

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Lenders Title Solutions
4033 Tampa Rd Ste 103
Oldsmar, FL 34677

REN R HAYHURST ESQ
BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612

PIN: 07-05-102-014

~~L-16121~~ L-16121

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

MADE BY

MNE SUB I, LLC,
a Delaware limited liability company
1303 Avocado Avenue, Suite 200, Newport Beach, California 92660
Hereinafter referred to as "Mortgagor"

IN FAVOR OF

CALIFORNIA BANK & TRUST,
a California banking corporation
1900 Main Street, Suite 200, Irvine, California 92614
Hereinafter referred to as "Mortgagee"

LOAN AMOUNT: \$20,000,000.00

Dated as of June 25, 2013

THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

Street Address of Property: 2080 Parkview Circle West, Hoffman Estates, IL 60169

Property Tax Index Number: 07-05-102-014

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (INCLUDING FIXTURE FILING)

RECITALS

A. This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (INCLUDING FIXTURE FILING) ("Mortgage") is being executed by MNH SUB I, LLC, a Delaware limited liability company, whose address is set forth above ("Mortgagor").

B. Mortgagor is the owner of the real property described in the attached Exhibit "A" ("Real Property").

C. This Mortgage is being executed by Mortgagor in favor of CALIFORNIA BANK & TRUST, a California banking corporation ("Mortgagee"), whose address is set forth above.

D. All terms not specifically defined herein shall have the meanings set forth in the Loan Agreement.

DEFINITIONS

"Action" shall mean any legal or equitable proceeding brought before a court, tribunal, administrative court, arbitrator, mediator or other forum for alternative dispute resolution.

"Mortgagee" shall mean CALIFORNIA BANK & TRUST, a California banking corporation.

"Compensation" shall mean the definition set forth in Section 2.14 below.

"CC&Rs" shall mean any and all agreements setting forth conditions, covenants, restrictions, easements, reservations, rights and rights of way for the Property.

"Mortgage" shall mean the definition set forth in Recital "A" above.

"Default Interest Rate" shall mean the definition given to such term in the Note.

"Event of Default" shall mean any event of default defined in the Mortgage, Loan Agreement and Note.

"Future Advances" shall mean the definition set forth in Section 1.3.4 below.

"Impound Account" shall mean the definition set forth in Section 2.17 below.

"Improvements" shall mean, without limitation, all present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the Real Property, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Real Property, and all window coverings, drapes and rods, carpeting and floor coverings, it being intended and agreed that all such items will be conclusively considered to be part of the Real Property conveyed by this Mortgage, whether or not attached or affixed to the Real Property.

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"Leases" shall mean the definition set forth in Section 2.8.1(b) below.

"Loan" shall mean the definition set forth in Section 1.1 below.

"Loan Agreement" shall mean the definition set forth in Section 1.1 below.

"Loan Documents" shall mean the definition set forth in Section 1.1 below.

"Note" shall mean the definition set forth in Section 1.1 below.

"Obligations" shall mean the definition set forth in Section 1.3 below.

"Personal Property" shall mean the definition set forth in Section 1.2.3 below.

"Prevailing Party" shall mean (a) the party who brings an Action against the other after the other is in breach or default, if such Action is dismissed upon the other's payment of the sums allegedly due or upon the other's performance of the covenants allegedly breached, or (b) the party obtains substantially the relief sought by it, whether or not such Action proceeds to a hearing, a trial on the merits, or a final judgment or determination.

"Proceeds" shall mean the definition set forth in Section 2.3.1 below.

"Property" shall mean the real and personal property described in Sections 1.2.1 through 1.2.7 below.

"Real Property" shall mean the real property described in the attached Exhibit "A".

"Rents" shall mean the definition set forth in Section 2.8.1(a) below.

"Security Deposits" shall mean the definition set forth in Section 2.8.1(c) below.

"Subdivision" shall mean the definition set forth in Section 2.10.3 below.

"Mortgagor" shall mean MNH SUB I, LLC, a Delaware limited liability company.

1. BASIC PROVISIONS.

1.1 Amount of Loan; Loan Documents. Mortgagor is making or has made a non-revolving line of credit loan to Mortgagor in the original amount not to exceed Twenty Million Dollars (\$20,000,000.00) ("Loan"). The Loan is evidenced by a promissory note dated as December 13, 2012 (as the same has been or may be amended from time to time, and collectively referred to in the singular as "Note"), executed by Mortgagor in favor of Mortgagee. The terms and conditions of the Loan are evidenced by and subject to the terms and conditions of that certain Line of Credit Loan Agreement and Security Agreement dated as December 13, 2012 (as the same has been or may be amended from time to time, "Loan Agreement") executed by Mortgagor and Mortgagee. Mortgagor shall be obligated to pay interest on the unpaid principal balance of the indebtedness evidenced by the Note at a variable rate equal to 2.55% in excess of the "Prime Rate" (as defined below), as provided in the Loan Agreement. Pursuant to the Note, the entire balance of principal with interest thereon shall be due and payable in full on December 14, 2013, or June 14, 2014, if extended. As used herein, Lender's "Prime Rate" means the variable rate of interest per annum, as adjusted from time to time, established by Lender as its "Prime Rate" as of the date of this Note. All present and future agreements executed by Mortgagor in favor of Mortgagee and relating to the Loan as the

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same have been or may be amended from time to time, collectively shall be referred to as the "Loan Documents."

1.2 Grant of Security in Property. In consideration of the Loan, Mortgagor hereby irrevocably mortgages, grants, bargains, remises, releases, aliens, sets over, conveys, transfers, pledges, grants a security interest in and assigns unto Mortgagee, with power of sale and right of entry and possession as provided below, all of its present and future estate, right, title and interest in and to the following described property now or hereafter acquired ("Property"):

1.2.1 Real Property. The Real Property, and all minerals, oil, gas and other hydrocarbon substances on or under the surface of the Real Property (to the extent owned by Mortgagor), as well as all development rights, permits, licenses, air rights, water, water rights, and water stock relating to the Real Property.

1.2.2 Improvements. All items listed as "Improvements" on Exhibit "B" attached hereto.

1.2.3 Personal Property. The term "Personal Property" shall include: (a) all property described in Exhibit "B" attached hereto; (b) all "Proceeds" (as defined in Section 2.3.1 below); and (c) all "Rents" (as described in Section 2.8.1 below).

1.2.4 Appurtenances of Real Property. All appurtenances of the Real Property and all rights of Mortgagor in and to any streets, roads or public places, easements or rights of way, relating to the Real Property.

1.2.5 Rents. All Rents and all rights of Mortgagor under all present and future leases affecting the Real Property, including but not limited to any security deposits.

1.2.6 Proceeds. All Proceeds and all claims arising on account of any damage to or taking of the Real Property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Real Property or any Improvements.

1.2.7 Other Collateral. All other "Collateral" (as defined in Exhibit "B" below) pledged by Mortgagor as security for the Loan.

1.3 Obligations Secured. This Mortgage secures the following obligations ("Obligations"):

1.3.1 Note Payments. Payment and performance of the Note, including all extensions, renewals and modifications of the Note.

1.3.2 Performance of the Mortgage Obligations. The performance of Mortgagor's obligations under this Mortgage and the Loan Agreement.

1.3.3 Payment of Advanced Sums. The payment of all sums advanced or paid out by Mortgagee under any provision of this Mortgage, or to protect the security of this Mortgage, together with interest thereon as provided herein, should Mortgagor fail to make any payment or to do any act as herein provided in connection with the rights granted hereunder, Mortgagee, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereunder, may make any payment or do any act in such manner and to such extent as herein provided or as either may deem necessary to protect the security hereof.

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1.3.4 Payment of Future Advances. The payment of the principal and interest on all other future loans or advances made by Mortgagee to Mortgagor (or any successor in interest to Mortgagor as the owner of all or any part of the Property) when the promissory note evidencing such loan or advance specifically states that it is secured by this Mortgage ("Future Advances"), including all extensions, renewals and modifications of any Future Advances.

1.3.5 Performance of the Loan Obligations. The performance of Mortgagor's obligations under the Loan Agreement and under all other Loan Documents including, without limitation, Mortgagor's payment and/or reimbursement of costs, charges, fees and expenses reasonably incurred by Mortgagee in connection with (i) the enforcement of any of Mortgagee's rights under the Loan Documents (including court costs, reasonable attorneys' fees and expert witness charges, whether incurred in any court action, arbitration, mediation, alternative dispute resolution forum, appeal proceedings or bankruptcy proceedings involving Mortgagor, (ii) Mortgagee's or any receiver's entry upon and taking possession of all or any part of the Property, (iii) any reappraisal or updated appraisal of the Property obtained by Mortgagee, either following the occurrence of an "Event of Default" (as defined below) or pursuant to the terms of the Loan Agreement, and (iv) Mortgagee exercising any of its rights under Section 4 below.

