

## Illinois Anti-Predatory Lending Database Program

Doc#. 2221618039 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 08/04/2022 10:04 AM Pg: 1 of 26

### Certificate of Exemption



**Report Mortgage Fraud**  
**844-768-1713**

The property identified as: **PIN: 18-09-416-049**

**Address:**

**Street:** 5315 Dansher Rd

**Street line 2:**

**City:** Countryside

**State:** IL

**ZIP Code:** 60525

**Lender:** WELLS FARGO BANK, NATIONAL ASSOCIATION,

**Borrower:** MDH F2 CHI Dansher LLC

**Loan / Mortgage Amount:** \$93,200,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

**Certificate number:** 8C69FB82-ECAB-4454-BCD8-CD3F989D9A39

**Execution date:** 7/21/2022

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NCS 1A9RIL01

**PREPARED BY:**

McGuireWoods LLP  
1230 Peachtree Street N.E.  
Suite 2100  
Atlanta, Georgia 30309  
Attn: Howard W. Walker, Esq.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association  
171 17<sup>th</sup> Street NW, 4<sup>th</sup> Floor  
Atlanta, Georgia 30363  
Attn: Relationship Manager  
Loan No. 1021093

(Space Above For Recorder's Use)

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mortgage**") (hereinafter referred to as "**Security Instrument**"), made as of July 21, 2022, is granted by MDH F2 CHI DANSHER, LLC, a Delaware limited liability company ("**Mortgagor**"), for the benefit of Wells Fargo Bank, National Association (collectively with its successors or assigns, "**Mortgagee**") (hereinafter referred to as "**Lender**").

**ARTICLE 1. GRANT**

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably does hereby grant, bargain, warrant, convey, sell, mortgage, encumber, transfer, hypothecate, pledge, sells, sets over, grant a security interest and assign to Lender, its successors and assigns all of that real property located in the City of Countryside, Cook County, Illinois, described on Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon

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substances in, on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; all buildings and other improvements and fixtures now or hereafter located on the real property including but not limited to, all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("**Improvements**"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "**Property**"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

- 1.2 **ADDRESS.** The address of the Property (if known) is: 5315 Dansher Road Countryside, Illinois 60525. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibit A.
- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title absolute to the Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Property subject only to those exceptions approved by Lender in writing. Mortgagor further warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead and that each of the parcels comprising the Property and set forth on Exhibit A is each a single tax parcel, and there are no properties included in such tax parcels other than the Property. Mortgagor further covenants and agrees that it shall not cause all or any portion of the Property to be replatted or for any lots or boundary lines to be adjusted, changed or altered for either ad valorem tax purposes or otherwise, and shall not consent to the assessment of the Property in more than one tax parcel or in conjunction with any property other than the Property.
- 1.4 **USE OF PROCEEDS.** Mortgagor represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Security Instrument constitute a business loan.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):
- (a) Payment to Lender of all sums at any time owing with interest thereon, according to the terms of that certain Promissory Note dated as of July 21, 2022, in the principal amount of Ninety-Three Million Two Hundred Thousand Dollars and No/100 (\$93,200,000.00) payable to the order of Lender (as the same may be amended, modified, restated, supplemented and replaced from time to time, the "**Note**"); and
  - (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
  - (c) Payment and performance of all covenants and obligations on the part of Mortgagor or any other Borrower under that certain Loan Agreement dated as of July 21, 2022 by and among Mortgagor, Lender and other Borrower (as the same may be amended, modified, restated, supplemented or replaced from time to time, the "**Loan Agreement**"); and
  - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and

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- (e) Payment and performance of all future advances and other obligations that Mortgagor may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by this Security Instrument including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
  - (f) Payment and performance of all covenants and obligations of Borrower under or in connection with any Swap Agreement (as defined in the Loan Agreement) at any time entered into between Borrower and Lender in connection with the Loan together with all modifications, extensions, renewals or replacements thereof; and
  - (g) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.4 **FUTURE ADVANCES.** In addition to other Secured Obligations, this Security Instrument secures future advances made after the date of recording of this Security Instrument.

