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Illinois Anti-Predatory Lending Database Program

Doc#: 2320545305 Fee: \$107.00
Karen A. Yarbrough
Cook County Clerk
Date: 07/24/2023 03:12 PM Pg: 1 of 36

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: PIN: 29-06-306-007-0000

Address:

Street: 14139 SOUTH WESTERN AVENUE

Street line 2:

City: BLUE ISLAND

State: IL

ZIP Code: 60406

Lender: Wells Fargo Bank, National Association

Borrower: STONETOWN 5 KB BORROWER, LLC

Loan / Mortgage Amount: \$23,500,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/10 et seq. because it is commercial property.

Certificate number: 905634F0-50A1-493A-9670-0DEDACBDC5DC

Execution date: 7/21/2023

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**THIS INSTRUMENT WAS
PREPARED BY:**

Zachary O. Bazara, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, Florida 33301

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

First American Title National Commercial Services
1380 17th St, Denver, CO 80202

(Space Above For Recorder's Use)

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

NAME AND ADDRESS OF MORTGAGOR:	Stonetown Colonial, LLC, a Colorado limited liability company c/o Stonetown 5 Investors, LLC 720 S. Colorado Blvd., Suite 1150N Glendale, Colorado 80246 Attention: Adam Minnick and Roy Lapidus
NAME AND ADDRESS OF BORROWER:	STONETOWN 5 KB BORROWER, LLC, a Delaware limited liability company c/o Stonetown 5 Investors, LLC 720 S. Colorado Blvd., Suite 1150N Glendale, Colorado 80246 Attention: Adam Minnick and Roy Lapidus
NAME AND ADDRESS OF LENDER:	Wells Fargo Bank, National Association 2030 Main Street 8 th Floor Irvine, California 92614-7255 <u>Attention:</u> Mr. Blake Daniel, Relationship Manager

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Loan Number: 1021535

PROPERTY INDEX NUMBER(S):	29-06-306-007-0000; 29-06-306-027-0000; 29-06-306-028-0000; 29-06-306-029-0000; 29-06-306-030-0000
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Property of Cook County Clerk's Office

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THIS SECURITY INSTRUMENT SECURES FUTURE ADVANCES.

THIS SECURITY INSTRUMENT SECURES A LOAN WHICH PROVIDES FOR A VARIABLE INTEREST RATE.

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

Term or Maturity Date (exclusive of any renewal or extension rights): July 21, 2026

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING ("Security Instrument"), made as of July 21, 2023, is granted by **STONETOWN COLONIAL, LLC**, a Colorado 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**"). Lender is the mortgagee hereunder for indexing purposes by the clerk of court.

RECITALS

A. Lender is the holder of a promissory note of even date herewith, executed by **STONETOWN 5 KB BORROWER, LLC**, a Delaware limited liability company ("**Borrower**"), payable to the order of Lender in the aggregate stated principal amount of **TWENTY-THREE MILLION FIVE HUNDRED THOUSAND AND/100 DOLLARS (\$23,500,000.00)** (as the same may be amended, modified, supplemented or replaced from time to time, collectively, the "**Note**").

B. In connection with the Note, Borrower, Mortgagor and certain other affiliates of Borrower are entering into (i) that certain Loan Agreement of even date herewith by and between Borrower and Lender (as the same may be amended, modified, supplemented or replaced from time to time, the "**Loan Agreement**") and (ii) such other documents defined in the Loan Agreement as the "**Loan Documents**".

C. To induce Lender to make the Loan to Borrower, Mortgagor has executed of even date herewith that certain Cross-Collateral Guaranty Agreement (as the same may be amended, modified supplemented or replaced from time to time, "**Guaranty Agreement**") in favor of Lender, under which Mortgagor has guaranteed the payment and performance of the Secured Obligations (as hereinafter defined) to Lender. Mortgagor's guaranty is secured by this Security Instrument, as the same may be amended, modified supplemented or replaced from time to time.