1.4 Warranty of Title. Mortgagor warrants that, except as disclosed to Mortgagee in a writing that refers to this warranty, Mortgagor is lawfully seized of the Property and has the right to mortgage, grant and convey the Property, and that this Mortgage is a valid first and prior lien on the Property subject only to the matters set forth in Schedule B, Part I of the title insurance policy issued in favor of Mortgagee that ensures the priority of this Mortgage. Mortgagor, at its sole cost and expense, shall at all times keep, protect, defend, and maintain title to the Property free and clear of any liens or encumbrances that would or could impair the validity or priority of this Mortgage. Mortgagor will not do or suffer any act or omission whereby the value of said Property, or lien hereof or of any estate or title covered hereby, may be diminished or impaired in any way. Mortgagor shall timely make all required payments under any other deeds of trust or other encumbrances which may now or hereafter affect the Property encumbered by this Mortgage and comply with all obligations hereunder. Should Mortgagor fail to make any such payment or comply with any such obligation, Mortgagee may, without notice to or authorization from Mortgagor, and without releasing Mortgagor from any obligation hereunder or under said mortgage or other encumbrance, pay any sum which may be owing under any other mortgage or other encumbrance or otherwise cure any default of Mortgagor thereunder, and the sums so expended by Mortgagee shall be secured hereby and shall be immediately due and payable by Mortgagor to Mortgagee, and shall bear interest at the "Default Interest Rate" provided for in the Note until paid. Any default (after the passage of any applicable grace or cure period) under any other mortgage or other encumbrance which may now or hereafter affect the Property encumbered by this Mortgage shall constitute a default hereunder.

2. COVENANTS OF MORTGAGOR. To protect the security of this Mortgage, Mortgagor agrees:

2.1 Performance. To pay all indebtedness and perform all obligations that are secured by this Mortgage in accordance with their terms.

2.2 Insurance. Mortgagor shall comply with all of the policies of insurance for Mortgagor and/or the Property as set forth in the Loan Agreement. In the event of Mortgagor's failure to obtain or maintain any of said policies of insurance, Mortgagee upon giving notice to Mortgagor may procure such insurance to be effected upon Mortgagee's interest or upon the interest of the owners of said Property and in their names, and Mortgagee may pay and expend for premiums for such insurance such sums as Mortgagee may deem to be reasonably necessary. At its option, in its own

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name, Mortgagee shall be entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement, in connection with such loss, taking or damage.

2.3 Assignment of Proceeds.

2.3.1 Definition of Proceeds. The term "Proceeds" shall mean all insurance proceeds on the Property, all proceeds of a sale of all or any portion of the Property (subject to the release provisions of the Loan Agreement), and all causes of action, claims, "Compensation" (as defined below in Section 2.14), awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it or for any loss or diminution in value of the Property. All Proceeds are hereby assigned to and shall be paid to Mortgagee. At Mortgagee's option, Mortgagee may appear in and prosecute (either in its own name or in the name of Mortgagor) or participate in any suits or proceedings relating to any such proceeds, causes of actions, claims, compensation, awards or recoveries and may adjust, compromise or settle any claim in connection therewith.

2.3.2 Application of Proceeds. Subject to the provisions of Section 2.3.3 below, Mortgagee shall apply any Proceeds received by it as follows: first, to the payment of all of Mortgagee's reasonable costs and expenses (including but not limited to legal fees and disbursements) incurred in obtaining those sums; and, then, in Mortgagee's sole discretion and without regard to the adequacy of its security, to the payment of the indebtedness and obligations secured by this Mortgage. Any application of such funds to the indebtedness secured hereby shall not be construed to cure or waive any "Event of Default" (as defined in the Loan Agreement) or invalidate any acts of Mortgagee arising out of such Event of Default.

2.3.3 Application of Insurance Proceeds. Notwithstanding the foregoing, any insurance proceeds or condemnation or eminent domain awards (in addition to any funds provided by Mortgagor, as set forth in Section 2.13.3 below) shall be applied to the restoration of the Property pursuant to Section 2.13 below, provided that:

- (a) The Improvements on the Property are able to be restored in their entirety with such proceeds or awards;
- (b) Mortgagor is not in default under any of the Loan Documents beyond the expiration of any applicable cure periods; and
- (c) The method for disbursement of any such proceeds or awards by Mortgagee for restoration shall be subject to the terms and conditions of Section 2.13 below.

Provided, however, that nothing herein shall prevent Mortgagee from applying any such proceeds or awards and/or Mortgagor's funds in accordance with the terms of Section 2.3.2 if, as required by Illinois law, Mortgagee is able to demonstrate that its security for the Loan has been impaired.

2.4 Property Taxes and Assessments. Except with respect to Permitted Encumbrances (as defined in the Loan Agreement) or as otherwise permitted under the Loan Agreement, Mortgagor agrees to pay when due all taxes, fees, impositions, and assessments which are or may become a lien on all or any portion of or interest in the Property or which are assessed against the Property or its rents, royalties, profits and income.

2.5 Mechanic's Liens. Mortgagor also agrees to pay when due all lawful claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered with respect to the Property. Mortgagor may in good faith contest any such claims by appropriate administrative or judicial proceedings as long as:

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2.5.1 Mortgagor has, in Mortgagee's judgment, a reasonable basis for such contest;

2.5.2 Mortgagor pays, prior to the date any interest or penalties will attach thereto, any portion of any such claims that Mortgagor does not contest;

2.5.3 Mortgagor's contest will not result in or pose any risk of the seizure, sale or imposition of a lien upon the Property or any portion thereof;

2.5.4 Mortgagor delivers to Mortgagee such bond or other security as Mortgagee may require in connection with such contest;

2.5.5 Mortgagor at all times prosecutes such contest with due diligence; and

2.5.6 Mortgagor pays, prior to the date any interest or penalties will attach thereto, the amount of the disputed claim that is determined to be due and owing by Mortgagor.

In the event that Mortgagor does not make any payment required to be made pursuant to subsection 2.5.6 above, Mortgagee may draw or realize upon any bond or other security delivered to Mortgagee in connection with the contest by Mortgagor, in order to make such payment.

2.6 **Taxation of Mortgage.** In the event of the passage after the date of this Mortgage of any law of the State of Illinois deducting from the value of land, for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes or the manner of the collection of such taxes so as to affect this Mortgage, the entire principal balance under said Note, together with all accrued interest thereon, at the option of Mortgagee, without demand or notice, forthwith shall become due and payable; provided, however, that such option shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax, in addition to all other payments required hereunder, and, if prior to such specified date, Mortgagor does pay such tax and agrees to pay any such tax when hereafter levied or assessed against the Property, and such agreement shall constitute a modification of this Mortgage.

2.7 **Perfection of Security.** Mortgagor agrees to execute and deliver to Mortgagee, from time to time on demand and at Mortgagor's cost and expense, any documents required to perfect and continue the perfection of Mortgagee's interest in the Property, or to effect any purpose hereunder.

2.8 **Assignment of Rents and Income.**

2.8.1 **Scope of Assignment.** This assignment of rents and income is intended to confer upon Mortgagee all rights, and impose upon Mortgagor all obligations, under Illinois law and is intended to be construed in accordance with said statutory requirements. Mortgagor hereby absolutely, unconditionally and irrevocably grants, sells, assigns, transfers and sets over to Mortgagee:

(a) **Rents.** All of the rents, issues, profits, royalties, income, cash proceeds, "Security Deposits" (as defined below) and other benefits (collectively "Rents") now existing or hereafter created and affecting all or any portion of the Property or the use or occupancy thereof.

(b) **Leases.** All of Mortgagor's right, title and interest in and to all leases, subleases, subtenancies, licenses, occupancy agreements and concessions covering Property or any portion thereof or space therein now or hereafter existing, including all modifications, amendments, extensions and renewals thereof, and all rights and privileges incident thereto (collectively "Leases").

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(c) **Security Deposits.** All security deposits, guaranties and other security now or hereafter held by Mortgagor as security for the performance of the obligations of the lessees under the Leases (collectively "Security Deposits").