## ARTICLE 3. ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof (collectively, "**Leases**"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases (collectively, "**Payments**"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as

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hereinafter defined). Upon a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to that certain Section hereof titled Application of Other Sums without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender, or any of its respective employees, agents, contractors or subcontractors, of any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that Mortgagor has delivered to Lender a true, accurate and complete list of all Leases, and that, except as disclosed to Lender in writing prior to the date hereof, (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to: (a) perform all of the obligations of landlord contained in the Leases and enforce by all available remedies performance by the tenants of the obligations of the tenants contained in the Leases; (b) give Lender prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the tenant or of the landlord; (c) exercise Mortgagor's commercially reasonable efforts to keep all portions of the Property that are capable of being leased at rentals not less than the fair market rental value; (d) deliver to Lender fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the landlord and tenant) of any Lease to the Security Instrument, in form and substance acceptable to Lender, as Lender may reasonably request. Mortgagor shall not, without Lender's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate,



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modify or amend any of the terms of the Leases or in any manner release or discharge the tenants from any obligations thereunder; (v) consent to any assignment or subletting by any tenant under any Lease; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance. Any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Lender shall be null and void. Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.

- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Lender, but not more frequently than one (1) time in any twelve (12) month period per tenant, Mortgagor shall obtain and shall deliver to Lender and to any party designated by Lender estoppel certificates executed by Mortgagor and use commercially reasonable efforts to obtain the same from each of the tenants, in recordable form, certifying (if such be the case) to (i) certain matters relating to the Leases, including, without limitation: (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by Mortgagor or tenants under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Lender, or (ii) such matters set forth in the form of estoppel attached to the applicable Lease which estoppel is acceptable to Lender in its reasonable discretion.
- 3.7 **LENDER RIGHT TO CURE.** Without regard to whether there exists a Default, if there exists a default under a Lease or any other contract collaterally assigned by Mortgagor to Lender in connection with the Loan, Mortgagor acknowledges and agrees (A) that Lender may, at its option, with no obligation to do so, take any actions necessary to cure such default including, without limitation, any actions that require Lender or its designee to enter onto the Property, (B) to indemnify, defend and hold Indemnitees (defined below) harmless in connection with any such action, and (C) any money advanced for any such purpose shall be secured hereby and payable by Mortgagor to Lender on demand, with interest thereon at the Default Rate from the date such amounts are advanced. Lender shall not take such action as long as the Borrower is diligently pursuing such cure and the applicable cure period, if any, has not expired.

## ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** This Security Instrument shall constitute a security agreement pursuant to the Uniform Commercial Code (Illinois), as amended or recodified from time to time (the "**UCC**") for any portion of the Property which under applicable laws, may be subject to a security interest pursuant to the UCC, and Mortgagor hereby grants and assigns to Lender as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**"), including without limitation:

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights,

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supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Mortgagor under any Swap Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Cook County, Illinois, under the UCC. For purposes of this fixture filing, the "**Debtor**" is the Mortgagor and the "**Secured Party**" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land. The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Security Instrument with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Lender under this Security Instrument or the priority of Lender's lien created hereby, and such financing statement is declared to be for the protection of Lender in the event any court shall at any time hold that notice of Lender's priority interest in any property or interests described in this Security Instrument must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the UCC records for Cook County, Illinois.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor's principal place of business is located at the address set forth in Section 8.1 of this Security Instrument.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior written notice

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thereof; (c) to cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Lender is authorized to file financing statements in the name of Mortgagor to perfect Lender's security interest in the Collateral.