D. To further induce Lender to make the Loan to Borrower, the other "**Non-Borrower Owners**" (as defined in the Loan Agreement), which are affiliates of Mortgagor, have also each executed a certain Cross Collateral Guaranty Agreement in favor of Lender.

E. Mortgagor is not primarily liable for the payment of the indebtedness, but will derive both direct and indirect benefits from the financial accommodations and extensions of credit provided to Borrower pursuant to the Note or otherwise. Mortgagor is wholly owned by Borrower and has a material business interest in Borrower.

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ARTICLE 1. GRANT

1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably bargains, conveys, warrants, mortgages, encumbers, transfers, hypothecates, pledges, sells, sets over, assigns and grants a security interest and assigns to Lender, its successors and assigns, all of that real property located in Blue Island, Cook County, Illinois, described on Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property 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 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 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**") (excluding any manufactured homes owned by any party other than Mortgagor); 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 is: 14139 South Western Avenue, Blue Island, Illinois. 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 all of the Property is a single tax parcel, and there are no properties included in such tax parcel or 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.

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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 and performance of all covenants and obligations of Mortgagor under the Guaranty Agreement, including, without limitation, all obligations of Borrower under the Note, Loan Agreement and other Loan Documents or in connection with any "Swap Agreement", as defined in the Loan Agreement, at any time entered into between Borrower and Lender, together with all modifications, extensions, renewals and replacements thereof; 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 of any rider attached as an Exhibit to this Security Instrument; and

(d) 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 secured by the Guaranty 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 of the Loan may vary from time to time.

2.4 **MAXIMUM INDEBTEDNESS; FUTURE ADVANCES**. This Security Instrument secures the payment of the entire indebtedness secured hereby; provided, however, that the total amount secured by this Security Instrument (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed twice the principal amount of the Loan, plus interest that may have accrued thereon, together with any disbursements made for the payment of taxes, levies or insurance premiums covered by the lien of this Security Instrument, including interest on all such disbursements. The lien of this Security Instrument shall be valid as to all indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the County in which the Property is located. The total amount of indebtedness may increase or decrease from time to

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time, as provided in the Note, and any disbursements which Lender may make under this Security Instrument, the Note, the Loan Agreement or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect Lender's liens and security interests, as permitted hereby) shall be additional indebtedness secured hereby. This Security Instrument is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

ARTICLE 3. 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 ("**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 ("**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 exercise all rights of the landlord under the Leases and perform all of the obligations of the landlord under the Leases, including the right to operate, administer, govern and enforce the Leases, to manage and operate the Property and to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as 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 entitled 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, 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. If required in order to evidence Mortgagor's authority with respect to a Lease, upon written request

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from Mortgagor, Lender shall provide a letter to such third-party confirming that the License remains in full force and effect (if such is, in fact, the case).

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, 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, except Mortgagor may collect rents for up to six (6) months in advance under any Lease so long as such amounts do not exceed three percent (3%) in the aggregate of monthly Rents for the applicable Property, and Rents shall not be recorded as income until such Rents are actually earned, for all of the properties that are security for the repayment of the Loan and payment thereof has not otherwise been forgiven, discounted or compromised except in the ordinary course of Mortgagor's business; 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) intentionally omitted; (c) exercise Mortgagor's commercially reasonable efforts to keep all portions of the Property that are capable of being leased at rental rates pursuant to the terms of the Loan Agreement; (d) exercise Mortgagor's commercially reasonable efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals not less than the fair market rental value; (e) deliver to Lender copies of each and every fully executed Lease and any modifications or amendments thereto if requested to do so; and (f) execute and record such additional assignments of any Lease or, with respect to commercial leases and if required pursuant to the provisions of any such commercial lease, 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 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

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(other than Approved Leases); (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases other than in the ordinary course of Mortgagor's business 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, except for bona fide security deposits not in excess of an amount equal to one (1) months' rent, except that with respect to the collection of excess advance rentals or security deposits, such excess collections may exceed one (1) months' rent provided such excess collections shall not exceed in the aggregate three percent (3%) of the monthly rents for all of the properties that are security for the repayment of the Loan; (iv) terminate, modify or amend any of the terms of the Leases with a then existing tenant or in any manner release or discharge the tenants from any obligations thereunder except for modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices; (v) consent to any assignment or subletting by any tenant under any Lease, except in those instances where Mortgagor in its prudent judgment determines that such assignment or sublease is beneficial to Mortgagor; 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.

