and payable on demand, together with interest at the Default Rate set forth in the Loan Agreement, such interest to be calculated from the date of such advance to the date of repayment thereof.

# ARTLICE IIIGRANTOR COVENANTS

Grantor covenants and agrees that throughout the term of the Loan:

## Section 3.1 Payment of Debt. Grantor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Notes and this Security Instrument.

## Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Notes 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. Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Loan Agreement.

## Section 3.4 Maintenance of Property. Grantor shall (a) cause the Property to be maintained in a good and safe condition and repair; (b) make or cause to be made, as and when necessary, all repairs, replacements and additions, whether or not insurance proceeds are available therefor; and (c) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property (except for normal replacement of the Fixtures, the Equipment or the Personal Property and refurbishment of the Improvements), except as expressly permitted under the terms of the Loan Agreement and the other Loan Documents. Subject to the terms of the Loan Agreement, Grantor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Security Instrument. Administrative Agent, and any persons authorized by Administrative Agent, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Administrative Agent, the necessity for any repair, alteration, replacement, clean-up or maintenance, Grantor shall, at the discretion of Administrative Agent, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Administrative Agent in an amount determined by Administrative Agent for the purpose of effecting such work.

##

## Section 3.5 Waste. Grantor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Grantor will not 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. Subject to Grantor's right to contest such amounts in accordance with the terms of the Loan Agreement, Grantor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the other Loan Documents, except for the Permitted Encumbrances.

## Section 3.7 Performance of Other Agreements. Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor 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 Seisin and Warranty. Grantor hereby warrants that (a) Grantor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters set forth in Exhibit B attached hereto (the "Permitted Encumbrances"); (b) Grantor has the right, full power and lawful authority to grant, convey and assign the same to Administrative Agent in the manner and form set forth herein; and (c) this Security Instrument creates a valid and enforceable first lien on and security title to the Property. Grantor hereby covenants that Grantor shall (a) preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Administrative Agent against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Administrative Agent to protect fully the lien of this Security Instrument.

## Section 3.9 Taxes and Other Charges. Grantor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property ("Taxes") when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Grantor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such Taxes, in accordance with the terms of the Loan Agreement.

## Section 3.10 Escrows. If required by Administrative Agent, Grantor shall pay to Administrative Agent at the time of each installment of interest due under the Loan Agreement, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of Taxes, and/or (b) the premiums which will next become due on the insurance policies required by the Loan Agreement, all in amounts as estimated by Administrative Agent, less all sums already paid therefor or deposited with Administrative Agent for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such Taxes and/or premiums, as applicable, will become due, such sums to be held by Administrative Agent to pay the same when due. If such escrow funds are not sufficient to pay such Taxes and/or insurance premiums, as applicable, as the same become due, Grantor shall pay to Administrative Agent, upon request, such additional amounts as Administrative Agent shall estimate to be sufficient to make up any deficiency. No amount paid to Administrative Agent hereunder shall be deemed to be trust funds but may be commingled with general funds of Administrative Agent and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Administrative Agent shall have the right, at its sole discretion, to apply any amounts so held against the Debt.

## Section 3.11 Removal of Fixtures. Grantor shall not remove or permit to be removed from the Property any Fixtures presently or in the future owned by Grantor (unless such Fixtures have been replaced with similar Fixtures of equal or greater utility and value).

# ARTICLE IVOBLIGATIONS AND RELIANCES

## Section 4.1 Relationship of Grantor and Administrative Agent. The relationship as between Grantor and Administrative Agent is solely that of debtor and creditor, and Administrative Agent has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Notes, this Security Instrument or the other Loan Documents shall be construed so as to deem the relationship between Grantor and Administrative Agent to be other than that of debtor and creditor.

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

## Section 4.3 Limitation of Agent Obligations.

## (a) Notwithstanding anything herein to the contrary, Administrative Agent is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Administrative Agent pursuant to this Security Instrument, the Loan Agreement, the Notes 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 insurance policy, Administrative Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Administrative Agent.

