

PREPARED BY AND UPON
RECORDATION RETURN TO:
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276 Fifth Avenue, Suite 404
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BH3 DJ SUB LLC, a Florida limited liability company

as mortgagor

to

MAXIM CREDIT GROUP, LLC, a New York limited liability company

as mortgagee

MORTGAGE AND SECURITY AGREEMENT

Dated: Effective as of May 11, 2020

Property
Address: 801-819 NE 2nd Avenue
Fort Lauderdale, Florida 33304

THIS MORTGAGE AND SECURITY AGREEMENT (this "Security Instrument" or "Mortgage") is made effective as of this 11th day of May, 2020 by BH3 DJ SUB LLC, a Florida limited liability company, having a registered office and an address for purposes of notices and legal process at c/o BH3 Asset Management LLC, 21500 Biscayne Boulevard, Suite 302, Aventura, Florida 33180 (the "Borrower" or "Mortgagor"), for the benefit of MAXIM CREDIT GROUP, LLC, a New York limited liability company, with an office at 660 Madison Avenue, Suite 1700, New York, New York 10065, as mortgagee (together with its successors and assigns, "Lender" or "Mortgagee"). All capitalized terms not defined herein shall have the respective meanings set forth in the Note (defined below).

RECITALS:

Of even date herewith, Borrower is executing and delivering in favor of Lender that certain Promissory Note in the original principal amount of \$5,100,000.00 (together with all extensions, renewals, replacements, restatements or other modifications thereof, whether one or more being hereinafter collectively referred to as the "Note").

Borrower is the owner of that certain property located at 801-819 NE 2nd Avenue, Fort Lauderdale Florida 33304 (the "Mortgaged Property") and more specifically described in Exhibit A attached hereto.

Borrower desires to secure the payment of that certain loan in the original principal amount of \$5,100,000.00 (the "Loan"), as evidenced by the Note, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Security Instrument or any of the other Loan Documents (defined below) and the performance of all of the obligations due under the Note and all other documents, agreements and certificates executed and/or delivered in connection with the Loan (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "Loan Documents").

This Security Instrument is given to Lender to secure the payment of the Loan.

This Security Instrument is given pursuant to the Note, and the payment, fulfillment, and performance of the payment and certain other obligations of Borrower due thereunder and under the other Loan Documents are secured hereby in accordance with the terms hereof.

Mortgagee has agreed to make the Loan to Borrower provided that the Borrower agrees to the terms and conditions hereinafter set forth.

Borrower expects to derive benefit from the Loan and has agreed to secure the Loan by, among other things, the grant of this Mortgage and Security Agreement to Mortgagee.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagee hereby agrees as follows:

1. The foregoing recitals are true and correct and constitute a material part of this Mortgage.
2. Capitalized terms not otherwise defined herein shall have those meanings assigned to them in the Note.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in order to secure Borrower's obligations under the Note, including the payment of principal and interest, late fees,

reasonable attorneys' fees, costs and disbursements, the full and prompt payment and performance of all of the indebtedness, obligations, covenants, agreements and liabilities of Borrower to Mortgagee under this Mortgage, together with all interest and other charges thereon, whether direct or indirect, existing, contingent or otherwise, due or to become due, under or arising out of or in connection with the Note and any future modifications thereof and any other instruments or documents delivered in connection herewith or therewith, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor has mortgaged, granted, bargained, sold, conveyed, liened, released, transferred, warranted and confirmed, and does hereby mortgage, grant, bargain, sell, convey, lien, release, transfer, warrant and confirm unto Mortgagee, and to all its successors and assigns forever, all of Mortgagor's right, title and interest in and to the following described property (collectively, the "Property"):

A. The Mortgaged Property, together with all right, title and interest in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Mortgaged Property, (b) any strips or gores between the Mortgaged Property, and any abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the Mortgaged Property (all of the foregoing, the "Land");

B. All buildings, structures and other improvements or any part thereof, now or hereafter situated on or under the Land and all restorations and replacements thereof (the "Improvements");

C. All fixtures and systems and articles of personal property, of every kind and character, now owned or hereafter acquired by Mortgagor (Mortgagor's successors or assigns), which are now or hereafter attached to the Land or the Improvements, or used in or necessary to complete the proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, all of the following items now owned or hereafter acquired by Mortgagor, any and all fixtures, systems, heating, ventilating, air conditioning, refrigerating, plumbing, water, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage of serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, floor coverings, wall coverings, windows, window screens and shades, awnings, fans, motors, engines and boilers; motor vehicles; decorative items and art objects; and files, records and books of account (all of which are herein sometimes referred to together as "Accessories");

D. All (a) plans and specifications for the Improvements; (b) approvals, entitlements and contracts relating to the Land or the Improvements or the Accessories or any part thereof; (c) deposits including, but not limited to, Mortgagor's rights in tenants' security deposits (if any), deposits with respect to utility services to the Land or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other Loan Document (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, bonds, certificates and other rights and privileges obtained in connection with the Land or the Improvements or the Accessories or any part thereof; (e) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, the Improvements and the Accessories; and (f) other properties, rights, titles and interests, if any, specified in any Section or any Article of this Mortgage as being part of the Property;

E. All proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, (i) the properties, rights, titles and interests referred to above in paragraphs (A), (B), (C) and (D); (ii) any sale, lease or other disposition thereof; (iii) each policy of insurance relating thereto (including premium refunds); (iv) the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and (v) any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and

F. All other interests of every kind and character, and proceeds thereof, which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (A), (B), (C), (D), (E) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

TO HAVE AND TO HOLD the Property, unto Mortgagee and Mortgagee's successors, substitutes or assigns, for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anyway appertaining or belonging thereto, subject only to the "Permitted Encumbrances" listed on Exhibit B attached hereto to the extent that the same are valid, subsisting and affect the Property.

PROVIDED ALWAYS, that these presents are upon the express condition, that if Borrower shall pay unto Mortgagee, its successors or assigns, all Indebtedness due under the terms of the other Loan Documents and shall pay and perform the Obligation (as hereinafter defined), without any deduction or credit for any amount payable for taxes in accordance with the terms of the said Note, and hereof, then this Mortgage shall cease, determine and become null and void; otherwise to remain in full force and effect, and upon payment in full of the Indebtedness, Mortgagee shall promptly execute and deliver to the Mortgagor a recordable satisfaction of this Mortgage, or, to the extent so requested by Mortgagor, in Mortgagor's sole discretion, Mortgagee shall promptly execute and deliver to the Mortgagor an assignment of this Mortgage to Mortgagor's designee, provided that Mortgagor pay all reasonable costs customarily associated therewith. By its acceptance of this Mortgage, Lender agrees to accept payment of the Indebtedness and payment or performance by the Mortgagor of any or all of its Obligations under this Agreement or any of the other Loan Documents.

ARTICLE I. THE OBLIGATION

Section 1.1 Mortgage. The expression "this Mortgage," as used herein, shall mean this Mortgage and Security Agreement, and all rights, title, interest, liens, security interests, powers and privileges created hereby or arising by virtue hereof. This Mortgage is given to secure payment and performance of the Obligation, including the indebtedness described in Section 1.2.

Section 1.2 Obligation.

(a) The word "Obligation", "Obligations" or the word "Indebtedness," as used herein, shall mean all of the indebtedness, obligations and liabilities described as follows solely in connection with the Loan:

(i) the indebtedness, obligations and liabilities of Borrower arising under the Note, and any other documents evidencing, securing, or now or hereafter executed in connection with the Loan and the Note (each a "Loan Document"; collectively the "Loan Documents"); and

(ii) all other and additional indebtedness, liabilities and obligations, of every kind and character, of Borrower now or hereafter existing in favor of Mortgagee in connection with the Loan, regardless of whether they are direct, indirect, primary, secondary, joint, several, joint and several, liquidated, unliquidated, fixed or contingent, and regardless of whether the same may, prior to their acquisition by Mortgagee, be or have been payable to some other person or entity, it being the intention and contemplation of Borrower and Mortgagee that future advances may be made to Borrower by Mortgagee for a variety of purposes, that Borrower may guarantee (or otherwise become directly or contingently obligated with respect to) the obligations of others to Mortgagee, and that Mortgagee may, from time to time, acquire from others obligations of Borrower to such others, or that Borrower may otherwise hereafter be or become further indebted to Mortgagee, and that payment and repayment of all of the foregoing are intended to and shall be part of the indebtedness secured hereby; and any and all renewals, modifications, rearrangements, amendments or extensions of all or any part of all of the foregoing indebtedness, obligations and liabilities.

(b) Each party at any time claiming an interest in or lien or encumbrance against the Property agrees that all advances made by Mortgagee from time to time under any of the Loan Documents, and all other portions of the Obligation herein referred to, shall be secured by this Mortgage with priority as if all of the same had been advanced, had arisen or become owing or performable on the date hereof, no reduction of the outstanding principal balance under the Note shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Mortgage shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligation without loss of priority until the Obligation is fully paid, performed and satisfied in accordance with the Note, as applicable, all agreements and obligations, if any, of Mortgagee for further advances have been terminated and this Mortgage has been released of record by Mortgagee.

ARTICLE II
CERTAIN REPRESENTATIONS, WARRANTIES
AND COVENANTS OF MORTGAGOR

Section 2.1 **Payment and Performance of Obligations.** Borrower shall pay and perform the Obligations when due in accordance with the provisions of the Loan Documents; and if any Default or Event of Default (as hereinafter defined) shall exist, Mortgagee shall have the remedies granted to Mortgagee hereunder, under the Loan Documents and under applicable law.

Section 2.2 **Authority.** Mortgagor is a Florida limited liability company and has all requisite power and authority and legal right to own its Property, to carry on its business as it is now being conducted, to enter into this Mortgage and the other Loan Documents entered into by it and to perform all of its obligations hereunder and thereunder. The execution and delivery by the Borrower of this Mortgage, and the performance of its obligations thereunder, have been duly authorized by all necessary limited liability company action and does not and will not: (i) require any further action, consent or approval on the part of the members of the Borrower; or (ii) to the Borrower's knowledge and except as would not reasonably be expected to have a material adverse effect on the Borrower, violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower.

Section 2.3 **Indebtedness Secured.** This Mortgage has been given and is intended to secure the full and prompt payment and performance of each and all of the Obligations and any renewal, extension, modification or replacement of any of the Obligations. Except as otherwise provided herein, this Mortgage shall remain in full force and effect with respect to all of the Property until all the Obligations shall have been paid and performed in full. If Borrower shall well and truly pay and perform

the Obligations at the time and times, and in the manner mentioned in the Loan Documents and shall well and truly abide by and comply with each and every term, covenant and condition set forth in the Loan Documents, then this conveyance shall be and become null and void and shall be released at the expense of Borrower but if there shall exist any Event of Default, then Mortgagee shall have the remedies granted to Mortgagee hereunder, under the Loan Documents and under applicable law.