3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Lender, Mortgagor shall, with respect to commercial leases that require Tenant to execute same, obtain and shall deliver to Lender and to any party designated by Lender estoppel certificates executed by Mortgagor and by each of the tenants, if any, in recordable form, certifying (if such be the case) to 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. In those instances where such commercial lease does not require that the tenant execute such an estoppel certificate, Mortgagor agrees to utilize commercially reasonable efforts to obtain such an estoppel certificate executed by each such tenant within the aforesaid thirty (30) day period.

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, Borrower or any Non-Borrower Owner 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 (as defined in Exhibit B attached hereto) 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 (as defined in the Note) from the date such amounts are advanced.

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ARTICLE 4. SECURITY AGREEMENT

4.1 **SECURITY INTEREST.** 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**"):

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, 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 payment of money from Lender to Mortgagor or Borrower 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 (excluding any manufactured homes owned by any party other than Mortgagor).

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

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Instrument constitutes a fixture filing filed with the real estate records of Cook County, Illinois under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located ("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.

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 on the cover page 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 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 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

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Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; (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 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

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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 (as defined 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 immediately discharge all liens, claims and encumbrances not approved by Lender in writing that have or may attain priority over this Security Instrument. Subject to the provisions of the Loan Agreement regarding mechanics' liens, 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. Provided, however, that Mortgagor may contest in good faith the validity of any lien so long as (i) Mortgagor notifies Lender that it intends to contest any such lien, (ii) Mortgagor provides Lender with a release bond or other security, in either case, in such form and amount as may be satisfactory to Lender, including Lender's estimate of interest, penalties and attorneys' fees and (iii) Mortgagor is diligently contesting the same by appropriate legal proceedings in good faith, at its own expense and on its own behalf and on behalf of Lender and concludes such contest prior to the tenth (10th) day preceding the date on which the Property or portion thereof is scheduled to be sold for non-payment and timely pays any award, judgment or settlement in favor of such lien claimant.

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 proceeds it receives to its expenses in settling, prosecuting or defending any claim and 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 conditions Lender may impose. Lender may commence,

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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 insurance or condemnation proceeds 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 Borrower, Mortgagor, any Non-Borrower Owner 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. Notwithstanding anything to the contrary contained herein, Lender shall make casualty insurance proceeds or condemnation proceeds available for restoration of the Property if the loss or award, as applicable, is less than or equal to \$500,000.00.

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; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof 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 entitled 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

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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 or action with respect to the Property or Collateral.

5.7 **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 or easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.

5.8 **DUE ON SALE; ENCUMBRANCE.** 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 violation of the terms of the Loan Agreement, 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.

5.9 **INTENTIONALLY OMITTED.**

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, Borrower or any Non-Borrower Owner: (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 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.

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5.11 **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.

5.12 **RIGHT OF INSPECTION**. Lender, its agents, representatives and employees, may enter any part of the Property at any reasonable time upon prior notice to Mortgagor and during normal business hours for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

5.13 **COMMUNITY FACILITIES DISTRICT**. Without obtaining the prior written consent of Lender, Mortgagor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any assessment district, improvement district, community facilities district, special district, special improvement district, governmental district or other similar district (any such district, a "**Special Assessment District**"). Mortgagor shall immediately give notice to Lender of any notification or advice that Mortgagor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Special Assessment District. Lender shall have the right to file a written objection to the inclusion of all or any part of the Property in a Special Assessment District, either in its own name or in the name of Mortgagor, and to appear at, and participate in, any hearing with respect to the formation of any Special Assessment District.

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 to pay any amount due hereunder or under the Guaranty Agreement 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, Borrower or any Non-Borrower Owner from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor, Borrower or any Non-Borrower Owner 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,

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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 Mortgage hereunder, and Mortgagee agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagee 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 entitled 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 Mortgagee 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 Mortgagee 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, to protect or enhance the security hereof and to continue and complete construction of the Improvements of the Property as necessary in Lender's sole judgment.