## Section 4.4 Reliance. Grantor recognizes and acknowledges that in accepting the Loan Agreement, the Notes, this Security Instrument and the other Loan Documents, Administrative Agent and each Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Administrative Agent or any Lender; that such reliance existed on the part of Administrative Agent and each Lender prior to the date hereof, that the warranties and representations are a material inducement to Administrative Agent and each Lender in making the Loan; and that each Lender would not be willing to make its Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in the Loan Agreement.

# ARTICLE VFURTHER ASSURANCES

## Section 5.1 Recording of Security Instrument, Etc. Grantor 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 conveying, creating or evidencing the security title, liens or security interest 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 security title, liens or security interest hereof upon, and the interest of Administrative Agent in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Notes, 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 any 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 any of the foregoing documents, except where prohibited by law so to do.

## Section 5.2 Further Acts, Etc. Grantor will, at the cost of Grantor, and without expense to Administrative Agent or any Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, security deeds, deeds of trust, 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 the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Administrative Agent, 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 Applicable Law. Grantor hereby irrevocably authorizes Administrative Agent, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Administrative Agent may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Grantor" or "all personal property of Grantor" or words of similar effect, in order to perfect the security title and interests granted by Grantor under this Security Instrument. Grantor 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, including without limitation such rights and remedies available to Administrative Agent pursuant to this Section 5.2.

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

## (a) If any Applicable 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 interest in the Property, Grantor will pay the tax, with interest and penalties thereon, if any. If Administrative Agent is advised by counsel chosen by it that the payment of tax by Grantor would be unlawful or taxable to Administrative Agent 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 twenty (120) days to declare the Debt immediately due and payable.

(b) Grantor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes 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 Applicable Law, Administrative Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(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 any Note, this Security Instrument, or any of the other Loan Documents or shall impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Splitting of Security Instrument. Each Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Administrative Agent, be split or divided into two or more notes, each of which shall cover all or a portion of the Debt to be more particularly described therein. To that end, Grantor, upon written request of Administrative Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Administrative Agent and/or its successors or assigns permitted by the Loan Agreement, substitute notes in such principal amounts, aggregating not more than the then unpaid principal amount of the Notes, and containing terms, provisions and clauses identical to those contained in the Notes.

# ARTICLE 6DUE ON SALE/ENCUMBRANCE

## Section 6.1 Reliance. Grantor acknowledges that Administrative Agent and each Lender has examined and relied on the experience of Grantor and its general partners, managers, members, principals and beneficial owners in owning and operating properties such as the Property in agreeing to make the Loans, and will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the performance of the Obligations. Grantor acknowledges that Administrative Agent and each Lender has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Administrative Agent can recover the Debt by a sale of the Property for the benefit of itself and the Secured Parties.

Section 6.2 No Transfer or Encumbrance. Except as expressly permitted in the Loan Agreement, Grantor shall not permit or suffer any Transfer of the Property. Except as expressly permitted under the Loan Agreement, Grantor will not permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property, other than the Permitted Encumbrances. Grantor shall give Administrative Agent written notice in accordance with the Loan Agreement of any default under any obligation secured by a Lien. As used herein, the term "**Transfer**" means any direct or indirect sale, transfer, conveyance, mortgage, pledge or assignment of (i) the Property or any part thereof, or any direct legal or beneficial interest therein; or (ii) any ownership interest in Borrower, or any direct or indirect owner of Borrower, direct or indirect, legal or equitable.

**ARTICLE VII**

**EVENTS OF DEFAULT; REMEDIES**

Section 7.1 Event of Default. Each of the following shall constitute an event of default (each, an "**Event of Default**") hereunder:

1. An Event of Default (as defined therein) occurs under the Loan Agreement;

(b) Grantor fails to promptly perform or comply with any of the obligations set forth in this Security Instrument, and such failure continues beyond that date which is thirty (30) days after the earlier of (i) the date on which Administrative Agent notifies Grantor of such failure or (ii) the date on which Grantor otherwise becomes aware of such failure; or

 (c) A default or event of default occurs under any of the Notes or any other Loan Document other than the Loan Agreement, and such default or event of default continues beyond the expiration of the applicable grace or notice and cure period therefor, if any, set forth in such Loan Document (without duplication).