2.8.2 Assignment. This assignment is intended by Mortgagor and Mortgagee to create and shall be construed to create an assignment to Mortgagee of all of Mortgagor's right, title and interest in the Rents and in the Leases. Mortgagor and Mortgagee further agree that, during the term of this assignment, the Rents shall not constitute property of Mortgagor (or of any estate of Mortgagor) within the meaning of 11 U.S.C. Section 541, as amended from time to time.

2.8.3 Grant of License. By its acceptance of this assignment and so long as an Event of Default shall not have occurred and be continuing hereunder, Mortgagee hereby grants to Mortgagor a revocable license to enforce the Leases, to collect the Rents, to apply the Rents to the payment of costs and expenses incurred in connection with the development, construction, operation, maintenance, repair and restoration of the Property, and to any indebtedness secured thereby and to distribute the balance, if any, to Mortgagor.

2.8.4 Revocation of License. Upon the occurrence of an Event of Default, and at any time thereafter during the continuance of such default, Mortgagee shall have the right to revoke the license granted to Mortgagor hereby by giving written notice of such revocation to Mortgagor. Upon such revocation, Mortgagor shall promptly deliver to Mortgagee all Rents then held by Mortgagor and Mortgagee shall thereafter be entitled to:

- (a) enforce the Leases, to collect and receive, without deduction or offset, all Rents payable thereunder, including, but not limited to, all Rents which were accrued and unpaid as of the date of such revocation; and
- (b) apply such Rents as provided in this Mortgage.

2.8.5 Appointment of Mortgagor as Agent for Mortgagee.

(a) **Purpose of Appointment.** Upon such revocation, Mortgagee may, at its option, appoint Mortgagor to act as agent for Mortgagee for the purpose of:

- (i) Managing and operating the Property and paying all expenses incurred in connection therewith and approved by Mortgagee.
- (ii) Enforcing the provisions of the Leases.
- (iii) Collecting all Rents due thereunder.

(b) **Notice to Mortgagor To Act as Agent.** If Mortgagee so elects, Mortgagee shall give written notice thereof to Mortgagor to act as agent of Mortgagee for the purpose or purposes specified in such notice. Mortgagor shall promptly comply with all instructions and directions from Mortgagee with respect thereto. Mortgagor shall not be entitled to any management fee, commission or other compensation unless expressly agreed to in writing by Mortgagee.

(c) **Deposit of Rents Collected.** All Rents collected by Mortgagor as agent for Mortgagee pursuant to this Section 2.8 shall be immediately deposited in an insured account in the name of Mortgagee in a bank or other financial institution designated by Mortgagee. All Rents collected by Mortgagor and all amounts deposited in such account, including interest thereon, shall be the property of Mortgagee and Mortgagor shall not be entitled to withdraw any amount from such account without the prior written consent of Mortgagee.

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(d) **Purpose of Agency.** The agency hereby created shall be solely responsible for the purpose of implementing the provisions of this assignment and collecting the Rents due Mortgagee hereunder. Nothing contained herein shall place upon Mortgagee the responsibility for the management, control, operation, repair, maintenance or restoration of the Property, nor shall Mortgagee be liable under or be deemed to have assumed Mortgagor's obligations with respect to the Leases. Mortgagee may at any time terminate the agency relationship with Mortgagor by written notice to Mortgagor.

2.8.6 Collection by Mortgagee. Upon the occurrence of an Event of Default, and at any time thereafter during the continuance thereof, Mortgagee shall have the right, in addition to the rights granted pursuant to this Section 2.8, to collect all or any portion of the Rents assigned hereby directly or through a court-appointed receiver or pursuant to a notice to the lessees or by any other means set forth under applicable law. Such rights shall include without limitation any and all of the following:

(a) **Notice to Lessees To Pay Rents to Mortgagee.** The right to notify the lessees under the Leases, with or without taking possession of the Property, to demand that all Rents under such Leases thereafter be paid to Mortgagee;

(b) **Enter and Possess the Property.**

(i) The right to enter into possession of the Property, either by a court-appointed receiver or by any other legally permissible means;

(ii) to assume control with respect to and to pay all expenses incurred in connection with the development, construction, operation, maintenance, repair or restoration of the Property;

(iii) to enforce all Leases and to collect all Rents due thereunder, and to apply all Rents received by Mortgagee as set forth herein;

(iv) if ordered by a court of competent jurisdiction, to amend, modify, extend, renew and terminate any or all Leases or to execute new Leases; and

(v) to do all other acts which Mortgagee shall determine, in its sole discretion, to be necessary or desirable to carry out the purposes of this Assignment; and

(c) **Specific Performance.** The right to specifically enforce the provisions of this assignment and, if Mortgagee shall so elect, to obtain the appointment of a receiver pursuant to and in accordance with the provisions of this Mortgage.

2.8.7 Protection of Lessees. Mortgagor and Mortgagee agree that all lessees under any Leases shall be bound by and required to comply with the provisions of this assignment. In connection therewith, Mortgagor and Mortgagee further agree as follows:

(a) **Notice to Lessees of Assignment.** If requested by Mortgagee, Mortgagor shall:

(i) notify each lessee under any Lease now or hereafter affecting all or any portion of the Property of the existence of this assignment and the rights and obligations of Mortgagor and Mortgagee hereunder;

(ii) provide each present or future lessee with a copy of this assignment;

and

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(iii) obtain each lessee's agreement to be bound and comply with the provisions hereof.

(b) **Reference to Assignment.** All Leases hereafter executed with respect to the Property or any portion thereof shall contain a reference to this assignment and shall state that such lessee shall be bound by and shall comply with the provisions hereof.

(c) **Occurrence of Event of Default.** Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, Mortgagee may, at its option, send any lessee a notice in compliance with applicable law to the effect that:

(i) an Event of Default has occurred and that Mortgagee has revoked Mortgagor's license to collect the Rents;

(ii) Mortgagee has elected to exercise its rights under this assignment and applicable law; and

(iii) such lessee is thereby directed to thereafter make all payments of Rents and to perform all obligations under its Lease for the benefit of Mortgagee or as Mortgagee shall direct.

(d) **Notice to Lessee To Comply With Leases.** Upon receipt of any such notice from Mortgagee, each lessee is hereby instructed by Mortgagor and Mortgagee to comply with the provisions of such notice, to make all payments of Rents and to perform all obligations under the Lease to and for the benefit of Mortgagee or as Mortgagee shall direct. Such notice and direction shall remain effective until the first to occur:

(i) the receipt by Lessee of a subsequent notice from Mortgagee to the effect that such Event of Default has been cured or that Mortgagee has appointed Mortgagor to act as agent for Mortgagee pursuant to this assignment;

(ii) the appointment of a receiver pursuant to this assignment, in which event such lessee shall thereafter make payments of Rents and perform all obligations under the Leases as may be directed by such receiver; or

(iii) the issuance of an order of a court of competent jurisdiction terminating this assignment or otherwise directing such lessee to pay Rents and perform its obligations in a manner inconsistent with said notice.

(e) **Lessee's Reliance on Notice From Mortgagee.** Each lessee shall be entitled to rely upon any notice from Mortgagee and shall be protected with respect to any payment of Rents made pursuant to such notice.

(f) **No Duty for Lessee To Investigate.** Each lessee who receives a notice from Mortgagee pursuant to this assignment shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Mortgagor hereby agrees to indemnify, defend and hold such lessee harmless from and against any and all loss, claim, damage or liability arising from or related to payment of Rents or performance of obligations under any Lease by such lessee made in good faith in reliance on and pursuant to such notice.

(g) **No Assumption by Mortgagee of Lease Obligations.** The payment of Rents to Mortgagee pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Mortgagee shall not cause Mortgagee to assume or be bound by the provisions of such

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Lease, including, but not limited to, any duty to return any Security Deposit to the lessee under such Lease unless and to the extent such Security Deposit was paid to Mortgagee by Mortgagor.

(h) **Assignment Binding on Lessees.** The provisions of this Section 2.8.7 are expressly made for the benefit of and shall be binding on and enforceable by each lessee under any Lease now or hereafter affecting all or any portion of the Property.

2.8.8 Application of Rents; Security Deposits. All Rents received by Mortgagee pursuant to this assignment shall be applied by Mortgagee, in its sole discretion, to any of the following:

(a) **First,** to pay any costs and expenses of collection of the Rents that may be incurred by Mortgagee;

(b) **Second,** to pay any costs and expenses incurred by Mortgagee in connection with the development, construction, operation, maintenance, repair or restoration of the Property;

(c) **Third,** to the establishment of reasonable reserves for working capital and for anticipated or projected costs and expenses of the Property, including, without limitation, capital improvements which may be necessary or desirable or required by law;

(d) **Fourth,** to the payment of any indebtedness then owing by Mortgagor to Mortgagee; and

(e) **Thereafter,** to remit the remainder, if any, to the person or persons entitled thereto.