(h) To execute a written notice of such Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Lender shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Lender, without notice to or demand upon Mortgagee except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither

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Mortgagor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Lender may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Lender shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagor or Lender may purchase at the sale.

(i) 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.

(j) 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 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.

(k) 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.

(l) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.

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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 entitled Rights and Remedies or that certain Section hereof entitled 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 and without demand 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, to prepare, execute and file or record any document necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and

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Collateral, and 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. 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. MISCELLANEOUS PROVISIONS

7.1 **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:

Stonetown Colonial, LLC,
c/o Stonetown 5 Investors, LLC
720 South Colorado Blvd., Suite 1150-N
Glendale, CO, 80246
Attention: Adam Minnick

With a Copy to:

Otten, Johnson, Robinson
950 17th Street, Suite 1600
Denver, Colorado 80202
Attention: David L. Plantz

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Lender: Wells Fargo Bank, National Association
2030 Main Street
8th Floor
Irvine, California 92614-7255
Attention: Mr. Blake Daniel, Relationship
Manager

With a Copy to: Wells Fargo Bank, National Association
1 West 4th Street
3rd Floor
Winston Salem, North Carolina 27101-3818
Attention: Ms. Laura Collins, Loan Servicing
Specialist

And to: Greenberg Traurig, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, Florida 33301
Attention: Stephen F. Katz, Esq./Stonetown 5
Portfolio

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 any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Mortgagor to perform its obligations to Lender under the Loan Documents.

7.2 **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.

7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note, the Guaranty Agreement or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, the Guaranty Agreement or this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, the Guaranty Agreement, 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.

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7.4 **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.

7.5 **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 entitled Due on Sale or Encumbrance.

7.6 **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.

7.7 **TIME**. Time is of the essence of each and every term herein.

7.8 **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 the State of Illinois, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of the State of Illinois, the laws of the State of Colorado 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 the State of Colorado having proper venue and also consent to service of process by any means authorized by Colorado or federal law.

7.9 **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.

7.10 **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.

7.11 **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

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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.

7.12 **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 Mortgagor's best interest.

7.13 **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.

7.14 **RULES OF CONSTRUCTION.** The word "**Mortgagor**" as used herein shall include both the named Mortgagor and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Mortgagor under the Note and the other Loan Documents. 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.

7.15 **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.

7.16 **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.

7.17 **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.

7.18 **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.

7.19 **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

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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.

7.20 **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.

7.21 **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.

7.22 **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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EXHIBIT A

DESCRIPTION OF PROPERTY

Exhibit A to **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** between **STONETOWN COLONIAL, LLC**, a Colorado limited liability company, as Mortgagor, and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Lender, executed as of even date herewith.

PARCEL 1:

LOT 3 IN THE COUNTY CLERK'S DIVISION OF THAT PART LYING EAST OF THE CENTER OF ROAD OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, NORTH OF THE INDIAN BOUNDARY LINE, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 660 FEET OF THE SOUTH 1/2 OF THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, THENCE SOUTH 7.18 CHAINS; THENCE WEST 16.26 CHAINS; THENCE NORTH 9 DEGREES WEST 7.24 CHAINS; THENCE EAST 17.18 CHAINS TO THE POINT OF BEGINNING (EXCEPT THE NORTH 20 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 88 FEET (EXCEPT THE EAST 655.60 FEET THEREOF) OF THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 14

EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 10.35 CHAINS SOUTH OF THE NORTH EAST CORNER THEREOF AND RUNNING THENCE SOUTH 3.24 CHAINS; THENCE WEST 14.94 CHAINS; THENCE NORTH 9 DEGREES WEST, 3.35 CHAINS; THENCE EAST 15.78 CHAINS TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, DESCRIBED AS FOLLOWS:

EXHIBIT B - 1

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COMMENCING AT A POINT 10.35 CHAINS SOUTH OF THE NORTHEAST CORNER THEREOF AND RUNNING THENCE SOUTH 3.24 CHAINS; THENCE WEST 14.94 CHAINS; THENCE NORTH 9 DEGREES WEST, 3.35 CHAINS; THENCE EAST 15.78 CHAINS TO THE POINT OF BEGINNING (EXCEPTING THEREFROM THAT PART OF THE SOUTH 88.0 FEET LYING WEST OF THE EAST 655.40 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE SOUTH 1/2 (EXCEPT THE EAST 600 FEET THEREOF) OF THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE; COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6; THENCE SOUTH 7.18 CHAINS; THENCE WEST 16.26 CHAINS; THENCE NORTH 9 DEGREES WEST 7.24 CHAINS; THENCE EAST 17.18 CHAINS TO THE PLACE OF BEGINNING (EXCEPT THE NORTH 20 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PIN: 29-06-306-007-0000, 29-06-306-027-0000, 29-06-306-028-0000, 29-06-306-029-0000 and 29-06-306-030-0000

ADDRESS: 14139 SOUTH WESTERN AVENUE, BLUE ISLAND, ILLINOIS

EXHIBIT B - 2

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EXHIBIT B

NON-BORROWER OWNER RIDER

Exhibit B to that certain **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (as hereinafter referred to as "**Security Instrument**") dated of even date herewith, by and between **STONETOWN COLONIAL, LLC**, a Colorado limited liability company ("**Mortgagor**") and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (collectively with its successors or assigns, "**Mortgagee**") (as hereinafter referred to as "**Lender**").

For the purposes of further securing the Secured Obligations, Mortgagor agrees as follows:

1. **INCORPORATION OF TERMS INTO SECURITY INSTRUMENT.** The terms of this Non-Borrower Owner Rider are hereby incorporated as an Addendum to the Security Instrument. Capitalized terms used herein which are not otherwise defined herein, are intended to have the definition given to them in the Security Instrument.

2. **CONDITIONS TO EXERCISE OF RIGHTS.** Mortgagor hereby waives any right it may now or hereafter have to require Lender, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection with any Secured Obligation: (a) to proceed against any Borrower, Non-Borrower Owner or other person, or against any other collateral assigned to Lender by Mortgagor or any Non-Borrower Owner or other person; (b) to pursue any other right or remedy in Lender's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Lender by any Non-Borrower Owner or other person (other than Mortgagor), or otherwise to comply with the Uniform Commercial Code (as modified or recodified from time to time, "**UCC**") with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind, unless otherwise specifically set forth herein or in the other Loan Documents in connection with any Secured Obligation or any collateral (other than the Property) for any Secured Obligation.

3. **DEFENSES.** Mortgagor waives any and all rights and defenses based upon or arising out of (a) any legal disability or other defense of Borrower, any Non-Borrower Owner, any other guarantor or other person or by reason of the cessation or limitation of the liability of Borrower or any Non-Borrower Owner from any cause other than full payment of all sums payable under the Loan Documents and satisfaction of all obligations under or in connection with any Swap Agreement between Borrower and Lender; (b) any lack of authority of the officers, directors, partners, managers, members or agents acting or purporting to act on behalf of Borrower, any Non-Borrower Owner, Mortgagor or any principal of Mortgagor, or any defect in the formation of Borrower, any Non-Borrower Owner, Mortgagor or any principal of Mortgagor, (c) the application by Borrower or any Non-Borrower Owner of the proceeds of the Loan for purposes other than the purposes represented by Borrower or any Non-Borrower Owner to Lender or intended or understood by Lender or Mortgagor; (d) any act or omission by Lender which directly or indirectly results in, or contributes to, the release of Borrower, Mortgagor, or any Non-