Section 2.4 Title to Property.

(a) Based on and subject to those exceptions to title specifically set forth in the title policy issued or to be issued by Chicago Title Insurance Company to the Mortgagee and insuring the lien of this Mortgage, the Borrower represents and warrants that, to the Borrower's knowledge, (i) it has good and valid fee simple title to the Land, free and clear of all Liens, other than Permitted Encumbrances; (ii) it has the good and unrestricted right, full power and lawful authority to mortgage the Property; (iii) it has obtained any and all consents and approvals necessary or required for the making of this Mortgage; and (iv) to its knowledge, the making of this Mortgage will not violate any contract or agreement to which it is a party.

(b) When recorded, this Mortgage will create a valid and perfected Lien and security interest in and to those portions of the Property that constitute real property and fixtures. Upon the filing of the UCC Financing Statements this Mortgage will create a valid and perfected Lien and security interest in those portions of the Property that constitute personal property.

(c) As of the date hereof, Mortgagor has no defenses or offsets or counterclaims to this Mortgage or to any of the Obligations.

(d) Intentionally Omitted.

(e) Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting Mortgagee's security and rights under this Mortgage.

Section 2.5 Liens. Borrower shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien" or "Lien"), whether senior or junior in lien to this Mortgage, other than the lien of this Mortgage and the Permitted Encumbrances; provided, however, that nothing contained in this Section 2.5 shall require Borrower to pay any real estate taxes or other Impositions (as hereinafter defined) prior to the time when same are required to be paid under this Mortgage. Borrower will keep and maintain the Property free from all liens arising in connection with the supply of labor or materials relating to the construction, alteration, modification or repair of the Improvements or the Property. Borrower agrees to discharge the same of record by payment or bond within ninety (90) days after the filing or notice thereof. Notwithstanding anything to the contrary contained herein, in no event shall Borrower do or permit to be done, or omit to do or permit the omission of, any act or thing, where such act or omission would impair the security of this Mortgage. Borrower shall not solely through its own acts directly create against the Property or any portion thereof, or against the rents, issues and profits therefrom any Lien, whether senior or junior in lien to this Mortgage, other than the lien of this Mortgage and the Permitted Encumbrances and any Lien created, consented to or permitted by or through Borrower; provided, however, that nothing contained in this Section 2.5 shall require Mortgagor to pay any real estate taxes or other Impositions (as hereinafter defined) prior to the time when same are required to be paid under this Mortgage.

Section 2.6 Impositions. The Borrower shall (subject to Section 2.9 hereof) pay or cause to be paid all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and all other governmental levies and charges, in each case prior to the imposition of any penalty thereon (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Property or any part thereof, or which shall become payable with respect thereto. Mortgagor shall endeavor to deliver to Mortgagee, within thirty (30) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a certified true copy of the official receipt evidencing such payment or other proof of payment reasonably satisfactory to Mortgagee.

Section 2.7 Insurance.

(a) Borrower shall provide, at its sole cost and expense, and keep in force for the benefit of Mortgagee, with respect to the Land, Improvements and Accessories: (i) insurance against loss or damage by fire, other hazards by so-called "all risk" and "extended coverage," and such other casualties and hazards as Mortgagee shall reasonably require from time to time; (ii) flood insurance if the Property is located in a flood hazard area to the extent that owners of similar buildings in the same county as the Property maintain such insurance; (iii) war risk insurance, when obtainable from the United States government or any agency thereof; (iv) rent insurance; (v) comprehensive general liability insurance against claims for bodily injury, death or property damage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; (vi) water damage legal liability insurance; (vii) workers' compensation insurance as required by law, if and when applicable; (viii) business interruption insurance; and (ix) prior to any construction on the Property, builder's risk insurance in an amount not less than the replacement value of the Improvements.

(b) The policies of insurance required by Subsection 2.7(a) hereof shall be with companies, in forms and amounts, and for such reasonable periods as Mortgagee shall require from time to time, and shall insure the respective interests of the Mortgagee. The full amount of the proceeds of any insurance covering real property or tangible personal property subject to a lien or security interest in favor of Mortgagee granted pursuant to any of the Loan Documents in the case of each separate loss in excess of \$250,000.00 (a "Major Loss"), other than the proceeds from the insurance required under clauses (vi), and (vii) of Subsection 2.7(a) hereof, shall be payable to Mortgagee pursuant to a non-contributing loss payee endorsement reasonably satisfactory to Mortgagee. Certificates of Insurance and true photocopies of the original policies and renewals thereof covering the risks required to be insured against in accordance with this Mortgage, bearing satisfactory evidence of payment of all premiums thereon for the succeeding one year period, shall be delivered to and held by Mortgagee, and within five (5) business days of demand by Mortgagee Borrower shall deliver to Mortgagee the original policies and renewals, replacements or endorsements thereof and shall assign to Mortgagee said policies of insurance as additional security for the indebtedness and other obligations secured hereby. At least twenty (20) days prior to the expiration of each policy required to be provided by Borrower, Borrower shall deliver Certificates of Insurance evidencing renewal or replacement thereof along with true photocopies of any endorsements or any renewal or replacement policies to Mortgagee with satisfactory evidence of payment of all premiums thereon. All insurance policies required hereunder shall be issued by companies of good standing in the State of Florida (the "State") and rated by A.M. Best's Insurance Reports (or any successor publication of comparable standing) as A:VIII or better (or the equivalent rating in the case of a successor publication).

(c) All insurance policies required in accordance with this Mortgage shall: (1) include effective waivers by the insurer of all rights of subrogation against Mortgagor, Mortgagee, any lessee or other occupant of all or any part of the Property, or any other person which controls, is controlled by or is under common control with any of the foregoing; (2) provide that the full amount of the proceeds of such insurance (other than the proceeds from the insurance required under clauses (vi) and (vii) of Subsection 2.7(a) hereof) shall, in the case of each separate Major Loss, be payable notwithstanding: (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured; (B) the occupation or use of the Improvements or the Land for purposes more hazardous than permitted by the terms thereof; (C) any foreclosure or other action or proceeding taken by Mortgagee pursuant to any provision of this Mortgage; or (D) any change in title to or ownership of the Property; (3) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Mortgagee of written notice thereof; (4) include "replacement cost endorsements" if available; and (5) be reasonably satisfactory to Mortgagee in all other respects. Mortgagor shall not permit any condition to exist with respect to the Property which would wholly or partially invalidate any of the insurance thereon.

(d) Mortgagee shall have the right but not the obligation to adjust and compromise any claims under such insurance in the case of a Major Loss, collect and receive the proceeds thereof and execute and deliver all proofs of loss, receipts, vouchers, checks, drafts, releases and other documents in connection with such claims. During the existence of an Event of Default, Mortgagee is hereby irrevocably appointed attorney-in-fact for the Mortgagor (which appointment is coupled with an interest) for such purposes, and the Mortgagor shall, upon reasonable request of Mortgagee, promptly execute any proofs of loss, receipts, vouchers, checks, drafts, releases, and other documents in connection with such claims.

(e) Mortgagee may deduct from the proceeds of the insurance required to be obtained by Borrower pursuant to Subsection 2.7(a) hereof, other than the insurance required under clauses (vi) and (vii) thereof, any actual, reasonable out of pocket expenses (including, without limitation, reasonable attorneys' fees, attorney's accountant fees, paralegal and law clerk (and similar person's) fees, including but not limited to, fees at the pretrial, trial and appellate levels (collectively, "Attorneys' Fees") and disbursements) incurred by it in connection with obtaining such proceeds, and Mortgagee shall release the balance of such proceeds to Mortgagor for the Restoration of the Property or at the Borrower's option, apply the balance of such proceeds in reduction or satisfaction of all or part of the Obligations, whether or not then due and payable (in such order of priority as Mortgagee shall elect). Upon the occurrence and continuance of any Event of Default, all of the Mortgagor's right, title and interest in and to all such policies, including unearned premiums thereon, shall be deemed assigned to Mortgagee. The application of such insurance proceeds toward the payment or performance of the Obligations shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the remainder of the Obligations and the interest thereon in accordance with the provisions of the Loan Documents.

(f) In the event of a sale, transfer or other disposition by Mortgagee of any of the property of Mortgagor, the purchaser, assignee or transferee of such property shall succeed to all of the rights of Mortgagee, including any right to unearned premiums, in and to all policies of insurance which Borrower is required to maintain under this Section 2.7 and to all proceeds of such insurance.

(g) Borrower's policies of insurance may be maintained under "blanket policies" insuring the Property and other property owned by Borrower, provided that such blanket policies shall: (i) separately set forth the amount of the insurance applicable to the Property (except as to the insurance required under clauses (iv), (v) and (vi) of Subsection 2.7(a) hereof), (ii) provide a separate aggregate for each location insured under such policy in an amount not less than \$10,000,000.00, (iii) otherwise comply

with the provisions of this Section, and (iv) afford the same protection to Mortgagee as, in Mortgagee's reasonable judgment, would be provided by policies individually applicable to the Property.

(h) Borrower shall not obtain or permit to be obtained separate insurance concurrent in form or contributing in the event of loss with the insurance Borrower is required to maintain under the provisions of this Section unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a standard mortgagee endorsement.

(i) Intentionally Deleted.

Section 2.8 Condemnation.

(a) Mortgagor shall give notice to Mortgagee promptly upon Mortgagor's learning of the commencement of any action or proceeding to take all or any part of the Property by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate together with Mortgagor in any such actions or proceedings in the name of Mortgagee, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall reasonably request to permit such participation. Mortgagor shall not settle any such action or proceeding or agree to accept any award or payment without the prior consent of Mortgagee (which consent Mortgagee may deny in its sole discretion), and the total of all awards made or allowed with respect to all right, title and interest in and to the Property or the portion or portions thereof taken or affected by such condemnation or eminent domain proceeding and any interest thereon (hereinafter collectively called the "Award") is hereby assigned to and shall be paid to Mortgagee and the amount received shall be retained and applied as provided in Subsection 2.8(b) hereof.

(b) The Obligations may be accelerated at the option of Mortgagee as a result of the exercise of the right of condemnation or eminent domain in respect of all of the Property or any part of the Property which may, in the collective judgment of the Mortgagor and Mortgagee, make impracticable the restoration of the Property in a manner which will permit the Property to be used for the intended purposes for which it was to be used prior to the exercise of such right of condemnation or eminent domain, in which event Mortgagee shall retain and apply the Award toward payment and performance of the Obligations (in such order of priority as Mortgagee shall elect); provided, however, that to the extent that the Award received by Mortgagee shall exceed the amount required to satisfy in full the then total amount of the Obligations, Mortgagee shall pay over to the Mortgagor the amount of such excess and provided, further, that until the actual vesting of title in such proceeding, the Obligations shall continue unimpaired. If there is a taking of a portion of the Property in any such proceeding and Mortgagee does not accelerate the Obligations, then the Award shall be paid over in whole or in part to pay or reimburse the Mortgagor for the cost of restoring or reconstructing the Improvements and the Accessories in a manner and on conditions reasonably satisfactory to Mortgagee.