- 4.4 **RIGHTS OF LENDER.** In addition to Lender's rights as a "**Secured Party**" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

Upon the occurrence of a Default (hereinafter defined) under this Security Instrument, then in addition to all of Lender's rights as a "**Secured Party**" under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; and (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Lender may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of



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Mortgagor; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

## ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Mortgagor to Lender on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall, not later than ten (10) Business Days after Mortgagor receives notice thereof, discharge all liens, claims and encumbrances not approved by Lender in writing that has or may attain priority over this Security Instrument. Subject to the section of the Loan Agreement titled "Right of Contest", Mortgagor shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.
- 5.4 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and, at the request of Lender, shall be paid directly to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law and without regard to any requirement contained in this Security Instrument, Lender may at its discretion apply all or any of the award or insurance proceeds it receives to its expenses in settling, prosecuting or defending any claim (collectively, the "**Lender Proceeds Costs**") and if after deducting the Lender Proceeds Costs, the amount of such award or insurance proceeds exceeds (x) Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), but is less than or equal to One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), Lender may apply the balance to the Secured Obligations in such order as reasonably acceptable to Mortgagor and/or release all such award or insurance proceeds to Mortgagor to repair or

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restore the Property subject to the terms and provisions of Section 5.4(b); and (y) One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), Lender may apply the balance to the Secured Obligations in such order and amounts as Lender in its sole discretion may choose and/or Lender may release all or any part of the proceeds to Mortgagor upon any such conditions Lender may impose. If the amount of such award or insurance proceeds after deducting the Lender Proceeds Costs is less than or equal to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), then Lender shall release all of such award or insurance proceeds to Mortgagor to repair or restore the Property. Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.

- (b) At its sole option, Lender may permit any insurance or condemnation proceeds, after the deduction of the Lender Proceeds Costs, which exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) but are less than or equal to the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) that are held by Lender to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Lender of such additional funds which Lender determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Lender of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Lender, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Lender; and (iv) the delivery to Lender of evidence acceptable to Lender (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Lender; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor and any other Borrower and any guarantors since the date of this Security Instrument; and (ee) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose. For the avoidance of doubt, any insurance or condemnation proceeds, which after the deduction of Lender Proceeds Costs, exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) and which such proceeds Lender agrees to release to restore or repair the Property, shall be on such terms and provisions as determined by Lender in its sole discretion.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Lender may require as set forth in the Loan Agreement and any supplemental insurance provisions or requirements provided to Mortgagor by Lender, and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral, without Lender's prior written approval; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof

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which may be damaged or destroyed, without regard to whether Lender elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in that certain Section hereof titled Damages, Insurance and Condemnation Proceeds; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.

- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Mortgagor shall give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.

5.7 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Lender in this Security Instrument; (ii) the failure or refusal of Lender to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or Collateral or under this Security Instrument; or (iii) any loss sustained by Mortgagor or any third party resulting from Lender's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Lender in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Lender and no such liability shall be asserted against or imposed upon Lender, and all such liability is hereby expressly waived and released by Mortgagor.
- (b) **MORTGAGOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNITEES (AS HEREINAFTER DEFINED) FOR, FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS, AND LEGAL EXPENSES OR OTHER EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES), COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH ANY INDEMNITEE MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF: (i) BY REASON OF THIS SECURITY INSTRUMENT; (ii) BY REASON OF THE EXECUTION OF THIS SECURITY INSTRUMENT OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF MORTGAGOR TO PERFORM MORTGAGOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON ANY INDEMNITEE'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE PROPERTY. FOR THE PURPOSES HEREOF "INDEMNITEES" SHALL MEAN LENDER, LENDER'S PARENTS, SUBSIDIARIES AND AFFILIATES, ANY HOLDER OF OR PARTICIPANT IN THE LOAN, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING. THE ABOVE OBLIGATION OF MORTGAGOR TO INDEMNIFY AND HOLD HARMLESS INDEMNITEES SHALL SURVIVE UNTIL THE "CESSATION DATE" DEFINED AS THREE (3) YEARS AFTER THE LATEST TO OCCUR OF THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RECONVEYANCE, RELEASE OR**