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Borrower Owner or any other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien which secures any Secured Obligation; (f) any failure of Lender to marshal assets in favor of Mortgagor or any other person; (g) any modification of any Secured Obligation, including, without limitation, any renewal, extension, acceleration or increase in interest rate; (h) an election of remedies by Lender, even though that election of remedies (such as a non-judicial foreclosure, if available and/or permitted, with respect to security for a guaranteed obligation) has or may have destroyed Mortgagor's rights of subrogation, reimbursement and contribution against the principal by the operation of applicable law or otherwise; (i) Lender's failure to disclose to Mortgagor any information concerning Borrower's or any Non- Borrower Owner's financial condition or any other circumstances bearing on Borrower's or any Non- Borrower Owner's ability to pay and perform its obligations under the Note, any other cross-collateral guaranty agreement or any of the other Loan Documents and any obligations under or in connection with any Swap Agreement between Borrower and Lender, or upon the failure of any Non- Borrower Owner or other principals of Borrower or any Non- Borrower Owner to guaranty the Loan or any obligations under or in connection with any Swap Agreement between Borrower and Lender; (j) any statute or rule of law which provides that the obligation of a surety or guarantor must be neither larger in amount nor in any other respects more burdensome than that of a principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (k) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (l) Lender's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (m) any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (n) any right of subrogation, any right to enforce any remedy which Lender may have against Borrower or any Non- Borrower Owner and any right to participate in, or benefit from, any security for the Note or the other Loan Documents or any obligations under or in connection with any Swap Agreement between Mortgagor and Lender now or hereafter held by Lender; (o) presentment, demand, protest and notice of any kind, except as required hereunder or under any of the other Loan Documents; (p) any statute of limitations affecting the liability of Mortgagor hereunder or the enforcement hereof; (q) use of cash collateral under Section 363 of the United States Bankruptcy Code; and (r) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further specifically waives any and all rights and defenses that Mortgagor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Lender may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Mortgagor or any Non-Borrower Owner; (2) if Lender forecloses on any real property collateral pledged by Borrower or any Non- Borrower Owner, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Lender may collect from Mortgagor even if Lender, by foreclosing on the real property collateral, has destroyed any right Borrower may have to collect from Mortgagor or any Non-Borrower Owner. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Borrower's debt is secured by real property. This understanding and waiver is made in addition to and not in limitation of any of the other terms and conditions of this Security Instrument. These rights and defenses being waived by Mortgagor include, but are not limited to, any rights or defenses based upon deficiency limitation or anti-

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deficiency, redemption or other similar rights, if any. Mortgagor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Note or any of the other Loan Documents shall similarly operate to toll the statute of limitations applicable to Mortgagor's liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further expressly waives to the extent permitted by law any and all rights and defenses, including, without limitation, any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor under any applicable law.

4. **SUBROGATION**. Mortgagor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against Borrower or any Non-Borrower Owner that relates to any Secured Obligation; (b) any right to enforce any remedy Mortgagor may now or hereafter have against Borrower or any Non-Borrower Owner that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Lender with respect to any Secured Obligation.

5. **MORTGAGOR INFORMATION**. Mortgagor warrants and agrees: (a) that Mortgagor has not relied, and will not rely, on any representations or warranties by Lender to Mortgagor with respect to the creditworthiness of Borrower or any Non-Borrower Owner or the prospects of repayment of any Secured Obligation from sources other than the Property; (b) that Mortgagor has established and/or will establish adequate means of obtaining from Borrower and each Non-Borrower Owner on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of Borrower and each Non-Borrower Owner; (c) that Mortgagor assumes full responsibility for keeping informed with respect to Borrower's and each Non-Borrower Owner's business operations, if any, and financial condition; (d) that Lender shall have no duty to disclose or report to Mortgagor any information now or hereafter known to Lender with respect to Borrower or any Non-Borrower Owner, including, without limitation, any information relating to any of Borrower's or Non-Borrower Owner's business operations or financial condition; and (e) that Mortgagor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

6. **REINSTATEMENT OF LIEN**. Lender's rights hereunder shall be reinstated and revived, and the enforceability of the Security Instrument shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Lender is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to Borrower or any Non-Borrower Owner.

7. **SUBORDINATION**. Until all of the Secured Obligations have been fully paid and performed, Mortgagor hereby agrees that all existing and future indebtedness and other obligations of Borrower and each Non-Borrower Owner to Mortgagor (collectively, the "**Subordinated Debt**") shall be and are hereby subordinated to all Secured Obligations.