(c) The application of the Award toward payment or performance of the Obligations shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the balance of the Obligations in accordance with the provisions of the Loan Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, Attorneys' Fees and disbursements) shall, on demand, be promptly due from Borrower to Mortgagee and the same shall be added to the Obligations and shall be secured by this Mortgage.

(d) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or material decrease in value of the Property by any public or quasi-public authority or corporation, the Obligations shall continue to bear interest at the rate payable pursuant to the Note until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

Section 2.9 Restoration. If: (a) the Improvements or Accessories shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain; and (b) Mortgagee releases or agrees to release to Mortgagor the proceeds of any insurance payable to Mortgagee or the proceeds of the Award, less any actual, reasonable out of pocket expenses (including, without limitation, reasonable Attorneys' Fees and disbursements) incurred by Mortgagee in obtaining same, and upon conditions reasonably satisfactory to Mortgagee; then Borrower shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee, which approval shall not be unreasonably withheld, conditioned, delayed or denied. Mortgagor shall give prompt notice to Mortgagee of any damage or destruction to the Property by fire or other casualty the cost of which would cost more than \$250,000.00 to repair.

Section 2.10 Intentionally Omitted.

Section 2.11 Maintenance and Alterations.

(a) Borrower shall put, keep and maintain in all material respects the Land, Improvements and Accessories, and the sidewalks, curbs and alleys adjoining or abutting the same in the same or better order, condition and repair as they were in on the date hereof, and Borrower shall make or cause to be made, as and when the same shall become necessary, all material structural and non-structural repairs, whether exterior or interior, ordinary or extraordinary, foreseen or unforeseen in a good and workmanlike manner. Mortgagor shall not knowingly commit or suffer any deliberate waste or abandonment of the Land, the Improvements or Accessories, and shall not demolish or remove or permit the demolition or removal of the Improvements or Accessories, or any part thereof, without the prior consent of Mortgagee in each instance, which consent shall not be unreasonably withheld, delayed, conditioned or denied.

(b) Mortgagor shall not make any material alterations to all or any part of the Improvements or Accessories (unless same would not be reasonably likely to have a material adverse effect on the Property), or construct additions to all or any part of the Improvements or construct any new or additional buildings on the Property which are not in accordance or contemplates with the plans for the Property previously delivered to Mortgagee, without the prior consent of Mortgagee in each instance (which consent shall not be unreasonably withheld, delayed, conditioned or denied), and then only upon terms and conditions reasonably satisfactory to Mortgagee. Notwithstanding any other provision of this Security Instrument to the contrary, Mortgagor shall be permitted (without the consent of Mortgagee) to continue to construct or improve its planned renovation of the project on the Mortgaged Property (the "Project").

Section 2.12 Compliance with Laws.

(a) Borrower shall promptly comply with, or cause to be complied with, in all material respects, all applicable present and future laws, statutes, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or relating to all or any

part of the Property and the sidewalks, curbs and alleys adjoining or abutting the Land, and the condition, repair, maintenance, use and occupation thereof if non-compliance therewith would result in imposition of any fine, penalty, lien or criminal liability on the Borrower or the Property, or would result in commencement of proceedings for foreclosure or forfeiture of the Mortgagor's interest in the Property; and Borrower shall promptly make, or cause to be made, all changes, alterations and improvements to the Property reasonably necessary to comply in all material respects with all such present and future laws, statutes, ordinances, rules, regulations and other requirements to the extent aforesaid. Borrower shall operate the Property in all material respects so as to cause compliance with all applicable laws, statutes, ordinances, rules, regulations and other legal requirements. Mortgagor shall not initiate, support, assist or acquiesce in any change in the zoning classification of the Property or any part thereof, without the prior consent of Mortgagee, which consent shall not be unreasonably withheld, delayed, conditioned or denied.

(b) Mortgagor shall promptly perform and observe, or cause to be performed and observed, in all material respects, all of the terms, covenants and conditions of all instruments of record affecting the Property, non-compliance with which may materially and adversely affect the security of this Mortgage, or shall impose any material duty or obligation upon the Borrower or any tenant or other occupant of the Property or any part thereof, and the Borrower shall do or cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor, or of constituting any portion of, the Property.

(c) Notwithstanding anything to the contrary contained herein, Mortgagor shall not use or permit the use of the Property in any manner which would materially impair or adversely affect the value or utility of the Property or increase the risk of fire or other casualty.

Section 2.13 Leasing.

(a) Mortgagor shall not, other than in the ordinary course of Mortgagor's business, without Mortgagee's prior written approval in each instance, which approval shall not be unreasonably withheld, delayed, conditioned or denied: (i) enter into or change, amend or modify, in any manner materially adverse to Mortgagor, (1) any lease, license or other agreement for the rental or occupancy (each a "Lease") of commercial or retail space in the Mortgaged Property, or (2) any single Lease, license or other agreement, or series of related agreements, for the rental or occupancy of more than 10% of the Mortgaged Property, (ii) terminate or cancel, or accept a surrender or suffer or permit any cancellation, termination or surrender or suffer or permit any cancellation, termination or surrender of, any of the foregoing Leases, in any manner whatsoever other than, in any case, for non-payment of rent, or (iii) receive, collect or accept, or permit the receipt, collection or acceptance of, any prepayment of rent or other charges under any such Lease for more than one month in advance, except that Mortgagor may, at the time of the execution or renewal of any Lease, accept rent security deposits, which shall be held by the Borrower in accordance with Subsection 2.13(b) hereof. For the avoidance of doubt, as used in this Section, a "Lease" shall not include the rental of residential space to transient occupants.

(b) Mortgagor shall at all times fully and promptly comply with, keep and perform in all material respects, all of the terms, covenants, provisions and conditions of any and all Leases on the part of the landlord thereunder to be complied with, kept and performed, and will not do or permit anything to be done which will constitute a material breach of any of the terms, covenants, provisions and conditions of any of such Leases. Mortgagor shall enforce the performance and observance, in all material respects, of each and every material term, covenant, provision and condition of each and every Lease to be performed or observed on the part of the tenant thereunder. Mortgagor shall give prompt notice to Mortgagee of: (i) any notice received by Mortgagor of any default by the landlord or the lessee under any Lease; (ii) the commencement of any action or proceeding by any tenant or lessor the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable

thereunder; or (iii) the interposition by any tenant of any defense or counterclaim in any action or proceeding brought by Mortgagor against such tenant; and Mortgagor will cause a copy of any process, pleading or notice received or served by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

Section 2.14 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to each Lease whether now existing or hereafter entered into, together with the room revenues, occupancy charges, issues and profits ("Rents") of each such Lease as further security for the payment and performance of the Obligations, and the Mortgagor grants to Mortgagee the right to enter the Property (via a court appointed receiver) for the purpose of collecting the same and to let the Property, or any part thereof, and to apply said Rents after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are fully paid and performed. Mortgagee hereby waives the right to enter the Property (via a court appointed receiver) for the purpose of collecting Rents, and Mortgagor shall have a revocable license to collect, receive and use said Rents unless an Event of Default shall exist and remain continuing under this Mortgage; provided, however, that if an Event of Default shall exist and remain continuing, such license shall immediately and automatically terminate, without the necessity of any action by Mortgagee or any other Person, and Mortgagee and any receiver appointed under this Mortgage shall have the right to exercise all of the rights and remedies provided under this Mortgage with respect to the Rents and Leases, and otherwise, under applicable law. Mortgagor shall, from time to time after reasonable request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, separate assignments confirming the foregoing assignment. Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any Lease or other agreement affecting all or any part of the Property, and the Borrower hereby agrees to indemnify Mortgagee for and save it harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Property upon Mortgagee, nor make Mortgagee liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Property resulting in injury, death or property damage. Mortgagee or the receiver shall be liable to account only for rents and profits actually received by Mortgagee or the receiver as the case may be. The assignment of Leases and Rents contained in this Mortgage is intended to provide Mortgagee with all the rights and remedies of lenders pursuant to Section 697.07 of the Florida Statutes ("Section 697.07"), as may be amended from time to time. However, in no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Mortgagee, including but not limited to, the appointment of a receiver as provided in this Mortgage, nor shall any provision in this Section diminish, alter, impair or affect any rights or powers of the receiver in law or equity. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Borrower to Mortgagee, and shall be in addition to any rights arising under Section 697.07.

Section 2.15 No Claims Against Mortgagee.

(a) Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Mortgagee in respect of labor or services or the furnishing of any materials or other property or

any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

Section 2.16 Mortgagee's Right to Perform the Mortgagor's Covenants.

(a) If Borrower shall fail to fully and promptly pay, perform or observe any of the Obligations after the expiration of any applicable notice and grace period, then, in any such event, Mortgagee may, at its option, but without any obligation to do so, and without waiving or releasing the Mortgagor from any of the Obligations, pay any Obligation or cost or perform any Obligation or act or take such action as Mortgagee deems reasonably necessary or desirable in order to cause such Obligation to be paid, performed or observed, as the case may be. The Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have the right, upon reasonable prior notice to the Mortgagor, to enter in and upon the Property or any part thereof (via a court appointed receiver) to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable for such purpose. Mortgagee may pay and expend such sums of money as Mortgagee, in its sole but reasonable discretion, deems necessary or desirable for any such purpose, and Borrower hereby agrees to pay to Mortgagee, on demand, all reasonable, actual out of pocket sums so paid or expended by Mortgagee, together with interest thereon from the date of each such payment or expenditure at the Default Rate established in the Note (hereinafter, the "Default Rate"). Any interest which has been paid by Borrower to Mortgagee pursuant to this Section 2.16 in excess of the maximum interest rate permitted by law shall be deemed payment in reduction of the principal amount of the Obligations. All sums paid or expended by Mortgagee pursuant to this Section 2.16, and the interest thereon, shall be added to and included in the Obligations and shall be secured by the lien of this Mortgage.

(b) Borrower hereby irrevocably appoints Mortgagee its true and lawful attorney-in-fact in its name or otherwise, at any time during which an Event of Default shall exist and remain continuing, to do any and all acts and to execute any and all documents which may be reasonably necessary or, in the opinion of Mortgagee, desirable to preserve any rights of Borrower in, to or under the Leases or to effectuate any rights of Mortgagee under this Section 2.16 or contained elsewhere in this Mortgage. The foregoing power of attorney is coupled with an interest.