 Section 7.2 Remedies. If an Event of Default shall have occurred, Administrative Agent may, or at the direction of the Required Lenders, shall, take any of the following actions:

(a) Acceleration. Administrative Agent may declare the entire amount of the Debt immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Administrative Agent may in accordance with the Loan Agreement charge and collect interest at the Default Rate from the date of default on the unpaid balance of the Debt, at the rate set forth in the Loan Agreement.

(b) Possession. Administrative Agent may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as provided in the Loan Agreement: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Administrative Agent is given full authority to do any act which Grantor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Security Instrument and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Grantor shall pay monthly in advance to Administrative Agent or to any receiver appointed to collect said rents the fair and reasonable rental value for Grantor's use and occupation of the Property, and upon default in any such payment Grantor shall vacate and surrender the possession of the Property to Administrative Agent or to such receiver. If Grantor does not vacate and surrender the Property then Grantor may be evicted by summary proceedings.

(c) Foreclosure and Sale. Trustee may sell the Property, in whole or in part, in one or more separate sales, and in the case of default of any purchaser or purchasers, resell the Property as an entirety, or in such parcels as Administrative Agent shall in writing request, or, in the absence of such request, as Trustee may determine, at public auction at some convenient place in the jurisdiction where the Property is situated, or in such place as may be permitted by law, at such time, in such manner and upon such terms as Trustee may fix and briefly specify in the notice of sale. Before such sale at public auction is made, there shall first be advertisement of the time, place and terms of sale for twenty (20) days by three (3) successive weekly notices in a newspaper published or having a general circulation in the county in which the Property is located. Any such sale may be adjourned by Trustee by announcement at the time and place appointed for such sale or for such adjourned sale, and, without further notice or publication, such sale may be made at the time and place to which same shall be so adjourned. Upon the completion of any sale, Trustee shall execute and deliver to the purchaser a good and sufficient deed of conveyance, or assignment and transfer, lawfully conveying, assigning and transferring the property sold for cash or other immediately available funds to the highest bidder, free of equity of redemption, statutory right of redemption, homestead, dower, and all other rights and exemptions of every kind, all of which are hereby expressly waived. The Property may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Administrative Agent, in its sole discretion, may elect. The receipt of Trustee of such purchase money shall be full and sufficient discharge of any purchaser of the Property sold as aforesaid for the purchase money, and no such purchaser, or its representatives, grantees, or assigns shall be bound to see to the application of such purchase money. Upon any sale or sales made under or by virtue of this Security Instrument, Administrative Agent shall be a competent bidder at such sale. Upon foreclosure, Trustee shall be entitled to retain as compensation a reasonable fee approved by Administrative Agent. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Administrative Agent may request. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Obligations, this Security Instrument and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Property but Administrative Agent shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. Trustee may, after any request or direction by Administrative Agent, sell not only the real property but also all other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Property. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or any substitute or successor of Trustee, and such power of sale may be exercised from time to time and as many times as Administrative Agent may deem necessary until all of the Property has been duly sold and all Obligations has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Administrative Agent, such sale shall not exhaust the power of sale hereunder and Administrative Agent shall have the right to cause a subsequent sale or sales to be made hereunder. Administrative Agent shall have the right from time to time to enforce any legal or equitable remedy against Grantor including, without limitation, suing for any portion of the Obligations or any other sums required to be paid under the terms of this Security Instrument, as the same become due, without regard to whether or not all of the Indebtedness shall then be due, and without prejudice to the right of Administrative Agent thereafter to enforce any other remedy including, without limitation, an action of foreclosure, whether or not such other remedy is based upon an Event of Default that existed at the time of commencement of an earlier or pending action, and whether or not such other remedy is based upon the same Event of Default upon which an earlier or pending action is based. Upon any foreclosure sale, Administrative Agent may bid for and purchase the Property or any part thereof and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

(d) Appointment of Receiver. Administrative Agent may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Grantor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Grantor has committed waste or allowed deterioration of the Property, and Administrative Agent or any agent of Administrative Agent may be appointed as such receiver. Grantor hereby agrees that Administrative Agent has a special interest in the Property and absent the appointment of such receiver the Property may suffer waste and deterioration and Grantor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Administrative Agent pursuant to sub-section (b) above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

(e) Rights as a Secured Party. Administrative Agent shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code. Administrative Agent may elect to foreclose such of the Property as then comprise Fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Uniform Commercial Code. To the extent permitted by law, Grantor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

(f) Excess Monies. Administrative Agent may apply on account of the Obligations any unexpended monies still retained by Administrative Agent or any Lender that were paid by Grantor to Administrative Agent or such Lender: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Grantor.