(f) **In connection herewith,** Mortgagor further agrees that all Rents received by Mortgagee from any lessee may be allocated, if Mortgagee so elects, to the payment of all current obligations of such lessee under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Mortgagor's license to collect such Rents. Mortgagee may, but shall have no obligation to, pursue any lessee for the payment of Rents which may be due under its Lease with respect to any period prior to the exercise of Mortgagee's rights under this assignment or which may become due thereafter. Mortgagee shall not be liable to any lessee for the payment or return of any Security Deposit under any Lease unless and to the extent that such Security Deposit has been paid to and received by Mortgagee, and Mortgagor agrees to indemnify, defend and hold Mortgagee harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a lessee with respect thereto, except to the extent such claim, loss, damage or liability arises from the gross negligence or willful misconduct of Mortgagee. Mortgagor further agrees that the collection of Rents by Mortgagee and the application of such Rents by Mortgagee to the costs, expenses and obligations referred to herein shall not cure or waive any default or Event of Default or invalidate any act (including, but not limited to, any sale of all or any portion of the Property or any property now or hereafter securing the Loan) done in response to or as a result of such Event of Default or pursuant to any notice of default or notice of sale issued pursuant to this Mortgage.

2.8.9 Covenants of Mortgagor. Mortgagor agrees as follows:

(a) **No Amendment or Termination of Leases.** Mortgagor shall not enter into, amend, modify or terminate any Lease of all or any portion of the Property, except in accordance with the provisions of this Mortgage;

(b) **No Acceptance of Advance Rent.** Mortgagor shall not accept advance rent in excess of one (1) month from any Lessee without the prior written consent of Mortgagee;

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(c) **Delivery of Leases.** Upon request by written notice to Mortgagor by Mortgagee, Mortgagor shall provide Mortgagee with true, correct and complete copies of all Leases, together with such other information relating to the Leases or to the lessees thereunder as Mortgagee shall reasonably request;

(d) **Mortgagee's Rights To Inspect Books and Records.** Upon request of Mortgagee, Mortgagor shall make available to Mortgagee all books, records, financial statements and other information relating to the Leases, the collection of all Rents, and the disposition and disbursement thereof;

(e) **Business Purposes.** The proceeds of the Loan shall be used exclusively for business purposes; and

(f) **Non Agricultural.** No portion of the Property is used or will be used principally for agricultural purpose.

2.8.10 Priority of Assignment; Further Assurances. Mortgagor hereby represents and warrants that the assignment hereby granted is a first priority assignment and that no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding. Mortgagor agrees to take such action and to execute, deliver and record such documents as may be reasonably necessary to evidence such assignment, and to establish the priority thereof and to carry out the intent and purpose hereof. If requested by Mortgagee, Mortgagor shall execute a specific assignment of any Lease now or hereafter affecting all or any portion of the Property.

2.8.11 Mortgagee Not Responsible for Mortgagor's Obligations. Nothing contained herein shall operate or be construed to obligate Mortgagee to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Mortgagee with respect to any Lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such Lessee shall have been thereby terminated. Prior to actual entry into and taking possession of the Property by Mortgagee, this assignment shall not operate to place upon Mortgagee any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this assignment by Mortgagor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Mortgagor, prior to such actual entry and taking of possession.

2.8.12 Termination of Assignment. A full and complete release and reconveyance of this Mortgage shall operate as a full and complete release of all of Mortgagee's rights and interest hereunder. Upon the recordation of such release and reconveyance, this assignment shall thereafter be void and of no further effect.

2.9 Due-On-Sale Provision. Mortgagor acknowledges and agrees that the creditworthiness of Mortgagor and expertise of Mortgagor in owning and operating the Property covered by the Mortgage which secures this Note is the basis upon which Mortgagee has determined that it is protected against impairment of the security and risk of default and thereby has agreed to lend Mortgagor the principal sum set forth above. In order to induce Mortgagee to make the Loan, Mortgagor agrees that in the event of any "Change of Control" (as defined in the Loan Agreement), without the prior written consent of Mortgagee, Mortgagee shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such consent shall be subject to this Note and the

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other Loan Documents, and such transferee shall assume all obligations hereunder and thereunder and agree to be bound by the provisions contained herein and therein. Such assumption shall not, however, release Mortgagor or any maker or guarantor of the Note from any liability hereunder or thereunder without the prior written consent of Mortgagee.

2.10 Waste; Changes in Zoning; Subdivision.

2.10.1 No Waste Permitted; Condition and Repair of Property. Mortgagor shall not commit any waste on the Property or take any actions that might invalidate any insurance carried on the Property. Mortgagor shall maintain the Property, and every portion thereof, in good condition and repair. During the continuance of an Event of Default, Mortgagee shall have the right, but not the obligation, to enter upon and take possession of the Property and to make additions, alterations, repairs, or improvements to the Property which Mortgagee may reasonably consider necessary or proper to keep the Property in good condition and repair. Except for any demolition of existing improvements and/or in connection with property preservation (as detailed on the applicable Disbursement Request, as defined in the Loan Agreement) which has been approved by Mortgagee, no improvements may be removed, demolished or materially altered without the prior written consent of Mortgagee, which Mortgagee may withhold in its sole and absolute discretion. No Personal Property in which Mortgagee has a security interest may be removed from the Property unless it is immediately replaced by similar property of at least equivalent value on which Mortgagee will immediately have a valid first lien and security interest. Mortgagor affirmatively warrants and represents that if any Improvements, or any part thereof, require inspection, repair or protection other than that given by Mortgagor, then, and in that event, Mortgagee may enter or cause entry to be made upon said property and into said building or buildings for inspection, repair or protection thereof, and such repair may be made by Mortgagee and be made or done in such manner as fully to protect the interest of Mortgagee, and any and all sums expended by Mortgagee in doing or causing to be done any of the things above authorized are secured by this Mortgage and shall be paid by Mortgagor on demand. Mortgagor shall comply with all laws, ordinances, governmental regulations, and CC&Rs affecting the Property or requiring any alteration or improvement thereof, and shall permit no violation, as to the Property, of any such law, ordinance, governmental regulation, covenant, condition or restriction affecting the Property.

2.10.2 No Change in Zoning, CC&Rs, Etc. Without the prior written consent of Mortgagee, which Mortgagee may withhold in its sole and absolute discretion, Mortgagor shall not seek, make or consent to any change in the zoning or conditions of use of the Property. Mortgagor, at its sole cost, shall comply with and make all payments required under the provisions of any CC&Rs affecting the Property, including but not limited to those contained in any declaration and constituent documents of any condominium, cooperative or planned Unit development project on the Property. Mortgagor, at its sole cost, shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property.

2.10.3 Governmental Permits, Licenses and Approvals. If this Mortgage covers a subdivision or common interest development ("Subdivision"), as defined under any Illinois law relating to the development or sale of a "common interest development" or a "subdivision," Mortgagor shall obtain, comply with and keep in effect all present and future permits, maps, bonds and other agreements required by applicable laws and regulations for the lawful construction or sale of the Subdivision lots and/or units.

2.11 Books and Records.

2.11.1 Books and Records Maintained by Mortgagor. Mortgagor shall keep adequate books and records of account for the Property and for its own financial affairs in a manner sufficient to permit the preparation of financial statements therefrom in accordance with the forms

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of statements provided to and accepted by Mortgagee as of the date hereof. Upon prior reasonable written notice to Mortgagor, Mortgagee shall have the right to examine, copy and audit Mortgagor's records and books of account at all reasonable times by written notice to Mortgagor. Mortgagor will deliver to Mortgagee all financial statements for Mortgagor and the Property as required under the Loan Agreement.

2.11.2 Written Statement of Indebtedness. Mortgagor will promptly furnish from time to time, upon Mortgagee's request, a duly acknowledged written statement setting forth all amounts due on the indebtedness secured by this Mortgage and stating whether any offsets or defenses exist, and containing such other matters as Mortgagee may reasonably require.

2.12 Defend Security.

2.12.1 Defense of Mortgagee. Mortgagor shall, at its own expense, appear in and defend any action or proceeding that is reasonably likely to materially affect Mortgagee's security or the rights or powers of Mortgagee or that purports to affect any of the Property. If Mortgagor fails to perform any of its covenants or agreements contained in this Mortgage, the Loan Agreement, or any of the other Loan Documents, or if any action or proceedings of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Mortgagee's interest in the Property or Mortgagee's right to enforce its security, then Mortgagee may, at its option, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Mortgagor to perform its covenants, including without limitation payment on behalf of Mortgagor of any taxes, assessments, liens, insurance premiums, and repair or maintenance costs (without, however, waiving any default of Mortgagor).