Section 2.17 Certificates of Borrower. Borrower, upon reasonable request of Mortgagee, shall certify to Mortgagee or to any proposed assignee of this Mortgage, by an instrument in form reasonably satisfactory to Mortgagee, duly acknowledged, the amount then owing on the Obligations, the date to which any interest thereon has been paid, and whether any offsets or defenses exist against payment thereof or performance of any Obligation, within ten (10) business days if the request is personally delivered, or within fifteen (15) business days if the request is made by mail. Mortgagee and any proposed assignee of this Mortgage shall have the right to rely on such certification.

Section 2.18 Inspection and Financial Reports. Mortgagee and its authorized agents and employees shall have the right, at Mortgagee's option, to enter into the Property at all reasonable times during normal business hours following reasonable prior notice to Mortgagor and subject to the rights of tenants under the Leases, if any, for the purpose of inspecting the same. Mortgagor will furnish to Mortgagee, within thirty (30) days after a request therefor, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Property, and all disbursements made in connection therewith, and containing a list of the names of all tenants and occupants of the Property, the portion or portions of the Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

Section 2.19 Accounting and Other Information. Borrower will keep books and records of account in accordance with generally accepted accounting principles, in which full, true and correct entries shall be made of all dealings and transactions relative to the Borrower and the Property. Said books and records of account shall be made available to Mortgagee, at an office of the Borrower and shall be open to the inspection of Mortgagee and its accountants at regular business hours following reasonable prior notice to the Borrower. Mortgagor further covenants that they will, within a reasonable time after any request by Mortgagee, furnish or cause to be furnished to Mortgagee such other information with respect to the Property as Mortgagee may from time to time reasonably request.

Section 2.20 Assignment.

(a) Subject to Section 2.20(c) below, Mortgagee shall have the right to sell, assign, participate, transfer, syndicate, securitize or dispose of all or any part of its interest in the Loan without the consent or approval of the Borrower and subject to Section 2.20(c) below, the Borrower shall promptly cooperate with Mortgagee to accomplish any and all of the foregoing, including in connection with obtaining and providing the information and materials described below.

(b) Subject to Section 2.20(c) below, in connection with any transfer by Mortgagee of an interest in the Loan described in Section 2.20(a) above, Mortgagee may collect, retain, release, disclose, exchange, share, transfer and assign from time to time, as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential loan defaults, lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by it relating to the Borrower, the Property or the Loan (both before and after any Event of Default thereunder, but subject to the terms of Section 2.20(a) above) without restriction or the consent of the Borrower (and the Borrower hereby irrevocably consents thereto):

(i) to any Person who has, who acquires, or who proposes to acquire an interest in the Loan;

(ii) to the respective third-party advisors and agents (such as lawyers, accountants, auditors, consultants, appraisers and credit verification sources) of such Persons;

(iii) to any group in connection with any offering memorandum, prospectus or other disclosure document relating to any sale, syndication or securitization of the Loan (including all initial and continuing disclosure requirements), regardless of format or scope of distribution;

(iv) to other interested persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or any related securitization or any interest therein, regardless of format or scope of distribution;

(v) to any governmental authority having jurisdiction over Mortgagee or over any sale, syndication or securitization of the Loan or any trade of any interest therein;

(vi) to any other person in connection with the sale, syndication or securitization of the Loan, including insurers and rating agencies; and

(vii) to any other person in connection with the collection or enforcement proceedings taken under or in respect of the Loan.

(c) In connection with any sale, assignment, participation, transfer, syndication, securitization or disposition of all or any part of Mortgagee's interest in the Loan and any other matters covered by this Section 2.20, Borrower and any guarantors of the Loan (collectively, "Guarantors") shall not be required to respond to or comply with Lender's requests unless all of the following are satisfied: (i) the total out of pocket costs and expenses incurred or to be incurred by Borrower and Guarantors to comply with or otherwise satisfy all requirements of this Section 2.20 shall not exceed an aggregate of \$2,500.00, (ii) Lender must agree to pay for and must pay for all Borrower's and Guarantors' costs and expenses in excess of such \$2,500.00 cap, including attorneys' fees and all other costs and expenses, (iii) there is no adverse change in the economic or other financial terms of the Loan, (iv) the liabilities, obligations or expenses of Borrower or Guarantors under the loan Documents are not increased, (v) Borrower and Guarantors are not required to provide any indemnifications of Lender or any Lender party or to any assignee in connection with same, and (vi) Borrower shall not be required to review or certify as to the accuracy of any Lender offering package or other materials in connection with same except for any financial information previously provided by Borrower and Guarantors (the "Required Financial Disclosures") to Lender pursuant to the express terms of the Loan Documents. Except for an assignment, sale or transfer to the Borrower or its designee of the Loan and/or all or any portion of Mortgagee's rights and obligations under this Mortgage, the Note and other Loan Documents, in no event shall all or any portion of Mortgagee's rights and obligations under this Mortgage, the Note and other Loan Documents be assigned, sold or otherwise transferred to an assignee that is in direct or indirect competition with Borrower, Guarantors or any of the principals of the foregoing.

Section 2.21 Due on Sale.

(a) The Property may be sold, transferred or conveyed, in whole, but not in part (a "Conveyance"), only if at the time of the Conveyance, Borrower shall pay to Mortgagee (i) the full amount of all principal and interest due on the Note as of such date, including the Make-Whole Amount (if applicable) under the Note, (ii) all actual costs and expenses, including reasonable attorney's fees and expenses, that Mortgagee incurs arising from or in connection with the Conveyance, and (iii) any other portions of the Obligations then due, or that become due, arising from or in connection with the Conveyance.

(b) Mortgagor shall not lease the entire premises, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, delayed, conditioned or denied. No mortgage, deed of trust, lien or other encumbrance shall be made or filed against or with respect to the Property, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, delayed, conditioned or denied. No conditional bill of sale or chattel mortgage shall be made or filed against any Accessories without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, delayed, conditioned or denied. If any such conditional bill of sale or chattel mortgage is made or filed with or without Mortgagee's prior written consent, then after the occurrence and during the continuance of an Event of Default all right, title and interest of the Borrower in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

(c) If, without the consent of Mortgagee, the Borrower enters into an installment sale contract or sells, conveys, mortgages or transfers all the Property, or any material part thereof, or leases all or substantially all of the Property or the Improvements, whether voluntary or involuntary, or by operation of law or otherwise, then Mortgagee shall have the right, at its option, at any time thereafter to declare the Obligations immediately due and payable. No waiver of this right shall be effective, nor shall any delay in the exercise thereof operate as a waiver thereof, unless Mortgagee shall have executed and delivered to the Mortgagor a written waiver of such right.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the transfers set forth on Exhibit C (collectively, the "Permitted Transfers") shall be permitted under this Mortgage and other Loan Documents and shall not constitute a Default or Event of Default under this Mortgage or any other Loan Documents, and shall not require Mortgagee's prior written consent. Provided however, Mortgagor will provide Mortgagee with notice and evidence of such Permitted Transfer and any costs or fees incurred by the Lender in connection with such Permitted Transfer, including reasonable and actual legal fees or the cost of a revised or new Eagle 9 Policy in connection with the Permitted Transfer shall be paid by the Mortgagor.

Section 2.22. Single Purpose Entity Covenants. Borrower covenants and agrees that it shall comply with the "separateness covenants" set forth in its operating agreement as in effect on the date hereof.

ARTICLE III.
RESPECTING DEFAULTS AND REMEDIES OF MORTGAGEE

Section 3.1 Event of Default. The occurrence of any of the following after the expiration of the notice and cure period set forth below shall constitute a "Default" or an "Event of Default" as used herein:

- (a) the failure of Borrower to make any payment of any installment of principal or interest within ten (10) days after the date such payment is due under the Note;
- (b) the failure of Borrower to pay any other sum when due hereunder or under any other Loan Document (with the exception of the Note, as discussed in Section 3.1(a) above), within ten (10) days after receipt of notice that such amount is due;
- (c) any material representation or warranty of the Borrower made herein or in any other Loan Document or in any other writing given to Mortgagee in connection with the Loan shall have been materially false or misleading in any material adverse respect as of the time when the same shall have been made or remade (or deemed to have been remade) where such material representation or warranty, if curable, is not cured within thirty (30) calendar days after Lender gives written notice thereof to Mortgagor (or if such material representation or warranty can be cured but not within such time period and Borrower is diligently attempting to cure, then the cure period will be ninety (90) days in aggregate).;
- (d) except as expressly permitted under this Mortgage or any other Loan Document, the sale, conveyance, assignment, transfer or other divestiture of the Borrower's title to the Mortgaged Property,
- (e) the granting or existence of any lien, security interest in, or other encumbrance on any of the collateral or any interest therein, whether voluntary or involuntary, except as permitted in this Security Instrument or in a Loan Document applicable to such portion of the collateral, provided, however, in the case of any involuntary lien, such lien shall not constitute an Event of Default hereunder unless any such lien is not bonded or discharged of record within the latter of (i) ninety (90) days after same is filed or (ii) forty-five (45) days after notice thereof is provided to the Mortgagor;
- (f) any merger, consolidation, liquidation or dissolution, or the sale or transfer of all or substantially all of the assets of Borrower, except as permitted in this Security Instrument or in any other Loan Document;

(g) the use of proceeds of the Loan by Borrower for any purpose other than the purpose permitted by this Security Instrument;

(h) for any reason, in any of the following cases due to the action or actions of Mortgagor, any Loan Document shall cease to be in full force and effect, the lien on the collateral purported to be created thereby shall cease to be or are not valid and perfected liens having priority over all other liens except for Permitted Encumbrances;

(i) one or more judgments or decrees shall be entered against the Borrower which is not fully covered by insurance shall not have been paid, vacated or discharged, stayed or bonded pending appeal within ninety (90) days after the Borrower receives written notice or otherwise has knowledge of the entry thereof;

(j) if (i) Borrower shall commence any case, proceeding or other action (A) under any Creditors Rights Laws (as defined below), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; (iii) there shall be commenced against Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; (iv) Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower shall generally not, or shall be unable to, or shall admit in writing (to any party other than Mortgagee) its inability to, pay its debts as they become due; (as used herein, "Creditors Rights Laws" shall mean with respect to any person any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors); and

(k) any default in the performance or observance of any other term, covenant or agreement to be performed by the Borrower in this Mortgage or in any other Loan Document (other than the Events of Default described above) within thirty (30) days after notice thereof; provided, that if such default is not susceptible of cure within such thirty (30) day period, then within such additional time as the Borrower shall require to cure such default, so long as the Borrower commences such cure within the thirty (30) day period and diligently continues to cure such default, but in no event to exceed ninety (90) days after the original notice to the Borrower of such default.