(g) Collection of Rents. Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Administrative Agent may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Administrative Agent may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Administrative Agent may notify the tenants under the Leases that all Rents are to be paid to Administrative Agent, and following such notice all Rents shall be paid directly to Administrative Agent and not to Grantor or any other Person other than as directed by Administrative Agent, it being understood that a demand by Administrative Agent on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Administrative Agent without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Administrative Agent instead of to Grantor, upon receipt of written notice from Administrative Agent, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Administrative Agent as Grantor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Administrative Agent's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Administrative Agent; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Administrative Agent may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied in accordance with the terms of sub-section (b), above.

(h) Other Remedies. Administrative Agent shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Loan Documents or by Applicable Law. Administrative Agent shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Security Instrument, as they become due, without regard to whether or not any Other Obligations shall be due, and without prejudice to the right of Administrative Agent thereafter to bring an action of foreclosure, or any other action, for any default by Grantor existing at the time the earlier action was commenced. In addition, Administrative Agent and each Lender shall have the right to set-off all or any part of any amount due by Grantor to Administrative Agent or such Lender under any of the Obligations, against any indebtedness, liabilities or obligations owing by Administrative Agent or such Lender in any capacity to Grantor, including any obligation to disburse to Grantor any funds or other property on deposit with or otherwise in the possession, control or custody of Administrative Agent or such Lender.

(i) **Waiver of Grantor's Rights**. BY EXECUTION OF THIS SECURITY INSTRUMENT, GRANTOR EXPRESSLY: (a) ACKNOWLEDGES THE RIGHT OF ADMINISTRATIVE AGENT TO ACCELERATE THE LIABILITIES SECURED BY THIS SECURITY INSTRUMENT AND THE POWER OF ATTORNEY GIVEN HEREIN TO ADMINISTRATIVE AGENT TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON AN EVENT OF DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT; (b) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (i) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY ADMINISTRATIVE AGENT OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO ADMINISTRATIVE AGENT, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT AND (ii) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (c) ACKNOWLEDGES THAT GRANTOR HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS OF GRANTOR REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR, AND GRANTOR HAS CONSULTED WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (d) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY GRANTOR AGAINST GRANTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

(j) Application of Proceeds of Sale. In the event of a foreclosure sale of all or any portion of the Property or upon the enforcement of any other rights under this Section 7.2, the proceeds of said sale or enforcement shall be applied in the manner prescribed by Administrative Agent, subject to applicable law, with any surplus being paid to Grantor or any other person or entity who may be lawfully entitled thereto.

## Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Administrative Agent may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Administrative Agent may deem necessary to protect the security hereof. 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 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 Administrative Agent upon demand. All such costs and expenses incurred by Administrative Agent in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear Default Interest, for the period beginning on the first day after notice from Administrative Agent that such cost or expense was incurred and continuing until the date of payment to Administrative Agent. All such costs and expenses incurred by Administrative Agent together with interest thereon 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 demand by Administrative Agent therefor.

## Section 7.4 Other Rights, Etc. The failure of Administrative Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Administrative Agent to comply with any request of Grantor 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 Notes or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Administrative Agent extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Security Instrument or the other Loan Documents.

### It is agreed that the risk of loss or damage to the Property is on Grantor, and Administrative Agent and Trustee shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Administrative Agent 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 possession.

### Administrative Agent may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Administrative Agent in such order and manner as Administrative Agent, in its discretion, may elect. Administrative Agent may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or 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 to the exclusion of any other provision. Administrative Agent shall not 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 7.5 Right to Release Any Portion of the Property. Administrative Agent may release any portion of the Property 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 Debt shall have been reduced by the actual monetary consideration, if any, received by Administrative Agent for such release, and Administrative Agent may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as security title to and a security interest in the remaining portion of the Property.