8. **HAZARDOUS MATERIALS**.

8.1 **Special Representations and Warranties**. Without in any way limiting the other representations and warranties set forth in the Security Instrument, and after reasonable

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investigation and inquiry, Mortgagor hereby represents and warrants to the best of Mortgagor's knowledge as of the date of hereof as follows:

(a) **Hazardous Materials.** Except as previously disclosed to Lender in that certain Phase I Environmental Report prepared by Blackstone Consulting LLC dated June 12, 2023, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, mold, toxic mold, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants or contaminants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "**Hazardous Materials**"). "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the Property, including reasonable amounts of fuel oil for heating individual manufactured housing units or other permitted residences which are used and stored in accordance with all applicable Hazardous Materials Laws.

(b) **Hazardous Materials Laws.** The Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("**Hazardous Materials Laws**"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "**CERCLA**"), 42 U.S.C. Section 9601 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Hazardous Materials Transportation Act, as amended 49 U.S.C. Section 1801 *et seq.*; the Atomic Energy Act, as amended, 42 U.S.C. Section 2011 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; each as now and hereafter amended, and the regulations thereunder, and any other applicable local, state and/or federal laws or regulations that govern (i) the existence, investigation, cleanup and/or remedy of contamination on the Property; (ii) the protection of the environment from released, spilled, deposited or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Materials, including any and all building materials.

8.2 **Hazardous Materials Claims.** There are no claims, actions, proceedings or investigations ("**Hazardous Materials Claims**") pending or threatened against Mortgagor, the Property or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

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8.3 Hazardous Materials Covenants. Mortgagor agrees as follows:

(a) No Hazardous Activities. Mortgagor shall not cause or permit the Property or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(b) Compliance. Mortgagor shall comply, and cause the Property, Improvements and project tenants to comply, with all Hazardous Materials Laws.

(c) Notices. Mortgagor shall immediately notify Lender in writing of: (1) the discovery by Mortgagor of any Hazardous Materials on, under or about the Property and Improvements; (2) any knowledge by Mortgagor that the Property and Improvements do not comply with any Hazardous Materials Laws; (3) any Hazardous Materials Claims; and (4) the discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to violate Hazardous Materials Laws.

(d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property or Improvements, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws, regulatory agency, governing body or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

8.4 Inspection By Lender. Upon reasonable prior notice to Mortgagor, Lender and its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Improvements for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Improvements.

8.5 Hazardous Materials Indemnity. MORTGAGOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNITEES FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH INDEMNITEES MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF (A) THE USE, GENERATION, MANUFACTURE, STORAGE, TREATMENT, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, TRANSPORTATION OR PRESENCE OF ANY HAZARDOUS MATERIALS WHICH ARE FOUND IN, ON, UNDER, ABOUT OR MIGRATING FROM THE PROPERTY; (B) ANY VIOLATION OR CLAIM OF VIOLATION OF ANY HAZARDOUS MATERIALS LAWS WITH RESPECT TO THE PROPERTY; (C) ANY INDEMNITY CLAIM BY A THIRD PARTY AGAINST ONE OR MORE INDEMNITEES IN CONNECTION WITH ANY OF THE FOREGOING; OR (D) THE BREACH OF ANY COVENANTS (OR REPRESENTATIONS AND WARRANTIES) OF MORTGAGOR UNDER THIS INDEMNITY. SUCH INDEMNITY SHALL INCLUDE, WITHOUT LIMITATION: (I) THE COSTS, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY REPAIR, CLEANUP OR