(l) if Borrower takes affirmative action to change the current understood usage or zoning of the Property, without the written consent of the Lender, which shall be approved in the Lender's sole and absolute discretion.

(m) if Gregory Freedman and/or Daniel Lebensohn shall no longer retain sole operational and decision-making control of the Borrower and/or the construction and development of the Property.

(n) Upon the occurrence and during the continuance of an Event of Default, at the option of Mortgagee, the Indebtedness shall become immediately due and payable with notice to the

Borrower and Mortgagee shall be entitled to all of the rights and remedies provided herein, in the Loan Documents or at law or in equity. Each and every remedy of Mortgagee whatsoever is distinct and cumulative to all other rights or remedies hereunder, under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

Section 3.2 Remedies Upon Default.

(a) Upon the occurrence of an Event of Default and during the continuance thereof, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property, or to the extent permitted by law, a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Mortgagee, Mortgagee or such receiver may obtain a judgment or decree conferring on such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to such receiver, and Mortgagor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and such receiver may take any action required by applicable law or which such receiver believes necessary to enforce compliance with the environmental provisions contained herein or in the other Loan Documents, and negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures in connection therewith. Mortgagee and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

(b) When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce payment of the Note or the performance of any term, covenant, condition or agreement of the Borrower under any of the Loan Documents; (ii) foreclose the lien hereof for the Indebtedness or part thereof by commencement of action or otherwise, as more particularly described below or otherwise and sell the Property as an entirety or otherwise, as Mortgagee may determine; (iii) exercise its rights under Subsection (o) of this Section with respect to all or any portion of the Accessories in accordance with the provisions of the UCC; and/or (iv) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located.

(c) Intentionally Omitted.

(d) Mortgagee shall have all powers, rights and remedies under applicable law or equity whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees under mortgages in the State in which the Land is located. Mortgagee shall be entitled to enforce the payment and performance of the Indebtedness or the Obligations and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Indebtedness and the Obligations may now or hereafter be otherwise secured, whether by mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other rights or security now or hereafter held by Mortgagee. Mortgagee shall be entitled to enforce this Mortgage and any other rights or security now or hereafter in custody by Mortgagee in such order and manner as Mortgagee may in its absolute discretion

determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Mortgagee shall not be deemed to have waived any provision hereof or to have released Mortgagor from any of the Obligations secured hereby unless such waiver or release is in writing and signed by Mortgagee.

(e) If an Event of Default is continuing or if Mortgagee shall have accelerated the Indebtedness, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, with notice to the Borrower, and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment, to the appointment, at its option, of a receiver to take possession of and to operate the Property, and to collect and apply the Rents.

(f) In any action to foreclose the lien hereof or otherwise enforce Mortgagee's rights and remedies hereunder, there shall be allowed and included as additional Indebtedness all costs which may be paid or incurred by or on behalf of Mortgagee. All costs and such other actual reasonable costs, expenses and fees as may be incurred by Mortgagee in the protection of the Property and the maintenance of the lien of this Mortgage, including, Attorneys' Fees, expenses and costs in any litigation or proceeding affecting this Mortgage, the Note, the other Loan Documents, the Property or the Accessories, including probate, appellate, and bankruptcy proceedings, any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage or the other Loan Documents, to obtain any court order or the appointment of a receiver to enforce Mortgagee's rights or in preparation for the commencement or defense of any action or proceeding, shall be immediately due and payable to Mortgagee, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

(g) From time to time upon written request of Mortgagee and presentation of this Mortgage for endorsement and without affecting the Borrower's personal liability of any person for payment of the Indebtedness or performance of the Obligations, Mortgagee may, at Mortgagee's sole cost and expense and upon prior notice to the Borrower and receipt of the Borrower's prior written consent: reconvey all or any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Mortgagee may from time to time apply in any court of competent jurisdiction for aid and direction in the enforcement of the rights and remedies available hereunder, and Mortgagee may obtain orders or decrees directing or confirming or approving acts in the enforcement of such remedies. Mortgagee shall notify the Borrower of any pending sale or any action or proceeding unless held or commenced and maintained by Mortgagee under this Mortgage. Borrower shall pay to Mortgagee reasonable compensation and reimbursement for services and expenses in the enforcement of the security created hereunder, including reasonable Attorneys' Fees. Borrower shall indemnify Mortgagee against all losses, claims, demands and liabilities which Mortgagee may incur, suffer or sustain in the execution of the security created hereunder or in the performance of any act required or permitted hereunder or by law, except to the extent caused by the gross negligence, willful misconduct, fraud or bad faith of Mortgagee.

(h) Intentionally Omitted.

(i) Intentionally Omitted.

(j) It is agreed that, in any deeds, assignments or other conveyances given by Mortgagee, any and all statements of fact or other recitals therein made as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, and, without being limited by the foregoing, as to any other act or thing having been duly done by or on behalf of Mortgagee shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do in the premises by virtue hereof.

(k) Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(l) Mortgagee may require Mortgagor to assemble the Accessories or any part thereof, and make them available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to Mortgagor and Mortgagee.

(m) After notification, if any, hereafter provided in this Subsection, Mortgagee may sell, lease or otherwise dispose of, at the office of Mortgagee or on the Land or elsewhere, as chosen by Mortgagee, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any sale, lease, or other disposition made pursuant to this Subsection) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale it shall not be necessary to exhibit the Accessories or part thereof being sold. Reasonable notification of the time and place of any public Sale pursuant to this Subsection, or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection, shall be sent to Mortgagor and to any other person entitled under the Uniform Commercial Code in the jurisdiction in which the Property is located (the "Code") to notice; provided that if the Accessories or part thereof being sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Mortgagee may sell, lease or otherwise dispose of the Accessories, or part thereof, without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates, is reasonable notification and notice for the purposes of this Subsection.

(n) Mortgagee may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Mortgagee is entitled to do so under the Code.

(o) Mortgagee may buy the Accessories or any part thereof at any private sale, if the Accessories or part thereof being sold are a type customarily sold in a recognized market or a type subject to widely distributed standard price quotations.

(p) If any payment under this Mortgage shall not be received by Mortgagee within ten (10) days of the payment's due date, a late charge of six cents for each dollar of such payment shall become due to Mortgagee. Such charge shall be payable with the payment next due and shall be added to the Obligations and be secured by this Mortgage, provided, however, that such late charge shall not apply to the principal amount due upon maturity of the Loan, whether at the Stated Maturity Date, the Maturity Date, upon acceleration or otherwise.

(q) Institute an action for specific performance of any covenant contained herein or in aid of the execution of any power herein granted.

(r) Mortgagee shall have and may exercise any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document, or under the Code, or otherwise.

Section 3.3 Intentionally Omitted.

Section 3.4 Other Rights of Mortgagee. Should any part of the Property come into the possession of Mortgagee, whether before or after an Event of Default, Mortgagee may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Property. Borrower covenants promptly to reimburse and pay to Mortgagee on demand, at the place where the Obligation is payable, the amount of all reasonable expenses (including the cost of any insurance, taxes or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the rate provided in the Note for past-due principal, and all such expenses, costs, taxes, interest and other charges shall be and become a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on the Borrower, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured.

Section 3.5 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by judicial action or otherwise, the purchaser at any such sale shall receive, as an incident to Mortgagee's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof, subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied), and anyone occupying such portion of the Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with process of law.

Section 3.6 Application of Proceeds. The proceeds from any sale, lease or other disposition made pursuant to this Article, or the proceeds from the surrender of any insurance policies required to be maintained hereunder, or any rental collected by Mortgagee from the Property, or sums received pursuant to Section 5.1 hereof, or proceeds from insurance which Mortgagee elects to apply to the Obligation pursuant to Section 5.2 hereof, shall be applied by Mortgagee as follows: first, to the payment of all expenses of advertising, selling and conveying the Property or part thereof, including reasonable Attorneys' Fees; second, to accrued interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation to the person or persons legally entitled thereto.

Section 3.7 Abandonment of Sale. If Mortgagee should institute a suit for the collection of the Obligation and for a foreclosure of the liens and security interests hereof, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Property or any part thereof in accordance with the provisions of this Mortgage. In no event shall Mortgagee be entitled to utilize this Section 3.7 to avoid any statute of limitations deadlines.

Section 3.8 Payment of Fees. If any part of the Obligation shall be collected or enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the beneficiary to mature same, or if Mortgagee becomes a party to any suit where this Mortgage or the Property or any part thereof is involved, the Borrower agrees to pay Mortgagee's actual reasonable out of pocket attorneys' and collection fees, and such fees shall be and become a part of the Obligation.

Section 3.9 Indemnification of Mortgagee. Except for gross negligence or willful misconduct, Mortgagee shall not be liable for any act or omission or error of judgment. Mortgagee may rely on any document believed by Mortgagee in good faith to be genuine. All money received by Mortgagee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Mortgagee shall not be liable for interest thereon. Borrower shall indemnify Mortgagee against all liability and actual reasonable out of pocket expenses which Mortgagee may incur in the performance of Mortgagee's duties hereunder.

Section 3.10 Release of Collateral. Mortgagee may release, regardless of consideration, the obligation of any Person or Persons liable for payment of any of the Obligations secured hereby, or may release any part of the Property or any other collateral now or hereafter given to secure the payment of the Obligations or any part thereof, without impairing, reducing or affecting the obligations of Borrower under the Loan Documents, the remainder of the security of this Mortgage or the priority of the rights created by this Mortgage.

Section 3.11 Partial Foreclosure. Mortgagee may from time to time, to the extent permitted by law, take action to recover any sums, whether interest, principal or any other sums required to be paid under the Loan Documents, as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by the Borrower existing when such earlier action was commenced. Mortgagee may, to the extent permitted by law, at the Mortgagee's option, cause this Mortgage to be foreclosed for any portion of the Obligations or any other sums secured hereby which are then due and payable subject to the continuing lien of this Mortgage for the balance of the secured Obligations not then due. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the Obligations by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Defaults, and proceed with full foreclosure proceedings, however in no event shall Mortgagee be entitled to utilize this Section 3.11 to avoid any statute of limitations deadlines. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the Obligations, it being the purpose to provide for a partial foreclosure sale of the secured Obligations of any matured portion of the secured Obligations without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured Obligations whether matured at the time or subsequently maturing; and without exhausting any right of acceleration and full foreclosure.

ARTICLE IV. SECURITY AGREEMENT

Section 4.1 Security Agreement.