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SATISFACTION OR PARTIAL RECONVEYANCE, RELEASE OR SATISFACTION OF THIS SECURITY INSTRUMENT (THE "SECURITY INSTRUMENT SATISFACTION DATE"), PROVIDED HOWEVER, THAT, (A) ON OR BEFORE THE CESSATION DATE, MORTGAGOR DELIVERS TO LENDER, (X) A PHASE 1 SITE ASSESSMENT HAVING AN INSPECTION DATE NO EARLIER THAN THE SECURITY INSTRUMENT SATISFACTION DATE AND WHICH REPORT SHALL INDICATE THAT (1) NO RELEASE OF HAZARDOUS MATERIALS HAS OCCURRED AT THE PROPERTY IN VIOLATION OF ANY HAZARDOUS MATERIALS LAW, (2) THERE ARE NO HAZARDOUS MATERIALS, AT, UNDER OR ABOUT THE PROPERTY IN VIOLATION OF ANY HAZARDOUS MATERIALS LAW; AND (3) NO ADDITIONAL TESTING OR REVIEW WITH THE RESPECT TO THE PROPERTY OR ANY PORTION THEREOF IS RECOMMENDED; (B) AS OF THE CESSATION DATE, THERE ARE NO EXISTING OR THREATENED CLAIMS, SUITS, DEMANDS OR VIOLATION NOTICES, IN WRITING WITH RESPECT TO ANY HAZARDOUS MATERIALS UNDER ANY HAZARDOUS MATERIALS LAWS RELATING TO THE PROPERTY, AND AS OF THE CESSATION DATE MORTGAGOR SHALL HAVE PROVIDED LENDER AN AFFIDAVIT DATED AS OF THE CESSATION DATE CERTIFYING TO THE ACCURACY OF THE FACTS DESCRIBED IN THIS SUBSECTION (B); (C) AS OF THE CESSATION DATE, LENDER SHALL HAVE CONFIRMED TO ITS SATISFACTION THE ACCURACY OF THE FACTS DESCRIBED IN (A) AND (B) ABOVE; AND (D) AS OF THE CESSATION DATE, MORTGAGOR SHALL HAVE PAID LENDER'S FEES AND EXPENSES (INCLUDING THOSE OF OUTSIDE CONSULTANTS AND ATTORNEY(S)) TO VERIFY THE ACCURACY OF THE FACTS DESCRIBED IN (A), (B) AND (C) ABOVE, IT BEING AGREED THAT LENDER MAY EMPLOY OUTSIDE CONSULTANTS TO VERIFY THE ACCURACY OF THE FACTS.

- (c) Mortgagor shall pay all amounts and indebtedness arising under this Section immediately upon demand by Lender together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 5.8 **ACTIONS BY LENDER.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Lender, without liability therefor and without notice, may: (a) release all or any part of the Property from this Security Instrument; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.
- 5.9 **DUE ON SALE; ENCUMBRANCE.** Except with respect to Permitted Transfers (as defined in the Loan Agreement), if the Property or any interest therein or if any direct or indirect ownership interest in Mortgagor shall be sold under contract to sell, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, or if there shall be any change in the management of the Property or Mortgagor, in each case without the prior written consent of Lender or as expressly permitted by or in accordance with the Loan Agreement; THEN Lender, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.
- 5.10 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time and without notice to Mortgagor or any other Borrower: (i) release any person or entity from liability for the payment or performance of any Secured Obligation; (ii) take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation; or (iii) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested



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Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.

- 5.11 **RELEASE OF ASSIGNMENT.** When the Property has been fully released or discharged, the last such release or discharge shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.
- 5.12 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.13 **RIGHT OF INSPECTION.** Lender, its agents, representatives and employees, may enter any part of the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

## ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean (a) at Lender's option, the failure of Mortgagor or any other person liable to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; or (b) the occurrence of any Default as defined in any one or more of the Loan Agreement, any other Loan Document or any Other Related Document, or an "Event of Default" under any Swap Agreement (as defined therein) between Borrower and Lender.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Lender shall have each and every one of the following rights and remedies in addition to Lender's rights under the other Loan Documents or under any Swap Agreement between Borrower and Lender:
- (a) With or without notice, to declare all Secured Obligations, (other than Swap Agreements) immediately due and payable.
  - (b) Pursuant to the terms of a Swap Agreement between Borrower and Lender, terminate such Swap Agreement.
  - (c) With or without notice, and without releasing Mortgagor or any other Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or any other Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
  - (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and

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that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.