# ARTICLE VIIIWAIVERS

## Section 8.1 Waiver of Counterclaim. To the extent permitted by Applicable Law, Grantor 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 arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Notes, any of the other Loan Documents, or the Obligations.

## Section 8.2 Marshalling and Other Matters. To the extent permitted by Applicable Law, Grantor hereby waives the benefit of all appraisement, 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, Grantor, for itself and all persons who may claim by, through or under Grantor, hereby expressly waives any so-called "moratorium law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "moratorium laws", and all rights of reinstatement and redemption of Grantor and of all other persons claiming by, through or under Grantor are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the State in which the Property is located.

## Section 8.3 Waiver of Notice. To the extent permitted by Applicable Law, Grantor shall not be entitled to any notices of any nature whatsoever from Administrative Agent except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provide for the giving of notice by Administrative Agent to Grantor and except with respect to matters for which Administrative Agent is required by Applicable Law to give notice. Grantor hereby expressly waives the right to receive any notice from Administrative Agent with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Administrative Agent to Grantor.

## Section 8.4 Waiver of Statute of Limitations. To the fullest extent permitted by Applicable Law, Grantor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Debt or performance of its Other Obligations.

## Section 8.5 Additional Waivers.  GRANTOR EXPRESSLY WAIVES, AND THE EXERCISE OF REMEDIES HEREUNDER, INCLUDING, WITHOUT LIMITATION, A FORECLOSURE SALE OF THE PROPERTY ARE FREE FROM AND IN BAR OF, THE FOLLOWING:  THE EQUITY OF REDEMPTION AND ALL RIGHTS OF REDEMPTION, STATUTORY OR OTHERWISE (INCLUDING, WITHOUT LIMTATION, THOSE RIGHTS OF REDEMPTION CONTAINED IN TENNESSEE CODE ANNOTATED SECTION 66-8-101 et seq.), HOMESTEAD, DOWER, ELECTIVE SHARE, RIGHTS OF APPRAISEMENT OR VALUATION AND ALL OTHER RIGHTS AND EXEMPTIONS OF EVERY KIND, WHICH GRANTOR OR GRANTOR'S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATE OF TENNESSEE OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE DEBT, OR ANY PART THEREOF.  ALL WAIVERS BY GRANTOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY GRANTOR, AFTER GRANTOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF GRANTOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS.  GRANTOR'S EXECUTION OF THIS SECURITY INSTRUMENT SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

# ARTICLE IX

**MISCELLANEOUS**

Section 9.1 Notices. All notices and communications under this Security Instrument shall be in writing and shall be given in accordance with the terms of Section 8.1 of the Loan Agreement, and with respect to the Trustee, at his (or her) address set forth herein.

Section 9.2 Remedies Cumulative. The rights and remedies of Administrative Agent and the Trustee as provided in this Security Instrument or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Administrative Agent at law or in equity. The failure, at any one or more times, of Administrative Agent to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Security Instrument or the rights of Administrative Agent.

Section 9.3 No Implied Waiver. Administrative Agent shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Administrative Agent, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

Section 9.4 No Warranty by Administrative Agent. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Administrative Agent pursuant to this Security Instrument or any of the other Loan Documents, Administrative Agent shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Administrative Agent.

Section 9.5 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Security Instrument shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

Section 9.6 Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Security Instrument shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Security Instrument cannot be assigned by Grantor except as permitted by the Loan Agreement, and any such assignment or attempted assignment by Grantor shall be void and of no effect with respect to Administrative Agent.

Section 9.7 Modifications. This Security Instrument may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the Grantor and Administrative Agent, with such consent of the Lenders (if any) required by the Loan Agreement. No course of dealing or conduct by or among Administrative Agent and Grantor shall be effective to amend, modify or change any provisions of this Security Instrument or the other Loan Documents.