(a) This Mortgage is also a security agreement between Borrower, as debtor, and Mortgagee, as secured party. The security interest created hereby is specifically intended to cover and include all leases of the Property, if any, presently existing or hereafter entered into (herein, together with all amendments

and supplements thereto made as provided therein, called the "Leases"), between Mortgagor (or parties acting on behalf of Mortgagor), as lessor or as successor to or assignee from the lessor, and tenants which occupy the Property under the Leases, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said Leases, together with all the right, title and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, charges and other revenues, rents, income, revenues, issues and profits and moneys payable as damages or in lieu of rent and moneys payable as the purchase price of the Property or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases, provided, that this provision shall not impair or diminish any obligation of Mortgagor under the Leases, nor shall any obligation be imposed upon Mortgagee. Borrower, from time to time, upon each reasonable request of Mortgagee, promptly shall (a) execute and deliver to Mortgagee all financing statements as reasonably required by Mortgagee in order to establish or maintain the validity, perfection or priority of the security interest with respect to the Accessories or fixtures; and (b) give to Mortgagee a certificate in form reasonably satisfactory to Mortgagee listing all trade names of the Borrower and under which the Borrower operates or intends to operate the Property or any part thereof, and give to Mortgagee advance written notice of any proposed change of any such trade name and of any change of name (or trade name or assumed name), identity or structure of the Borrower. Borrower, from time to time, upon each reasonable request of Mortgagee, promptly shall pay to Mortgagee on demand all costs of preparation and filing of financing statements pursuant the provisions of this section and all costs of Code searches reasonably required by Mortgagee.

(b) To the extent that the Property includes items of personal property that are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this Mortgage in the land records of the county in which such Property is located shall also operate from the time of filing as a fixture filing with respect to such Property, the information required for the purpose of such fixture filing being as set forth in this Mortgage (Borrower being the "Debtor" and Mortgagee being the "Secured Party" with respect to such filing).

ARTICLE V. SPECIAL PROVISIONS

Section 5.1

(a) Condemnation Proceeds. Mortgagee shall be entitled to receive any and all sums which may be awarded or become payable to the Borrower for the condemnation of the Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to the Borrower for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Mortgagee and the Borrower shall, upon request of Mortgagee, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Mortgagee as a result of condemnation shall be applied towards restoration of the Property.

(b) Notwithstanding anything to the contrary contained in this Mortgage:

(i) if less than 100% of the Land constituting the Property is taken, then the net amount of all awards and payments received by Mortgagee with respect to such taking, after

deduction of Mortgagee's reasonable costs and expenses in collecting the same (hereinafter referred to as the "Net Award"), will be disbursed by Mortgagee to pay for the costs and expenses of the Condemnation Restoration (hereinafter defined), provided (i) no uncured Event of Default shall exist, (ii) the Borrower proceeds promptly after the making of any award of payment for such taking (and Borrower receives such award for such restoration, replacement, rebuilding or repair of the Property) with the restoration, replacement, rebuilding or repair of the Property as nearly as possible to the condition the Property was in immediately prior to such taking (the "Condemnation Restoration"), (iii) no material Leases are terminated as a result of such taking, (iv) the Condemnation Restoration shall be done in compliance with all applicable laws, rules and regulations, (v) a set of plans and specifications in connection with the Condemnation Restoration shall be submitted to Mortgagee and shall be reasonably satisfactory to Mortgagee in all respects, (vi) Borrower shall have reimbursed Mortgagee for all actual costs and expenses incurred by Mortgagee in connection with making the Net Award available for the Condemnation Restoration of the Property, including, without limitation, reasonable counsel fees, inspecting engineer fees and appraisal fees incurred by Mortgagee, and (vii) in the reasonable opinion of Borrower and Mortgagee the Condemnation Restoration of the Property is economically feasible.

(ii) The Net Award shall be held in trust by Mortgagee without interest thereon and shall be paid by Mortgagee to, or as directed by, Borrower, from time to time during the course of the Condemnation Restoration, upon receipt of evidence satisfactory to Mortgagee, that (i) all materials installed and work and labor performed (except to the extent they are to be paid for out of the requested payment) in connection with the Condemnation Restoration have been paid for in full, (ii) there exist no notices of intention, mechanics' or other liens or encumbrances on the Property arising out of the Condemnation Restoration, and (iii) the balance of the Net Award plus the balance of any deficiency deposits given by Mortgagor to Mortgagee pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Condemnation Restoration.

(iii) Mortgagee shall not be obligated to make the Net Award available for the Condemnation Restoration of the Property unless in the reasonable opinion of Mortgagee the principal balance of the Note after the completion of the Condemnation Restoration will not exceed 75% of the appraised value of the Property after the completion of the Condemnation Restoration, as determined by an appraiser reasonably selected by Mortgagee. The fee for such appraisal shall be paid by Borrower.

(iv) The excess, if any, of the Net Award after payment to the Borrower and Mortgagor as hereinabove provided, shall be applied by Mortgagee in reduction of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper. Notwithstanding anything to the contrary contained herein, if the Net Award shall be less than \$50,000.00, only one such disbursement shall be required upon the completion of the Condemnation Restoration to the reasonable satisfaction of Mortgagee. If at any time the Net Award, or the undisbursed balance thereof, shall not in the opinion of Mortgagee be sufficient to pay in full the balance of the cost of Condemnation Restoration, Borrower shall deposit such deficiency with Mortgagee before any further disbursement of the Net Award shall be made.

(v) Any amount of the Net Award received by Mortgagee and not required to be disbursed for the Condemnation Restoration pursuant to the provisions of this paragraph hereinabove set forth may, in Mortgagee's reasonable discretion, be either (i) retained and applied by Mortgagee to the discharge of the Obligations, whether or not then due and payable, in such priority and proportions as Mortgagee in its reasonable discretion shall deem proper or (ii) paid in whole or in part to the Borrower for such purposes as Mortgagee shall designate. If the Property is sold through foreclosure or otherwise prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right to receive such award or payment or a portion thereof sufficient to pay the Obligations, whichever is less. The Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and

with due diligence and cause the same to be collected and paid over to Mortgagee, and the Borrower hereby irrevocably authorizes and empowers Mortgagee, in the name of the Borrower or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, the Borrower shall upon demand of Mortgagee make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Mortgagee.

Section 5.2 Insurance Proceeds.

(a) The proceeds of any and all insurance upon the Property shall be collected by Mortgagee and Mortgagee shall apply any proceeds so collected to the restoration of the Property.

(b) Notwithstanding anything to the contrary contained in this Mortgage:

(i) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. The net amount of all insurance proceeds received by Mortgagee with respect to such damage or destruction, after deduction of the reasonable costs and expenses incurred by Mortgagee in collecting the same (the "Net Proceeds") shall be disbursed by Mortgagee in accordance with the terms and conditions set forth herein to pay for the costs and expenses of the Restoration (hereinafter defined) provided (i) no uncured Event of Default shall exist, (ii) Mortgagor proceed promptly after the insurance claims are settled (and Mortgagor receives such insurance proceeds for such restoration, replacement, rebuilding or repair of the Property) with the restoration, replacement, rebuilding or repair of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty (the "Restoration"), (iii) the Restoration shall be done in material compliance with all applicable laws, rules and regulations, (iv) a set of the plans and specifications in connection with the Restoration shall be submitted to Mortgagee and shall be reasonably satisfactory to Mortgagee in all respects, (v) all actual costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Restoration of the Property including, without limitation, reasonable counsel fees and inspecting engineer fees incurred by Mortgagee, shall be paid by Borrower, and (vi) no material Leases are terminated as a result of such fire or other casualty.

(ii) The Net Proceeds shall be held in trust by Mortgagee without interest thereon and shall be paid by Mortgagee to, or as directed by, the Borrower from time to time during the course of the Restoration, upon receipt of evidence, satisfactory to Mortgagee, that (i) all materials installed and work and labor performed (except to the extent they are to be paid for out of the requested payment) in connection with the Restoration have been paid for in full, (ii) no notices of intention, mechanics' or other liens or encumbrances on the Property arising out of the Restoration exist, and (iii) the balance of the Net Proceeds plus the balance of any deficiency deposits given by Borrower to Mortgagee pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Restoration.

(iii) The excess, if any, of the Net Proceeds after payment to Borrower as provided herein shall be applied by Mortgagee in reduction of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper. Notwithstanding anything to the contrary contained herein, if the Net Proceeds shall be less than \$50,000.00, only one disbursement shall be required upon the completion of the Restoration to the reasonable satisfaction of Mortgagee. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not in the opinion of Mortgagee be sufficient to pay in full the balance of the cost of the Restoration, Borrower shall deposit the deficiency with Mortgagee before any further disbursement of the Net Proceeds shall be made.

(iv) Any amount of the Net Proceeds received by Mortgagee and not required to be disbursed for the Restoration pursuant to the provisions of this paragraph hereinabove set forth may, in Mortgagee's reasonable discretion, be either (i) retained and applied by Mortgagee toward the payment of the Obligations whether or not then due and payable in such priority and proportions as Mortgagee in its reasonable discretion shall deem proper, or (ii) paid in whole or in part to Borrower for such purposes as Mortgagee shall designate. If Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations.

Section 5.3 Right to Accelerate Upon Transfer. If the Borrower shall sell, convey, assign or transfer all or any part of the Mortgaged Property (except as expressly otherwise provided in Section 2.21 or otherwise permitted in this Mortgage or in any other Loan Document), Mortgagee may, at Mortgagee's option, with notice to Borrower, declare the Obligation to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, or transfer, and upon such declaration the entire unpaid balance of the Obligation shall be immediately due and payable. Mortgagee may, in Mortgagee's sole discretion and at Borrower's request, decide not to exercise said option, in which event Mortgagee's forbearance may be predicated on such terms and conditions as Mortgagee may, in Mortgagee's sole but reasonable discretion, require, including, but not limited to, Mortgagee's approval of the transferee's credit worthiness and management ability, the execution and delivery to Mortgagee by transferee prior to the sale, transfer, assignment, lease or conveyance of an assumption agreement containing such terms as Mortgagee may reasonably require, including, but not limited to, a payment of a part of the principal amount of the Obligation, an increase in the rate of interest payable on the Obligation, the payment of an assumption fee, a modification of the terms of the Obligation and such other terms as Mortgagee may reasonably require, or Mortgagee may require any of such modifications of the terms of the Obligation without requiring an assumption thereof by the transferee. Should the Property be sold, traded, transferred, assigned, exchanged, leased or otherwise disposed of without the prior consent of Mortgagee (except as otherwise permitted in this Mortgage or in any other Loan Document) and should payment of any portion of the Obligation thereafter be accepted by Mortgagee, such acceptance shall not be deemed a waiver of the requirement of Mortgagee's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, lease or other disposition.