- (e) To the extent this Security Instrument may encumber more than one property, the Lender at its sole option shall have the right to foreclose any one property or to foreclose en masse. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness to the decree for sale all costs, fees and expenses described in that certain Section hereof titled Payment of Costs, Expenses and Attorney's Fees which may be paid or incurred by or on behalf of Lender to prosecute such suit, and such other costs and fees including, but not limited to, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, accounting fees, brokerage commissions, costs of whatever nature or kind to protect and avoid impairment of the Property, and other related costs and fees as shall be necessary.
- (f) To apply to a court of competent jurisdiction for and obtain ex parte appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such ex parte appointment and waives notice of any hearing or proceeding for such appointment.
- (g) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, and to protect or enhance the security hereof as necessary in Lender's sole judgment.
- (h) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.
- (i) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value

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ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- (j) Upon the completion of any foreclosure of all or a portion of the Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.
  - (k) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.
- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Lender under this Security Instrument other than those described in that certain Section hereof titled Rights and Remedies or that certain Section hereof titled Grant of License, less all costs and expenses incurred by Lender or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.
- 6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender immediately all costs and expenses of any kind incurred by Lender pursuant to this Article (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Mortgagor will pay the costs and fees for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Lender as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices that Lender deems appropriate to protect Lender's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security

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Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Lender may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (ii) Lender shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Lender under this Section. Furthermore, the Mortgagor hereby authorizes Lender and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Mortgagor or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Security Agreement and/or this Security Instrument, on behalf of the Mortgagor.

- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Lender. No failure on the part of Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

## ARTICLE 7. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS.

To the extent that the Loan Documents or any Other Related Document provide support, through a guarantee or otherwise, for a Swap Agreement or any other agreement or instrument that is a QFC (as hereinafter defined) (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regime**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents, any Other Related Document and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) In the event a Covered Entity (as hereinafter defined) that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate (as hereinafter defined) of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as hereinafter defined) under the Loan Documents or any Other Related Document that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised



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against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents, or any Other Related Document, were governed by the laws of the United States or a state of the United States.

(b) As used in this Article, the following terms have the following meanings:

- (i) **"BHC Act Affiliate"** of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.
- (ii) **"Covered Entity"** means any of the following:
  - (A) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
  - (B) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
  - (C) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).
- (iii) **"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.
- (iv) **"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

## ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	MDH F2 CHI DANSHER, LLC 3715 Northside Parkway, NW Suite 4-240 Atlanta, GA 30327 Attention: Arun Singh, CFA
Lender:	Wells Fargo Bank, National Association 171 17 <sup>th</sup> Street, NW, 4 <sup>th</sup> Floor Atlanta, Georgia 30363 Attention: Relationship Manager  Loan #: 1021093
With a copy to:	Wells Fargo Bank, National Association Winston-Salem Loan Center

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	100 North Main Street, 10 <sup>th</sup> Floor Winston-Salem, North Carolina 27101 Attention: DISBURSEMENT REPRESENTATIVE  Loan #: 1021093
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Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Lender, or which could reasonably be deemed to affect the ability of Mortgagor to perform its obligations to Lender under the Loan Documents.

- 8.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 8.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 8.4 **SEVERABILITY.** If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.
- 8.5 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of that certain Section titled Due on Sale or Encumbrance.
- 8.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, without the obligation to do so, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.
- 8.7 **TIME.** Time is of the essence of each and every term herein.
- 8.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument, this Security Instrument shall be governed by, and construed in accordance with, the laws of Illinois, it being understood that, except as expressly set forth above in this

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paragraph and to the fullest extent permitted by the laws of Illinois, the laws of Georgia shall govern any and all matters, claims, controversies or disputes arising under or related to this Security Instrument, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Security Instrument, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor hereby consents to the jurisdiction of any federal or state court within Georgia having proper venue and also consent to service of process by any means authorized by Georgia or federal law.