Section 9.8 Commercial Loan. Grantor represents and warrants that the loans or other financial accommodations included as Debt secured by this Security Instrument were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

Section 9.9 Governing Law. 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 law of the state in which the Property is located. All other provisions of this Security Instrument shall be governed by the laws of the State **[in which the Property is located / of North Carolina [ or other state in footprint after analysis of waiver of jury trial] without reference to conflict of laws principles/ of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).]**

Section 9.10 Joint and Several Liability. If Grantor consists of more than one person or entity, the word "Grantor" shall mean each of them and their liability shall be joint and several.

Section 9.11 Trustee. Trustee, by his (or her) acceptance hereof, covenants to perform and fulfill faithfully the trusts herein created, being liable, however, only for willful misconduct or gross negligence, and hereby waives any statutory fee and agrees to accept reasonable compensation in lieu thereof for any services rendered by him (or her) in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days’ prior notice in writing to Grantor and to Administrative Agent. Administrative Agent may remove Trustee at any time or from time to time and select a successor Trustee. In the event of the death, removal, resignation, refusal to act or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Administrative Agent, without notice, without specifying any reason therefor and without applying to any court, may select and appoint a successor Trustee, and all powers, rights, duties and authority of Trustee shall thereupon become vested in the successor. The substitute Trustee shall not be required to give bond for the faithful performance of his (or her) duties unless required by Administrative Agent. Grantor shall pay the reasonable fees and expenses of the Trustee for acting as Trustee under this Security Instrument, including, but not limited to, the reasonable fees and expenses of counsel employed by the Trustee. Before taking any action under this Security Instrument, the Trustee may require that satisfactory indemnity be furnished to them for the reimbursement of all expenses to which he (or she) may be put and to protect him (or her) against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from his (or her) gross negligence or willful default. Grantor, at all times, shall protect, indemnify and save harmless Trustee from and against all liabilities, losses, damages, claims, obligations, penalties, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) imposed upon, incurred by or asserted against Trustee on account of (a) any failure of Grantor to comply with any of the terms of this Security Instrument, (b) any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Property or the use thereof, (c) any breach of any material representation or warranty of Grantor set forth herein, or (d) any action, suit, claim, demand, administrative proceeding, enforcement action or governmental or private action contesting or affecting title to the Property, or arising from or in connection with the financing, acquisition, construction, equipping, ownership, use or operation of the Property; provided, however that the foregoing indemnity shall not be applicable with respect to the gross negligence or willful misconduct of the parties to be indemnified.

Section 9.12        Additional Filings. Grantor hereby authorizes Administrative Agent to file for recordation an Addendum to this Deed of Trust noting an increase in the amount of the Debt secured hereby and paying any additional transfer taxes as may be due in respect thereof.

Section 9.13        Obligatory Advances. The term “**Obligatory Advances**” as used herein has the same meaning as in Tennessee Code Annotated § 47‑28‑101.

[*Remainder of Page Intentionally Left Blank*]

**IN WITNESS WHEREOF**, Grantor, intending to be legally bound, has duly executed and delivered this Security Instrument under seal as of the day and year first above written.

 **GRANTOR:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,

 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

 Name:

 Title:

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_

 Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_, to me known or proved to me on the basis of satisfactory evidence to be the person(s) described in and who executed the foregoing instrument, and acknowledged that \_he\_ executed the same for the purposes therein contained.

 Witness my hand and Notarial Seal at office this \_\_\_ day of \_\_\_\_\_\_, 200\_\_.

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_

 Before me, the undersigned Notary Public, of the State and County aforesaid, duly commissioned and qualified, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself (or herself) to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the within named bargainor, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that \_he as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by himself (or herself) as such \_\_\_\_\_\_\_\_\_\_\_\_\_.

 Witness my hand and Notarial Seal at office this \_\_\_ day of \_\_\_\_\_\_, 200\_\_.

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B
PERMITTED ENCUMBRANCES

1. Note to drafter: if defined terms in the Loan Agreement are modified or deleted, corresponding modifications and deletions need to be made in this document as well. [↑](#footnote-ref-1)
2. Note to drafter: this form covers personal property as well as real property and fixtures. The personal property collateral can be deleted from this form and addressed with a separate security agreement, at the drafter’s preference. [↑](#footnote-ref-2)
3. *Note to drafter:* Revise reference if a party other than the Grantor enters into a hedge in connection with the Loan. [↑](#footnote-ref-3)