Section 5.4 Subordinate Financing. If Borrower, without the prior written consent of Mortgagee, executes or delivers any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Property (hereinafter called "**Unauthorized Subordinate Mortgage**"), Mortgagee may, at Mortgagee's option, which option may be exercised at any time following such pledge, security agreement, mortgage or deed of trust, with notice and demand on the Borrower, declare the Obligation to be immediately due and payable. In the event of consent by Mortgagee to the granting of a subordinate mortgage, or in the event the above-described right of Mortgagee to declare the Obligation to be immediately due and payable upon the granting of a Unauthorized Subordinate Mortgage without the prior written consent of Mortgagee is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, the Borrower will not execute or deliver any subordinate mortgage unless (i) it shall contain express covenants to the effect: (a) that the subordinate mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Mortgage and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the subordinate mortgage, no tenant of any portion of the Property will be named as a party defendant, nor will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior consent of Mortgagee; (c) that the rents and profits, if collected through a receiver or by the holder of the subordinate mortgage, shall be applied first to the obligations secured by this Mortgage, including principal and interest due and owing on or to become due and owing under the Note and the other indebtedness secured hereby, and then to

the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and maintenance of the Property; and (d) that if any action or proceeding shall be brought to foreclose the subordinate mortgage, notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Mortgagee not less than ten (10) days prior to the date of the execution of such subordinate mortgage. Notwithstanding anything contained herein to the contrary, these provisions shall only be enforceable to the extent permitted under the laws of the State of Florida.

Section 5.5 Taxes Imposed on Mortgagee. Except for any Excluded Taxes, Borrower shall pay any taxes (except any federal, state, or local income taxes measured by the income of Mortgagee from all sources or franchise taxes in lieu thereof) imposed on Mortgagee by reason of its ownership of this Mortgage and the Note.

Section 5.6 Recording, Filing and Other Fees. Borrower shall pay all recording and filing fees, all recording taxes, all documentary stamp taxes, intangible taxes, and all other reasonable actual out of pocket costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of the Loan Documents, and shall reimburse Mortgagee on demand for all such costs and expenses actually incurred by Mortgagee in connection therewith (including, without limitation, Attorneys' Fees). Borrower will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, or the like, in respect of any Accessories. Borrower shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

Section 5.7 No Release. Mortgagor and any other Person now or hereafter obligated for the payment or performance of all or any part of the Obligations shall not be released from paying and performing such Obligations and the lien of this Mortgage shall not be affected by reason of: (a) the failure of Mortgagee to comply with any request of the Borrower, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the Obligations secured by this Mortgage; (b) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of the Obligations or any part thereof; or (c) any agreement or stipulation extending the time of payment or modifying the terms of the Note, and in the event of such agreement or stipulation, the Borrower and all such other Persons shall remain liable under the Loan Documents, as amended by such agreement or stipulation unless expressly released and discharged in writing by Mortgagee.

Section 5.8 Interest After Maturity. The principal amount of the Obligations and any other amounts secured by this Mortgage and, to the extent permitted by law, any accrued interest thereon, shall bear interest from and after maturity of the Loan, whether or not resulting from acceleration, at the Default Rate, but this shall not constitute an extension of time for payment of the Obligations or such other amounts or accrued interest. In the event that an action to enforce this Mortgage or the other Loan Documents results in the entry of a judgment (in foreclosure) against the Borrower, subject to the provisions of Section 6.44 of this Mortgage, interest on the judgment shall accrue at the statutory post-judgment rate of interest.

Section 5.9 Indemnification Against Liabilities. To the extent not caused by the gross negligence or willful misconduct of Mortgagee or were caused by actions, conditions or events that occurred after the date that Mortgagee (or its designee or any purchaser at a foreclosure sale) acquired fee simple title to the Property or a receiver was appointed for the Property, Borrower will protect, indemnify, save harmless and defend Mortgagee from and against any and all actual liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without

limitation, reasonable Attorneys' Fees and expenses) imposed upon or incurred by or awarded against Mortgagee by reason of: (a) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Property or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (b) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (c) any failure on the part of Borrower to perform or comply with any of the terms of the Mortgage; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof made or suffered to be made by or on behalf of Borrower; (e) any negligence or tortious act on the part of Borrower or any of its agents, contractors, lessees, licensees or invitees; (f) any work in connection with any alterations, changes, new construction or demolition of the Property; and (g) any other matter or thing arising from or attributable to the collateral and/or any act or omission of any person with respect thereto. Borrower will pay and save Mortgagee harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the applicable governing jurisdiction or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Mortgagee in respect of this Mortgage, the Note or the indebtedness secured thereby. All amounts payable to Mortgagee under this Section 5.9 shall be payable on demand and shall be deemed indebtedness secured by this Mortgage and any such amounts which are not paid within ten (10) days after demand therefor by Mortgagee shall bear interest at the Default Rate from the date of such demand. If any action, suit or proceeding is brought against Mortgagee by reason of any such occurrences, Borrower, upon request of Mortgagee, will, at Borrower's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Borrower and approved by Mortgagee, as the case may be.

Section 5.10 Notice of Acceleration. Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligation upon an Event of Default, Mortgagee may do so with prior notice and demand to or upon the Borrower.

Section 5.11 Representations. Borrower makes to Mortgagee the same representations and warranties as made by the Borrower to the Mortgagee under the Note and Loan Documents.

Section 5.12 After Acquired Property. To the extent permitted by law, all real or personal property now or hereafter attached to, adjoining or used for or in connection with the Property or any part thereof which is acquired by the Borrower on or after the date hereof shall, immediately upon the acquisition thereof by the Borrower, and without any further mortgage, conveyance, assignment, security agreement or transfer, become subject to the lien of this Mortgage. The Borrower shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for better assuring, conveying, assigning, transferring, confirming or perfecting Mortgagee's security and rights under this Mortgage.

Section 5.13 The Borrower's representations, warranties and agreements set forth in this Mortgage shall survive the closing but shall terminate upon satisfaction or release of this Mortgage. The Borrower hereby acknowledges and agrees that it is a requirement of this Mortgage and of the Borrower's obligations hereunder that all of the Borrower's material representations and warranties contained herein shall be true and correct in all material respects on the date hereof and remain true and correct in all material respects through and including the Maturity Date of the Note, and that any material inaccuracy in the Borrower's material representations and warranties and/or the Borrower's failure to notify Mortgagee prior to the Maturity Date of the Note of any such inaccuracies therein shall be defaults by the Borrower under this Mortgage (subject to the applicable notice and cure periods set forth herein).

ARTICLE VI
MISCELLANEOUS

Section 6.1 Release. If all of the Indebtedness and all of Borrower's other obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents, then this conveyance shall become null and void and be released of record at the Borrower's request and expense.

Section 6.2 Rights Cumulative. Mortgagee shall have all rights, remedies and recourse granted herein, in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Property or any portion thereof), and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against the Borrower or others obligated for the Obligation or any part thereof, or against any one or more of them, or against the Property, at the sole discretion of Mortgagee; (c) may be exercised as often as occasion therefor shall arise, it being agreed by the Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Property.

Section 6.3 Payments. Acceptance by Mortgagee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default (after the expiration of the applicable notice and cure period).

Section 6.4 Change of Security. Any part of the Property may be released, regardless of consideration, by Mortgagee from time to time without impairing, subordinating or affecting in any way the lien, security interest and other rights hereof against the remainder. The lien, security interest and other rights granted hereby shall not be affected by any other security taken for the Obligation or any part thereof. The taking of additional security, or the extension, renewal or rearrangement of the Obligation or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal, extension or rearrangement of the Obligation or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Property not expressly released until the Obligation is fully paid and performed.

Section 6.5 Usury Savings. The parties hereto intend to conform strictly to the applicable usury laws. All agreements between Borrower (and any other party liable for any part of the Obligation) and Mortgagee, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged or received by Mortgagee hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced automatically to the maximum amount permitted under applicable law. If Mortgagee shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation in inverse order of maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Mortgagor, or to the maker of the Note or other evidence of indebtedness if other than Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the

extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The terms and provisions of this Section shall control and supersede every other provision of all existing and future agreements between the Borrower, the maker of the Note or other evidence of indebtedness if other than the Borrower and Mortgagee.

Section 6.6 Effect of Transfer on the Borrower's Liability. If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than the Borrower, or in the event of a change in ownership (legal or beneficial) of the Borrower other than an individual, Mortgagee may, without notice to or consent of the Borrower or Borrower's successors, deal with such successor or successors in interest with reference to this Mortgage and the Obligation either by way of forbearance on the part of Mortgagee, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Mortgagee's rights and liens hereunder or the liability of the Borrower or any other party liable for payment of the Obligation, in whole or in part.

Section 6.7 Waiver of Right to Marshal. The Borrower hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

Section 6.8 Subrogation. To the extent that proceeds of the Obligation are used to renew, extend or pay any outstanding debt or to perform any obligation, such proceeds have been advanced by Mortgagee at the Borrower's request, and Mortgagee shall be subrogated to all liens, security interests, rights, priorities, powers, titles, equities and interests owned or held by any owner or holder of such outstanding debt or obligation, however remote, irrespective of whether the same are released of record, and all of the same are recognized as valid and subsisting and are renewed, continued and preserved in force to secure the Obligation; provided, however, that if and to the extent Mortgagee desires in each case, the terms and provisions hereof and of the other Loan Documents shall govern the rights and remedies of Mortgagee and shall supersede the terms, provisions, rights, and remedies under any lien, security interest, charge or other encumbrance to which Mortgagee is subrogated hereunder.

Section 6.9 Covenant to Perform. Mortgagor and each subsequent owner of the Property, or any part thereof, covenants and agrees that Mortgagor and any subsequent owner will perform or cause to be performed, each and every condition, term, provision and covenant of this Mortgage.

Section 6.10 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee pursuant to this Mortgage, including, without limitation, any certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

Section 6.11 Mortgagor's Waivers. Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases to the extent permitted by law, and whether now or hereafter in force, (a) intentionally omitted; (b) any right of redemption after the date of any sale of the Property upon foreclosure, whether statutory, common law or otherwise, in respect of the Property; (c) intentionally omitted; and (d) intentionally omitted.

Section 6.12 Environmental Matters. Mortgagor shall comply at all times with the terms of that certain Environmental Indemnity of even date herewith executed by Borrower in favor of Lender (the "Environmental Indemnity").

Section 6.13 Intentionally Omitted.

Section 6.14 Modifications. This Mortgage, the Note and all other Obligations are subject to Modification (as defined below). To the extent permitted by law, this Mortgage secures all Modifications from the date upon which this Mortgage was originally recorded, including future loans and extensions of credit and changes in the interest rate, due date, amount or other terms and conditions of any Obligations.

"Modification" shall mean, inter alia, to changes in the interest rate, due date or other terms or conditions of a "mortgage loan," or future advances pursuant to a "line of credit".