- 8.9 **JOINT AND SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 8.10 **HEADINGS.** All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 8.11 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 8.12 **POWERS OF ATTORNEY.** The powers of attorney granted by Mortgagor to Lender in this Security Instrument shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid or unperformed or any obligation under or in connection with a Swap Agreement between Borrower and Lender remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event. Lender hereby discloses that it may exercise the foregoing powers of attorney for Lender's benefit, and such authority need not be exercised for Borrower's best interest.
- 8.13 **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Security Instrument shall have the meanings attributed to such terms in the Loan Agreement.
- 8.14 **RULES OF CONSTRUCTION.** The word "**Borrower**" as used herein shall include the Mortgagor and any other Borrower (as defined in the Loan Agreement). The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security Instrument is executed by more than one person, the term "**Mortgagor**" shall include all such persons. The word "**Lender**" as used herein shall include Lender, its successors, assigns and affiliates. The term "**Property**" and "**Collateral**" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively. . Where Mortgagor and Borrower are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Borrower" means the obligor in any provision dealing with the Secured Obligations.
- 8.15 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 8.16 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.

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- 8.17 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable, shall prevail.
- 8.18 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing and in accordance with the terms of the Loan Agreement.
- 8.19 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.
- 8.20 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("**Wells Fargo**") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property; provided, however, that confidential details about Borrower, Guarantor and any Affiliates of any of them, including the identities of the limited partner investors in MDH Fund II, LP shall not be used in any such advertising by Wells Fargo.
- 8.21 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Security Instrument and shall provide that Lender may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the County Recorder of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Security Instrument.
- 8.22 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.



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## ARTICLE 9. STATE SPECIFIC PROVISIONS

- 9.1 **ADVANCES.** The total amount of indebtedness secured by this Security Instrument may decrease or increase from time to time but the total unpaid balance so secured at one time shall not exceed \$139,800,000.00; provided, however, in no event shall the Lender or the other Secured Parties be obligated to advance funds in excess of the amount required by the Loan Agreement.
- 9.2 **RIGHT OF POSSESSION.** Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the mortgaged premises after the occurrence of an Event of Default hereunder and any and all rights of redemption from judgment, as allowed under Section 15-1601(b) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), as amended from time to time ("**IMFL**"), and any and all rights of reinstatement under Section 15-1602 of IMFL, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in the mortgaged premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of the Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement statute. Mortgagor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power, or remedy herein or otherwise granted or delegated to the Lender or any other Secured Party, but shall permit the execution of every such right, power, and remedy as though no such law or laws had been made or enacted. Mortgagor acknowledges that the land does not contain agricultural real estate, as said term is defined in Section 15-1201 of IMFL, or residential real estate, as said term is defined in Section 15-1219 of IMFL. To the fullest extent permitted by applicable law, Mortgagor, on its own behalf and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor, hereby waives any claims based on allegations that Lender, or any other Secured Party, has failed to act in a commercially reasonable manner or has acted in bad faith with respect to any matters whatsoever arising out of or in any way connected with this Security Instrument any of the other Loan Documents.
- 9.3 **COMPLIANCE WITH ILLINOIS LAW.** It is the intention of Mortgagor and Lender that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the IMFL, and with respect to the IMFL, Mortgagor agrees and covenants that:
- (a) Mortgagor and Lender shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may be repealed, Lender 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;
  - (b) Wherever provision is made in this Security Instrument or the other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender 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 Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale;
  - (c) All advances, disbursements and expenditures made or incurred by Lender or any other Secured Party 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 proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or the other Loan Documents or by the IMFL (collectively "**IMFL Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL:

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- (i) all advances by Lender or any other Secured Party in accordance with the terms of this Security Instrument to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Security Instrument or the priority thereof; (C) enforce this Security Instrument, as referred to in Subsection (b) (5) of Section 5/15-1302 of the IMFL;
- (ii) payments by Lender or any other Secured Party of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (B) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by the Lender; (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;
- (iii) advances by Lender, or any other Secured Party, in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Security Instrument as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the IMFL; (ii) in connection with any action, suit, or proceeding brought by or against the Lender, or any other Secured Party, for the enforcement of this Security Instrument or arising from the interest of the Lender, or any other Secured Party, hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Security Instrument or the Property;
- (v) Lender's (and all other Secured Parties') fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b)(1) of the IMFL;
- (vi) expenses deductible from the proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the IMFL;
- (vii) expenses incurred and expenditures made by Lender, or any other Secured Party, for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed on the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender, or any other Secured Party, whether or not Lender or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 5/15-1704(c)(1) of the IMFL; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender, or any other Secured Party, to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the loan secured hereby is a construction loan, as may be authorized by the applicable commitment, credit agreement or other agreement; (viii) payments required to be paid by Mortgagor or Lender pursuant to any lease