2.12.2 Payment of Defense Fees and Costs. Mortgagor agrees to pay all reasonable out-of-pocket expenses of Mortgagee incurred under 2.12.1 above (including but not limited to fees and disbursements of counsel). Any sums disbursed or advanced by Mortgagee shall be additional indebtedness of Mortgagor secured by this Mortgage and shall be payable by Mortgagor upon demand. Any such sums so disbursed or advanced by Mortgagee shall bear interest at the Default Interest Rate as set forth in the Note. This Section 2.12 shall not be construed to require Mortgagee to incur any expenses, make any appearances, or take any other actions.

2.13 Damage and Destruction. Notwithstanding anything contained herein to the contrary, if any part of the Property is damaged or destroyed by any means, including, without limitation, by flood, earthquake, wind or fire, Mortgagor shall promptly restore the Property to its prior undamaged condition in accordance with the following:

2.13.1 Plan of Restoration. Mortgagor shall present within sixty (60) days of such damage or destruction to Mortgagee a plan for restoration which includes, among other things, plans and specifications prepared by an architect satisfactory to Mortgagee, cost estimates and time schedules which in Mortgagee's sole discretion are satisfactory;

2.13.2 Construction Contract. Mortgagor shall enter into, with Mortgagee's prior written consent, which consent shall not be unreasonably withheld, a contract with contractor(s) providing for the complete restoration in accordance with such restoration plan previously approved by Mortgagee within ninety (90) days of such damage or destruction; and

2.13.3 Application of Insurance Proceeds. The insurance proceeds available by reason of such damage or destruction that are received by Mortgagee pursuant to Section 2.3.1 above (less Mortgagee's reasonable costs and expenses incurred in obtaining such funds) plus additional sums provided to Mortgagee by Mortgagor for restoration purposes shall be at least equal to the

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anticipated costs of competing such construction, which anticipated costs shall include, but not be limited to, appropriate interest reserves and contingency funds reasonably required by Mortgagee.

2.13.4 Conditions to Disbursement of Proceeds. When Mortgagor has complied with all of the preceding subsections of this Section 2.13, Mortgagee may condition disbursement of the sums specified in subsection 2.13.3 above to Mortgagor on terms and conditions such as those governing disbursements of loan funds in construction loans made by Mortgagee for similar properties.

2.14 Condemnation. Mortgagor hereby assigns to Mortgagee, as security for Mortgagor's obligations under the Loan Documents, all compensation, awards and other payments (collectively "Compensation") payable to Mortgagor in connection with any taking of all or any portion of the Property for public use, and any Proceeds of any related settlement regardless of whether eminent domain proceedings are instituted in connection therewith. Mortgagor shall deliver to Mortgagee immediately upon receipt all Compensation and related settlement proceeds.

2.15 Security Agreement and Fixture Filing.

2.15.1 Mortgage Includes Security Agreement. This Mortgage is intended to be and shall constitute a "Security Agreement" as defined in the Illinois Uniform Commercial Code, 810 ILCS 5, Section 9-101, et seq., Mortgagor being the "debtor" and the Mortgagee being the "secured party." Mortgagor hereby grants Mortgagee a security interest in any items of Personal Property described in Exhibit "B" attached hereto which are not herein effectively made a part of the Real Property for the purpose of securing all indebtedness and other obligations of Mortgagor now or hereafter secured by this Mortgage. Portions of the Property described herein as encumbered by the Mortgage are goods which have become or are about to become fixtures relating to the Property and Improvements described herein, and Mortgagor herein expressly covenants and agrees that the filing of this Mortgage in the real estate records of the county where the encumbered Property is located shall also operate from the time of filing therein as a financing statement filed as a fixture filing in accordance with Illinois's Uniform Commercial Code--Secured Transactions. Therefore, in accordance with the Illinois's Uniform Commercial Code, the Mortgage shall continue to be prior to any other security interest in goods on the Property that may become or are about to become fixtures for the completion of construction.

As to all of the above-described personal property which is or hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a financing statement for purposes of Section 9-402 of the Illinois Uniform Commercial Code (Illinois Revised Statutes, Section 26), as amended or recodified from time to time, and shall constitute a "Fixture Filing" under such statutes and shall be recorded in the real estate records of the county in which the Property is located. This filing remains in effect as a fixture filing until this Mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the Property. In that regard, the following information is provided:

Name and Address of Debtor	MNH SUB I, LLC 1303 Avocado Avenue, Suite 200 Newport Beach, California 92660
Name and Address of Secured Party:	CALIFORNIA BANK & TRUST 1900 Main Street, Suite 200 Irvine, California 92614

Property Description: See Exhibit "A" attached hereto.

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2.15.2 Delivery of Financing Statements. Mortgagor authorizes the filing of financing and continuation statements covering the Personal Property from time to time in such form as Mortgagee may require to perfect and continue the perfection of Mortgagee's security interest with respect to said property, and to reimburse Mortgagee for any costs incurred in filing such financing statements and any continuation statements.

2.15.3 No Other Security Interest Permitted. Mortgagor shall not create or allow the creation of any other security interest in the Personal Property.

2.15.4 Rights Upon Default. Upon the occurrence of any Event of Default by Mortgagor, Mortgagee shall have the rights and remedies of a secured party under the Illinois Commercial Code, as well as all other rights and remedies available at law or in equity or as provided herein all at Mortgagee's option.

2.15.5 Effect of Filing of Financing Statement. Mortgagor and Mortgagee agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way impairing this declaration and the stated intention of the parties hereto that everything used in connection with the operation or occupancy of said property or the production of income therefrom (which is owned by Mortgagor) is and, at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as Real Property encumbered by this Mortgage.

2.16 Indemnification of Mortgagee.

2.16.1 Indemnification. Mortgagor hereby agrees to indemnify Mortgagee against, and hold them harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, which either may suffer or reasonably incur:

- (a) By reason of this Mortgage (excluding any regulatory or other administrative losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses arising out of claims against Mortgagee in connection with its lending activities); or
- (b) By reason of the execution of this Mortgage or in performance of any act by Mortgagor which is required or permitted hereunder or by law; or
- (c) As a result of any failure of Mortgagor to perform Mortgagor's obligations under the Loan Documents; or
- (d) By reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Mortgagor contained in any other Loan Document related to the Property, the Loan or Mortgage.

2.16.2 No Liability of Mortgagor. Notwithstanding the foregoing, Mortgagor shall not be liable under Section 2.16.1 to the extent that Mortgagor establishes that such liability is attributable solely and directly to the gross negligence or willful misconduct of Mortgagee.

2.16.3 Payment of Indebtedness. Mortgagor shall pay all indebtedness arising under this Section 2.16 immediately upon demand by Mortgagee, together with interest thereon from the date the indebtedness arises at the Default Interest Rate of interest set forth in the Note (after giving effect to any notice and/or cure periods). Mortgagor's duty to indemnify Mortgagee shall survive the release and cancellation of the Obligations and the release and reconveyance or any partial release or reconveyance of this Mortgage.

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2.17 Insurance and Tax Impounds. Upon notice by Mortgagee to Mortgagor during the continuance of an Event of Default, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect an impound account ("Impound Account") with Mortgagee for the payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby in accordance with the Mortgage Escrow Account Act, *765 ILCS 910, et seq.*

2.17.1 Deposit Into Impound Account. If required by Mortgagee in its sole discretion after any Event of Default, Mortgagor shall deposit in the Impound Account an amount determined by Mortgagee to be necessary to ensure that there will be on deposit with Mortgagee an amount which, when added to the monthly payments subsequently required to be deposited with Mortgagee hereunder on account of real estate taxes, assessments and insurance premiums, will result in there always being on deposit with Mortgagee in the Impound Account an amount sufficient to pay the next due semiannual installments of real estate taxes and assessments on the Property and the next due annual insurance premiums with respect to the Property (if paid in one installment).

(a) If required by Mortgagee in its sole discretion, after an Event of Default and commencing on the next monthly payment date under the Note following said default, and continuing thereafter on each subsequent monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Mortgagor is required to maintain hereunder, each as estimated and determined by Mortgagee in accordance with the Mortgage Escrow Account Act, *765 ILCS 910, et seq.*

(b) Notwithstanding anything to the contrary herein, if the amount of the monthly deposit being paid at any time pursuant to subsection (a) above, multiplied by the number of subsequent monthly installments, when added to the amount held on deposit at such time, will be insufficient to pay, thirty (30) days prior to delinquency, the next annual installments of insurance and taxes and assessments due and payable, then Mortgagor shall immediately deposit the amount of the deficiency, and any failure to do so shall be deemed to be an Event of Default under this Mortgage.