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DETOXIFICATION OF THE PROPERTY, OR THE REMOVAL OR REMEDIATION OF ANY HAZARDOUS MATERIALS (REGARDLESS OF THE MEDIUM) FROM THE PROPERTY, OR THE TAKING OF ANY EMERGENCY ACTION, WHICH IS REQUIRED BY ANY GOVERNMENTAL ENTITY OR IS OTHERWISE NECESSARY TO RENDER THE PROPERTY IN COMPLIANCE WITH ALL HAZARDOUS MATERIALS LAWS AND REGULATIONS; (II) ALL OTHER DIRECT OR INDIRECT CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY TORT CLAIMS OR GOVERNMENTAL CLAIMS, FINES OR PENALTIES AGAINST ANY AND ALL INDEMNITEES); AND (III) ALL COURT COSTS AND ATTORNEYS' FEES AND EXPENSES PAID OR INCURRED BY ANY AND ALL INDEMNITEES. EACH INDEMNITEE SHALL HAVE THE RIGHT AT ANY TIME TO APPEAR IN, AND TO PARTICIPATE IN AS A PARTY IF IT SO ELECTS, AND BE REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN, ANY ACTION OR PROCEEDING INITIATED IN CONNECTION WITH ANY HAZARDOUS MATERIALS LAWS THAT AFFECT THE PROPERTY. MORTGAGOR SHALL IMMEDIATELY PAY TO THE APPLICABLE INDEMNITEES UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. 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.

8.6 **Legal Effect.** The term of the indemnity provided for herein will commence on the date hereof. Without in any way limiting the above, it is expressly understood that Mortgagor's duty to defend and indemnify the Indemnitees hereunder shall survive: (1) any judicial or non-judicial foreclosure under the Security Instrument or transfer of the Property in lieu thereof; (2) the cancellation of the Note and the release or reconveyance or partial release or reconveyance of the Security Instrument; and (3) the Satisfaction Date (as hereinafter defined).

For purposes hereof:

"**Satisfaction Date**" shall mean the date on which the entire Loan, any other obligations under the Loan Documents, and any other obligations secured by the Security Instrument have been satisfied and performed in full; *provided, however*, in the event the Property is released prior to payment of the Loan in full pursuant to the Loan Agreement, then the date on which the Property is released; *further provided, however*, that if any such payment and performance is challenged in any proceedings under any Debtor Relief Law or otherwise, the Satisfaction Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"**Debtor Relief Law**" shall mean any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

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9. **LAWFULNESS AND REASONABLENESS.** Mortgagor warrants that all of the waivers in the Security Instrument are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Lender, Borrower, Non-Borrower Owner and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

10. **ENFORCEABILITY.** Mortgagor hereby acknowledges that: (a) the obligations undertaken by Mortgagor in this Non-Borrower Owner Rider are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Lender's consideration for entering into this transaction and any Swap Agreement between Mortgagor and Lender, Lender has specifically bargained for the waiver and relinquishment by Mortgagor of all such defenses, and (d) Mortgagor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Mortgagor does hereby represent and confirm to Lender that Mortgagor is fully informed regarding, and that Mortgagor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Mortgagor, and (iv) the legal consequences to Mortgagor of waiving such defenses. Mortgagor acknowledges that Mortgagor makes this Non-Borrower Owner Rider with the intent that this Non-Borrower Owner Rider and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

11. **MISCELLANEOUS PROVISIONS.**

11.1 **Loan Sales and Participations; Disclosure of Information.** Mortgagor agrees that Lender may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities (each, a "**Participant**"), at Lender's sole discretion. Mortgagor further agrees that Lender may disseminate to any such actual or potential Participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property and Collateral and its operation; (b) any party connected with the Loan (including, without limitation, the Borrower, the Mortgagor, any Non-Borrower Owner, any partner of Borrower or Non-Borrower Owner and any guarantor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan.

Anything in this Non-Borrower Owner Rider to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Non-Borrower Owner Rider, including this Section, Lender and any Participant may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such party from its obligations thereunder.

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11.2 WAIVER OF RIGHT TO TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, EACH PARTY TO THIS NON-BORROWER OWNER RIDER, AND BY, LENDER'S ACCEPTANCE HEREOF, LENDER, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND LENDER HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS NON- BORROWER OWNER RIDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND LENDER TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

11.3 INTEGRATION; INTERPRETATION. The Loan Documents, including this Non- Borrower Owner Rider, 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.

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