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or other agreement for occupancy of the Property; and (ix) if this Security Instrument is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

- 9.4 **PROTECTIVE ADVANCES.** All IMFL Protective Advances shall be additional indebtedness secured by this Security Instrument, 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 Documents. This Security Instrument shall be a lien for all IMFL Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL.
- 9.5 **RECEIVER.** In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMFL.
- 9.6 **CONTROLLING PROVISIONS.**
- (a) In the event that any provision in this Security Instrument shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with IMFL.
  - (b) If any provision of this Security Instrument shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under IMFL in the absence of said provision, Lender shall be vested with the rights granted in IMFL to the full extent permitted by law.
- 9.7 **REIMBURSABLE EXPENSES.** Without limiting the generality of the foregoing, all expenses incurred by Lender, or any other Secured Party, to the extent reimbursable under Sections 15-1510 and 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated elsewhere in this Security Instrument, shall be added to the obligations secured by this Security Instrument or by the judgment of foreclosure.
- 9.8 **BUSINESS LOAN.** Mortgagor covenants that the proceeds of the Secured Obligations secured by this Security Instrument will be used for the purposes specified in, and are secured by a mortgage on real estate described in, 815 ILCS 205/4 of the Illinois Compiled Statutes or other applicable law or replacement statutes, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph. Mortgagor represents and agrees that the obligations secured hereby are exempted from transactions under the Truth-in-Lending Act, 15 U.S.C. 1601, et seq.
- 9.9 **WAIVERS.** Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives the benefit of all such laws. Mortgagor, to the extent Mortgagor may lawfully do so, hereby waives any and all right to have the Property marshaled upon any foreclosure of this Security Instrument, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Security

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Instrument may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

- 9.10 **FORECLOSURE PROCEEDINGS.** In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Security Instrument: (i) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Security Instrument; and (ii), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Security Instrument, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.
- 9.11 **FORECLOSURE PROCEEDING VENUE.** Security Instrument foreclosures and other *In Rem* proceedings against Mortgagor may be brought in the applicable county in Illinois in which the Property is located or any federal court of competent jurisdiction in Illinois.

[Signature Page Follows]



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IN WITNESS WHEREOF, Mortgagor has executed this Security Instrument as of the day and year set forth above and Mortgagor acknowledges receipt of a copy hereof.

"MORTGAGOR"

MDH F2 CHI DANSHER, LLC  
a Delaware limited liability company

By: *Arun Singh*  
Arun Singh, Chief Financial Officer

STATE OF Georgia )  
COUNTY OF Fulton ) SS.

I, Francesca Comeaux, a Notary Public in and for said County and State, certify that Arun Singh, the Chief Financial Officer of MDH F2 CHI DANSHER, LLC, a Delaware limited liability company, personally known to me to be the person whose name is subscribed to the foregoing instrument as such Chief Financial Officer, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5<sup>th</sup> day of July, 2022.

*F. Comeaux*  
Notary Public

My commission expires: August 26, 2025



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## EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Security Instrument between MDH F2 CHI DANSHER, LLC, a Delaware limited liability company, as "Mortgagor" and Wells Fargo Bank, National Association, as "Lender", dated as of July 21, 2022, as amended, modified, restated or supplemented from time to time.

All that certain real property located in the City of Countryside, County of Cook, State of Illinois, described as follows:

LOT "C" IN THE RESUBDIVISION OF LOT 4 IN TRACT 2 OF DANSHER INDUSTRIAL PARK, BEING A SUBDIVISION IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

**PIN:** 18-09-416-049; 18-09-416-050

**Property address:** 5315 Dansher Road, Countryside, Illinois 60525

[End of Exhibit A]