2.17.2 Responsibility. Mortgagor shall be responsible for ensuring the receipt by Mortgagee, at least thirty (30) days prior to the respective due dates for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account.

2.17.3 Reliance. In making any payment from the Impound Account, Mortgagee shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof.

2.17.4 Funds in Impound Account. The Impound Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. No interest on funds contained in the Impound Account shall be paid by Mortgagee to Mortgagor. The Impound Account is solely for the protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the payment of taxes, assessments and insurance premiums following receipt of bills, invoices or statements therefor

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in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received.

(a) Upon assignment of this Mortgage by Mortgagee, any funds in the Impound Account shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate.

(b) If the total funds in the Impound Account shall exceed the amount of payments actually applied by Mortgagee for the purposes of the Impound Account, such excess may be credited by Mortgagee on subsequent payments to be made hereunder or, at the option of Mortgagee, refunded to Mortgagor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written notice thereof, deposit with Mortgagee the full amount of any such deficiency. If Mortgagor shall fail to deposit with Mortgagee the full amount of such deficiency as provided above, Mortgagee shall have the option, but not the obligation, to make such deposit and all amounts so deposited by Mortgagee, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If there is a default under this Mortgage which is not cured within any applicable grace or cure period, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the Impound Account against the indebtedness secured hereby in whatever order Mortgagee shall subjectively determine.

2.17.5 No Cure or Waiver. No such application of the Impound Account shall be deemed to cure any default hereunder. Upon full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Mortgagee may elect, the balance of the Impound Account then in Mortgagee's possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

2.18 Use of Loan Proceeds. Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for the business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a "Business Loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1)(l).

3. EVENTS OF DEFAULT.

3.1 List of Events of Default. An "Event of Default" shall have occurred under this Mortgage upon the occurrence of any of the following beyond any applicable notice and cure period:

3.1.1 Failure To Make Note Payments. Mortgagor fails timely to make any payment required by the Note, any Future Advances, or any of the other Loan Documents; or

3.1.2 Breach of Loan Agreement and Mortgage Covenants. Mortgagor breaches any warranty or fails to perform any other covenant contained in the Loan Agreement, this Mortgage or any of the other Loan Documents, and does not cure that failure within the period of time, if any, that Mortgagee has granted to Mortgagor in said documents to cure that failure; or

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3.1.3 Violation of Due-On-Sale Provision. Any violation of the restrictions on the transfer of the Property or the transfer of any interest in Mortgagor as set forth in Section 2.9 of this Mortgage without the prior written consent of Mortgagee; or

3.1.4 Notice Limiting Future Advances. If Mortgagor files for record a notice limiting the maximum amount which may be secured by this Mortgage.

3.1.5 Other Events of Default. Any other Event of Default occurs under the Loan Agreement, the Note, or any of the other Loan Documents.

3.1.6 Notice and Cure Rights. All of the Events of Default described herein shall be subject to any notice and cure provisions set forth in the Loan Agreement and the Note.

4. REMEDIES FOR DEFAULT.

4.1 List of Remedies for Default. At any time following an Event of Default, Mortgagee may, at its option, and without notice to or demand upon Mortgagor (except as may be required under applicable law):

4.1.1 Acceleration of Debt. Declare any or all indebtedness secured by this Mortgage to be due and payable immediately;

4.1.2 Enter and Possess Property. Enter onto the Property, in person or by agent or by court appointed receiver, and take any and all steps which may be desirable in Mortgagee's judgment to complete any unfinished construction and/or to manage, operate, preserve, develop, maintain and protect the Property, and Mortgagee may apply any Rents, royalties, income or profits collected against the Obligations secured by this Mortgage without in any way curing or waiving any default of Mortgagor;

4.1.3 Assemble and Deliver Personal Property. Cause Mortgagor to assemble any Personal Property and deliver it to Mortgagee at a place designated by Mortgagee;

4.1.4 Judicial Foreclosure. Bring a court action to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or Obligations secured by this Mortgage;

4.1.5 Reserved.

4.1.6 Appointment of Receiver. Mortgagee shall have the right to petition the court, on an ex parte basis, for the appointment of a receiver for the Property. Mortgagor acknowledges and agrees that Mortgagee is entitled to the appointment of a receiver for the Property without regard to (a) the adequacy of the collateral or (b) the existence of any waste with respect to the Property. MORTGAGOR HEREBY CONSENTS TO THE APPOINTMENT OF A RECEIVER ON AN EX PARTE BASIS. MORTGAGEE MAY PROVIDE ANY COURT WITH A COPY OF THIS AGREEMENT AS PROOF OF MORTGAGEE'S AUTHORITY, AND MORTGAGOR'S CONSENT THERETO, TO OBTAIN A RECEIVER FOR THE PROPERTY. Such right shall be exercised, if at all, by Mortgagee in Mortgagee's sole and absolute discretion at any time on or after the date hereof.

4.1.7 Other Rights and Remedies. Exercise any other right or remedy available under any of the Loan Documents or otherwise available under law or in equity, including without limitation, rights and remedies with respect to the Personal Property that are available to a Secured Party under the Illinois Uniform Commercial Code.

4.2 Sale of Property.

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4.2.1 Record Notices of Default and Sale. Mortgagee shall record and give all notices required by law. After compliance with such notice requirements, and upon the expiration of such time as is required by law, Mortgagee may sell the Property upon any terms and conditions specified by Mortgagee and permitted by applicable law.

4.2.2 Right To Postpone Sale. Mortgagee may postpone any sale by public announcement at the time and place noticed for the sale.

4.2.3 Sale of Multiple Lots/Parcels. If the Property consists of several lots or parcels, Mortgagee in its discretion may designate their order of sale or may elect to sell them through a single sale, or through two (2) or more successive sales, or in any other manner Mortgagee may elect. In the event Mortgagee elects to dispose of the Property through more than one (1) sale, Mortgagor shall pay the costs and expenses of each such sale and of any judicial proceedings wherein the same may be made.

4.2.4 Right To Purchase at Sale. To the extent permitted under applicable laws, any person, including Mortgagor and Mortgagee, may purchase at any sale, and Mortgagee shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness secured hereby.

4.3 Application of Foreclosure Sale Proceeds. If any foreclosure sale is effected, Mortgagee shall apply the proceeds of such sale in the following order of priority:

4.3.1 First: Payment of the costs, fees and expenses related to the sale and of the sale, including, without limitation, the payment of the sheriff's fees and attorneys' fees permitted pursuant to applicable law;

4.3.2 Second: Payment of the entire indebtedness and Obligations of Mortgagor secured by this Mortgage, in any order that Mortgagee chooses;

4.3.3 Third: Payment to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and

4.3.4 Fourth: The remainder, if any, to the person or persons legally entitled to it.

4.4 Waiver of Rights. Mortgagor waives all rights to direct the order in which any of the Property shall be sold in the event of any sale under this Mortgage, and also any right to have any of the Property marshaled upon any sale.

4.5 Remedies Are Cumulative. All remedies contained in this Mortgage are cumulative, and Mortgagee has all other remedies provided by law, in equity, or in any other agreement between Mortgagor and Mortgagee. No delay or failure by Mortgagee to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any default by Mortgagor. Mortgagee may exercise any one (1) or more of its rights and remedies at its option without regard to the adequacy of its security.

4.6 Payment of Expenses. Mortgagor shall pay all of Mortgagee's and Mortgagee's reasonable expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs, escrow fees, filing fees, recording fees, and title charges.

4.7 No Cure or Waiver. Mortgagee's or any receiver's entry upon and taking possession of all or any part of the Property, or any collection of Rents, issues, profits, Proceeds, other security

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or proceeds of other security, or other sums, or the application of any collected sum to any Obligation, or the exercise of any other right or remedy by Mortgagee or any receiver shall not cure or waive any breach, Event of Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, Lease, or option or a subordination of the lien of this Mortgage.

4.8 Power To File Notices and Cure Defaults. Subject to any notice and cure rights set forth herein or in any of the Loan Documents, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns as Mortgagor's attorney-in-fact, which agency is coupled with an interest:

4.8.1 to execute and record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, and

4.8.2 upon the occurrence of an Event of Default, to perform any obligation of Mortgagor hereunder; provided, that:

(a) Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee, and

(b) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this section.

4.9 Waiver of Statutory Rights. Mortgagor hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Mortgage pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (the "Act"), and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption stay, redemption and moratorium laws under any state or federal law on behalf of itself and all those taking by, through or under Mortgagor.

4.10 Illinois Responsible Property Transfer Act. Mortgagor covenants and agrees that, if the disclosure requirements of the Illinois Responsible Property Transfer Act, 765 ILCS 90/1 et seq. ("RPTA"), apply to the loan transaction contemplated by this Mortgage, Mortgagor will comply with RPTA and will timely execute and deliver to Mortgagee such disclosure documents as may be required by RPTA. Mortgagor agrees to place of record simultaneously with the recording of this Mortgage, any disclosure statement furnished to Mortgagee pursuant to this paragraph and also to file simultaneously therewith a true and correct copy of said disclosure statement with the Illinois Environmental Protection Agency, as and if required by law.

5. ILLINOIS LOCAL LAW PROVISIONS.

5.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Section 5 and the other provisions of this Mortgage, the terms and conditions of this Section 5 shall control and be binding.

5.2 Maximum Principal Sum. It is agreed that the maximum amount of Indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed \$20,000,000.00 (or the equivalent thereof in any foreign currency), plus interest thereon and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgage Estate and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5).

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5.3 Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Act and with respect to such Act Mortgagor agrees and covenants that:

5.3.1 Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including, to the extent provided by law, all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

5.3.2 Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

5.3.3 Except as varied by a court of law, all advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceeding, for the following purposes, in addition to those otherwise authorized by the Mortgage or the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act;

5.3.4 In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act; and

5.3.5 Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. As provided by law and pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

5.3.6 Mortgagee is obligated under the terms of the Loan Agreement to make future advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Act. That portion of the obligations which comprises the principal amount then outstanding of the revolving loans constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of 205 ILCS 5/5d, Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Agreement, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of

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Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other Obligations outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the Indebtedness may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee may make under this Mortgage or any other document or instrument evidencing or securing the Obligations) at any time outstanding may be substantially less but shall not exceed the amount referred to in Section 5.3 of this Mortgage. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens, except taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

5.4 Collateral Protection Act Compliance. The following is added pursuant to 815 ILCS 180/10:

UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN MORTGAGOR'S COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS. THE COVERAGE THAT MORTGAGEE PURCHASES MAY NOT PAY ANY CLAIM THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE COLLATERAL. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF MORTGAGEE PURCHASES INSURANCE FOR THE REAL PROPERTY, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO MORTGAGOR'S TOTAL OUTSTANDING BALANCE OF THE OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON MORTGAGOR'S OWN.

5.5 Mortgagee in Possession. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Real Property, or for the appointment of a receiver, the Mortgagee shall have the right, in accordance with Subsections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Real Property or at its request to have a receiver appointed, and any such receiver, or the Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

5.6 Amount Secured Hereby. At all times, regardless of whether any proceeds have been disbursed, this Mortgage secures the payment of any and all commissions, service charges, liquidated damages, expenses and advances (whether obligatory or at the opinion of the Mortgagee) due to or incurred by the Mortgagee in connection with the Mortgage.

5.7 Acceleration; Remedies. Mortgagee shall give notice to Mortgagor prior to acceleration following Mortgagor's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under Section 2.9 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Mortgagor, by which the default must be cured; and (d) that

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failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Mortgagee at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 5.7, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

6. MISCELLANEOUS.

6.1 Invalidity. The invalidity or unenforceability of any one (1) or more provisions of this Mortgage will in no way affect any other provision.

6.2 Statement. Mortgagor agrees to pay Mortgagee a reasonable charge, not to exceed the maximum allowed by law, for giving any statement of the status of the Obligations secured by this Mortgage.

6.3 Notices. All notices given under this Mortgage must be in writing and shall be in the form and delivered in the manner set forth in the Loan Agreement.

6.4 Rights of Mortgagee To Release Debtors or Security. Without affecting Mortgagor's liability for the payment of any of the indebtedness secured by this Mortgage, Mortgagee may from time to time and without notice to Mortgagor:

6.4.1 release any person liable for the payment of this indebtedness;

6.4.2 extend or modify the terms of that indebtedness;

6.4.3 accept additional real or personal property of any kind as security, or alter, substitute or release any property securing that indebtedness; or

6.4.4 to consent to the making of any map or plat of the Property, or to reconvey any part of the Property, or to join in granting any easement or creating any restriction on the Property, or to join in any subordination or other agreement affecting this Mortgage.

6.5 Inspection Rights. Mortgagee may at any reasonable times enter upon and inspect the Property in person or by agent upon reasonable prior written notice to Mortgagor; provided that such inspection shall not unreasonably interfere with the operations of the tenant(s) of the Property.

6.6 Full Reconveyance. Upon the payment and performance in full of all Obligations secured by this Mortgage, Mortgagee agrees to reconvey the Property, and upon payment by Mortgagor of its fees and all other sums owing to it under this Mortgage, Mortgagee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons must pay all costs of recordation. The recitals in the reconveyance of any facts will be conclusive as to all persons. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto."

6.7 Governing Law. Mortgagor agrees as provided below, the Loan Documents shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of California (without regard to conflicts of laws principles) as to interpretation, enforcement, validity, construction, effect and in all other respects. Mortgagor hereby:

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6.7.1 consents and submits to the jurisdiction of any local, state or federal court located within the County of Orange, State of California, and hereby irrevocably agrees that, subject to Mortgagee's election, all actions or proceedings in any way, manner or respect arising out of, from or relating to the Loan Documents, shall be litigated in such courts;

6.7.2 accepts, generally and unconditionally, the nonexclusive jurisdiction of such courts, waives any defenses of forum non conveniens, and irrevocably agrees to be bound by any final, nonappealable judgment rendered thereby in connection with any of the Loan Documents;

6.7.3 with respect to the foregoing choice of law, agrees that the State of California has a substantial relationship to the parties, to the Loan and to the transactions evidenced by the Loan Documents; and,

6.7.4 in all respects (including without limitation matters of construction, validity and performance), agrees that the Loan Documents and the obligations arising thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America; except that at all times:

(a) enforcement of the real property liens created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan shall be governed by and construed according to the law(s) of the state(s) in which the applicable portion of such collateral is located;

(b) enforcement of the liens created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan which is not subject to the Uniform Commercial Code shall be governed by and construed according to the law(s) of the state(s) in which the applicable portion of such collateral is located;

(c) enforcement of the liens and security interests created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan which is subject to the Uniform Commercial Code shall be governed and construed by the laws of the State of California, but the provisions for the perfection of such liens shall be governed by and construed according to the laws of the state whose law is designated as the governing law pursuant to the Uniform Commercial Code of the State of California.

it being understood that, to the fullest extent permitted by the laws of the State of California shall govern the validity and the enforceability of the Loan Documents and the indebtedness and obligations arising thereunder. Mortgagor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

6.8 **Subsequent Mortgagors and Beneficiaries.** The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Property, and the term "Mortgagee" includes the original Mortgagee and also any future owner or holder, including pledges and participants, of the Note or any interest therein.

6.9 **Headings; Underlining.** The headings of the sections of this Mortgage are for convenience only and do not limit its provisions. The use of underlining in this Mortgage is for convenience only, and the parties understand and agree that the presence or absence of underlining shall not be used in interpreting or construing this Mortgage or any provision hereof.

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6.10 Waiver. Neither the acceptance of any partial or delinquent payment or performance, nor the failure to exercise any rights upon a default, shall be a waiver of Mortgagor's obligations hereunder. Mortgagee's consent to any act or omission by Mortgagor will not be a consent to any other or subsequent act or omission or a waiver of the need for such consent in any future or other instance.

6.11 Successors and Assigns. The terms of this Mortgage shall bind and benefit heirs, legal representatives, successors and assigns of Mortgagor and Mortgagee.

6.12 Joint and Several Liability. If Mortgagor consists of more than one (1) person or entity, each shall be jointly and severally liable to perform the obligations of Mortgagor.

6.13 Intentionally Omitted.

6.14 Intentionally Omitted.

6.15 Subrogation. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

6.16 Statutes of Limitation. Mortgagor hereby waives the pleading of any and all statutes of limitation as a defense to any action brought against Mortgagor by Mortgagee, to the fullest extent permitted by law.

6.17 Time of the Essence. Time is of the essence as to all Obligations secured by or arising under this Mortgage.

6.18 Requests For Notice. Mortgagor requests that a copy of any notice of default and notice of sale required by law be mailed to it at its address set forth above.

6.19 Attorneys' Fees. The Prevailing Party in any Action shall recover all reasonable attorneys' fees incurred by said Prevailing Party in connection with any default hereunder and in any proceeding brought to enforce any of the provisions of this Mortgage.

6.20 Savings Clause. Regardless of any provision contained in this Mortgage, the Loan Documents, or any documents executed or delivered in connection therewith, Mortgagee will never be considered to have contracted for or to be entitled to charge, receive, collect, or apply as interest, and hereby disavows any intention to so receive, collect, or apply as interest, any amount in excess of the maximum amount permissible under applicable law. Without limiting its general applicability, the preceding sentence specifically applies to any acceleration of the Obligations or any part thereof. In the event that Mortgagee ever receives, collects, or applies as interest any such excess, the amount which would be excessive interest will be applied to the reduction of the principal balance of the Obligations, and, if the principal balance of the Obligations is paid in full, any remaining excess shall forthwith be paid to Mortgagor, and Mortgagor agrees to accept such payment from Mortgagee, together with interest on such sums at the maximum lawful rate then in effect. In determining whether the interest paid or payable exceeds the maximum amount permissible under applicable law, Mortgagor and Mortgagee shall, to the greatest extent permitted under applicable law:

6.20.1 Characterize any nonprincipal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest;

6.20.2 Exclude voluntary prepayments and the effect thereof; and

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6.20.3 Amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the Obligations so that the interest rate is uniform throughout the term.

THIS MORTGAGE SECURES AN ADJUSTABLE RATE PROMISSORY NOTE. THIS MORTGAGE IS A FIRST MORTGAGE. NO FURTHER DEEDS OF TRUST WILL BE RECORDED AGAINST THE REAL PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE AN EVENT OF DEFAULT AND THE LOAN SHALL IMMEDIATELY BECOME DUE AND PAYABLE. CONSENT TO ONE (1) FURTHER ENCUMBRANCE SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO REQUIRE SUCH CONSENT TO FUTURE OR SUCCESSIVE ENCUMBRANCES.

6.21 HOMESTEAD EXEMPTION WAIVER. I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THE PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

IN WITNESS WHEREOF the undersigned have executed this Mortgage as of the date first above written.

MORTGAGOR

MNH SUB I, a Delaware limited liability company


By: Mariners National Holdings, LLC, a Delaware limited liability company, Its Sole Member

By: Mariners Pacific Management, LLC, a California limited liability company, Its Manager

By: Mariners Companies, a California corporation, Its Manager

By: 
Steve Olson, President

Attest:

By: 
April Smit
Secretary

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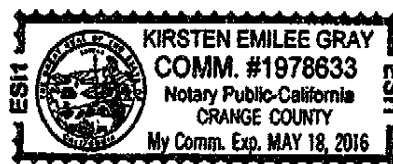
STATE OF California)

COUNTY OF Orange)

On July 16th, 2013, before me, Kirsten Emilee Gray (here insert name and title of the notarizing officer), personally appeared Steve Olson
and April Smith

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Kirsten Emilee Gray (Seal)

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EXHIBIT "A" LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Cook, STATE OF Illinois, AND IS DESCRIBED AS FOLLOWS:

LOT FOURTEEN (14) IN BLOCK TWO HUNDRED NINETEEN (219) IN THE HIGHLANDS WEST AT HOFFMAN ESTATES XXVI, BEING A SUBDIVISION OF PART OF FRACTIONAL SECTION 5, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON AUGUST 31, 1967, AS DOCUMENT NUMBER 2345071.

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EXHIBIT "B" DESCRIPTION OF PERSONAL PROPERTY FOR FIXTURE FILING

1. **REAL PROPERTY RIGHTS, APPURTENANCES AND IMPROVEMENTS.** All present and future structures, buildings, improvements and fixtures of any kind on the real property described in the attached Exhibit "A" ("Real Property"), which is incorporated herein by this reference, as well as:

1.1 all appurtenances of the Real Property and all rights in and to any streets, roads or public places, easements or rights of way, relating to the Real Property, and all minerals, oil, gas and other hydrocarbon substances on or under the surface of the Real Property, as well as all development rights, permits, licenses, air rights, water and water rights relating to the Real Property, and all existing and future goods and tangible personal property located on the Real Property or wherever located and used or useable in connection with the use, operation or occupancy of the Real Property or in construction of any improvements thereon, including, but not limited to, apparatus, equipment and appliances used to supply air cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, waste removal, recreation or other services on the Real Property; and

1.2 all elevators, escalators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, pools and spas and pool and spa operation and maintenance equipment and apparatus; and

1.3 all trees and plants located on the Real Property, and all renewals or replacements thereof or articles in substitution thereof; it being intended and agreed that all such items will be conclusively considered to be part of the Real Property, whether or not attached or affixed to the Real Property ("Improvements").

2. **COLLATERAL.** All right, title and interest in and to the following described property and any and all products and proceeds thereof, now owned or hereafter acquired (sometimes all of such being collectively referred to herein as the "Collateral"):

2.1 **General Intangibles.** All general intangibles relating to design, development, operation, management and use of the Real Property and construction of the Improvements, including, but not limited to:

2.1.1 all names under which or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names or any variants thereof, and all goodwill in any way relating to the Real Property;

2.1.2 all permits, licenses, authorizations, variances, land use entitlements, approvals and consents issued or obtained in connection with the construction, maintenance or operation of the Improvements;

2.1.3 all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the use, occupancy or operation of the Real Property;

2.1.4 all rights as a declarant (or its equivalent) under any covenants, conditions and restrictions or other matters of record affecting the Real Property;

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2.1.5 all materials prepared for filing or filed with any governmental agency;

2.1.6 all rights under any contract in connection with the development, design, use, operation, management and construction of the Real Property and/or the Improvements; and

2.1.7 all books and records prepared and kept in connection with the acquisition, construction, operation and occupancy of the Real Property and the Improvements;

2.2 **Contracts.** All construction, service, management, engineering, consulting, leasing, architectural, design, landscape and other similar contracts of any nature, as such may be modified, amended or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use, and/or disposition of any portion of or all of the Real Property;

2.3 **Plans and Reports.** All architectural, design and engineering drawings, plans, specifications, working drawings, shop drawings, general conditions, addenda, soil tests and reports, feasibility studies, appraisals, engineering reports, environmental reports and similar materials relating to any portion of or all of the Real Property and/or the Improvements and all modifications, supplements and amendments thereto;

2.4 **Sureties.** All payment and performance bonds or guarantees, and any and all modifications and extensions thereof relating to the Real Property and/or the Improvements;

2.5 **Payments.** All reserves, deferred payments, deposits, refunds, cost savings, letters of credit and payments of any kind relating to the construction, design, development, operation, occupancy, use and disposition of all or any portion of the Real Property and/or the Improvements, including, without limitation, any property tax rebates now owing or hereafter payable;

2.6 **Claims.** All proceeds and any claims arising on account of any damage to or taking of the Real Property and/or the Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Real Property and/or the Improvements;

2.7 **Insurance.** All policies of, and proceeds resulting from, insurance relating to the Real Property, Improvements or any of the Collateral, and any and all riders, amendments, renewals, supplements or extensions thereof, and all proceeds thereof;

2.8 **Deposits.** All deposits made with or other security given to utility companies with respect to the Real Property and/or the Improvements, and all advance payments of insurance premiums made with respect thereto and claims or demands relating to insurance and all deposit accounts wherever located;

2.9 **Stock.** All shares of stock or other evidence of ownership of any part of the Real Property that are owned in common with others, including all water stock relating to the Real Property, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property and/or the Improvements;

2.10 **Sale Contracts.** All sales contracts, escrow agreements and broker's agreements concerning the sale of any or all of the Real Property and/or the Improvements, and all amendments thereto; and

2.11 **Income.** All income, rents, revenues, issues, deposits, receipts, profits and proceeds, and accounts receivable generated from the use and operation, of the Real Property, the Improvements and the Collateral to which Mortgagor may be entitled, whether now due, past due or

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to become due including, without limiting the above items, all "Goods", "Accounts", "Documents", "Instruments", "Money", "Chattel Paper" and "General Intangibles", as those terms are defined in the Illinois Commercial Code from time to time in effect.

ATTENTION: COUNTY CLERK/RECORDER — THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST AND MORTGAGES ON REAL ESTATE ARE RECORDED.

ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A DEED OF TRUST OR MORTGAGE, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

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