Section 6.15 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if (a) hand delivered or (b) expedited prepaid delivery service, either commercial overnight carrier or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and a Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Mortgagee:	Maxim Credit Group, LLC 660 Madison Avenue, Suite 4040 New York, New York 10065 Attention: Adam Glick
With a copy to:	Mavrides, Moyal, Packman & Sadkin, LLP 276 Fifth Avenue, Suite 404 New York, New York 10001 Attention: Eric Sadkin, Esq.
If to Borrower:	BH3 DJ Sub LLC c/o BH3 Asset Management LLC 21500 Biscayne Blvd., Suite 302 Aventura, Florida 33180
With a copy to:	Becker & Poliakoff, P.A. 1 East Broward Boulevard, Suite 1800 Fort Lauderdale, Florida 33301 Attention: David K. Blattner, Esq.

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; or in the case of expedited prepaid delivery, upon the first attempted delivery on a business day.

Section 6.17 No Waiver. No course of dealing between the Borrower and Mortgagee or any failure or delay on the part of Mortgagee in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Mortgagee and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. In the event any agreement contained in this Mortgage or the other Loan Documents should be breached and thereafter waived by Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder or thereunder.

Section 6.18 Failure to Exercise Rights. Nothing herein contained shall impose upon Mortgagee any obligation to enforce any terms, covenants or conditions contained in this Mortgage and the other Loan Documents. Failure of Mortgagee, in any one or more instances, to insist upon strict performance of any terms, covenants or conditions of this Mortgage and the other Loan Documents, shall not be considered or taken as a waiver or relinquishment by Mortgagee of its right to insist upon and to enforce in the future, by injunction or other appropriate legal or equitable remedy, strict compliance with all the terms, covenants and conditions of this Mortgage and the other Loan Documents. The consent of Mortgagee to any act or omission by Mortgagor shall not be construed to be a consent to any other or subsequent act or omission or a waiver of the requirement for Mortgagee's consent to be obtained in any future or other instance.

Section 6.19 Intentionally Omitted

Section 6.20 Intentionally Omitted

Section 6.21 Choice of Law; Jurisdiction. **THE LOAN WAS MADE BY MORTGAGEE IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES IRREVOCABLY AND UNCONDITIONALLY AGREE HAS A SUBSTANTIAL, NORMAL AND REASONABLE RELATIONSHIP TO THE UNDERLYING TRANSACTION EMBODIED HEREBY AND TO THE PARTIES AND, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CHOICE OF LAW CONSIDERATIONS, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, AND MORTGAGOR SHALL NOT ASSERT A DEFENSE, WHICH DEFENSE IN ANY WAY CONTESTS THE APPLICABILITY OF THE LAWS OF THE STATE OF NEW YORK AS AFORESAID, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF FLORIDA; IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE OF FLORIDA, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL THE LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF FLORIDA. THE PARTIES HERETO AGREE THAT ANY PROCEEDING INSTITUTED IN EITHER OF SUCH COURTS SHALL BE OF PROPER VENUE, AND WAIVE ANY RIGHT TO CHALLENGE THE VENUE OF SUCH COURTS OR TO SEEK THE TRANSFER OR RELOCATION OF ANY SUCH PROCEEDING FOR ANY REASONS. THE PARTIES HERETO FURTHER AGREE THAT SUCH COURTS SHALL HAVE PERSONAL JURISDICTION OVER THE PARTIES. ANY JUDGMENT OR DECREE OBTAINED IN ANY SUCH ACTION OR PROCEEDING MAY BE FILED OR ENFORCED IN ANY OTHER APPROPRIATE COURT.**

Section 6.22 Taxes. Except for any Excluded Taxes (as hereinafter defined), Mortgagor agrees if Mortgagor is required to make any deduction or withholding of foreign taxes (or taxes imposed

because Mortgagor is a foreign person or entity) from any payment due to Mortgagee herein, then the amount payable to Mortgagee by Borrower upon which such deduction or withholding is based, shall be increased to the extent necessary to ensure that, after all deductions or withholdings, Mortgagee is paid a net amount equal to the amount Mortgagee would have been paid in the absence of such deduction or withholding. At Mortgagee's request, Borrower shall provide Mortgagee with documentation adequate to demonstrate payment of such deduction or withholding by Borrower under this provision.

Section 6.23 Mortgagee's Discretion. Any condition of this Mortgage or any other Loan Document which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and, subject to the terms of the Loan Documents, Mortgagee shall, at all times, be free independently to establish to its reasonable satisfaction and in its absolute discretion such existence or non-existence and provide Borrower with reasonable documentation evidencing such determination.

Section 6.24 Further Assurances.

The Borrower shall:

(a) execute and deliver, or cause to be executed and delivered to Mortgagee, all other instruments, certificates and agreements as Mortgagee, Borrower, Borrower's counsel or Mortgagee's counsel may reasonably require, provided same does not increase the Borrower's or any Guarantor's obligations or decrease the Borrower's rights, including, but not limited to, estoppel certificates stating that the Loan is in full force and effect and that there are no defenses or offsets thereto, to effect, confirm or assure the rights, remedies and liens intended to be granted or conveyed to Mortgagee under this Mortgage or any other Loan Document.

(b) At Mortgagee's sole cost and expense, re-execute any document or instrument signed in connection with the Loan, provided in each case same does not increase the Borrower's or any Guarantor's obligations or decrease the Borrower's or any Guarantor's rights;

(c) in the event of any miscalculation, misapplication or error in payment or collections of monies at Closing, correct the same upon written request therefor with reasonable explanatory evidence documenting any required correction; and

(d) at Borrower's sole cost and expense, within ten (10) business days of a request by Mortgagee for the same, do, execute, acknowledge and deliver and appropriately file and record, provided in each case same does not increase the Borrower's or any Guarantor's obligations or decrease the Borrower's or any Guarantor's rights, all and every such further acts, conveyances, mortgages, assignments, financing statements, supplemental mortgages, notices, estoppel certificates and assurances as Mortgagee shall, from time to time, reasonably require for accomplishing the purposes of this Mortgage and shall pay the expenses of the filing or recording of the same and reimburse Mortgagee for its reasonable legal expenses incurred in connection with the preparation or review thereof. If an Event of Default has occurred with respect to any such execution, acknowledgement, delivery, filing or recording, Mortgagee may, without limitation, exercise the rights conferred upon it in this Mortgage to execute, acknowledge and file or record any such instrument for and on behalf of the Mortgagor, as attorney-in-fact of the Mortgagor (which appointment is coupled with an interest and irrevocable), and shall be entitled to reimbursement for its reasonable expenses in connection therewith.

Section 6.25 Partial Invalidity. A determination that any portion of this Mortgage or any of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provisions of this Mortgage or any Loan

Document to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provisions it may apply to other persons or circumstances.

Section 6.26 Entire Agreement. This Mortgage supersedes in all respects all prior agreements and understandings relating to the Loan, including, without limitation, the Term Sheet dated March 18, 2020 between the parties hereto.

Section 6.27 Amendments. This Mortgage may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagee or Borrower, except by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 6.28 Successors and Assigns. Mortgagor may not assign its rights under this Mortgage without the prior written consent of Mortgagee. Any such attempted assignment in violation of this Mortgage shall be void and of no effect. All covenants and agreements in this Mortgage shall bind and inure to the benefit of the respective permitted successors and assigns of the parties hereto and any holder or holders of the Note or any portion thereof.

Section 6.29 Waiver of Jury Trial. **THE MORTGAGEE AND BORROWER AGREE THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE MORTGAGEE OR BORROWER ON OR WITH RESPECT TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. THE MORTGAGEE AND BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE MORTGAGEE AND BORROWER WAIVE ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS MORTGAGE AND THAT MORTGAGEE WOULD NOT EXTEND CREDIT TO BORROWER (AS APPLICABLE) IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS MORTGAGE.**

Section 6.30 Intentionally Omitted.

Section 6.31 Tax Withholding. Each party shall provide the other, as applicable, with any necessary documentation to obtain reduced or no withholding tax as portfolio interest under the Internal Revenue Code or any applicable income tax treaty, including Mortgagee providing IRS Form W-8BEN and or W-9 to the Borrower. Notwithstanding anything to the contrary contained in the Note, this Mortgage or any other Loan Document, in no event shall the Borrower or any Guarantor be responsible for the payment of any Excluded Taxes. As used herein "Excluded Taxes" means, (a) with respect to the Lender or any other recipient of any payment to be made by or on account of any Obligation of the Borrower under the Note or any other Loan Document, (i) taxes imposed on or measured by its overall net income or net profits (however denominated) or any franchise taxes imposed, directly or indirectly, by the laws of any jurisdiction (or any political subdivision thereof) where such recipient is organized, located, otherwise doing business (other than any business or deemed business arising solely from any Loan Documents or any transactions contemplated thereby) or under which it is otherwise subject to such taxes, (ii) any branch profits taxes or similar taxes imposed by any jurisdiction (or any political subdivision thereof) in which the Borrower or Lender is organized, located, otherwise doing business (other than any business or deemed business arising solely from any Loan Documents or any transactions

contemplated thereby), (iii) any U.S. federal withholding tax that is imposed on amounts payable to Lender under the law in effect at such time Lender becomes a holder of the Note (other than U.S. federal withholding tax attributable to or resulting from a change in law enacted or adopted after the date of the Note and other than as a result of the Borrower's failure to comply with the terms and conditions of the Note), (iv) any U.S. federal withholding tax imposed pursuant to FATCA (or any amended or successor versions that are substantially comparable) or any current or future regulations with respect thereto or official administrative interpretations thereof, and (v) any interest, penalties or additions to tax with respect to any of the foregoing. As used herein, "FATCA" means Sections 1471 through 1474 of the Internal Revenue Code as of the date hereof (and any amended version that is substantively comparable) and any current or future regulations or interpretations issued with respect thereto.

Section 6.32 Publicity.

(a) Upon receipt of the Borrower's prior written consent, Mortgagee shall have the right, at its sole cost and expense, to issue news releases, and publicize and/or advertise, in any medium or manner as Mortgagee shall elect, including without limitation to photograph and use pictures of the Mortgaged Property in any such advertisements, brochures, print, media and other copy, the fact that it has provided financing with respect to the Mortgaged Property.

(b) During any period of time that any other person erects or posts any signage, or uses any other medium, providing any information about such person's involvement in the Mortgaged Property, at Mortgagee's request and at Mortgagee's sole cost and expense, Borrower shall erect and thereafter maintain signage at the Mortgaged Property publicizing Mortgagee's role in the financing of the Mortgaged Property in a location which is clearly visible to the public and otherwise reasonably acceptable to Mortgagee, subject to all applicable zoning and building codes. At Mortgagee's election, the signage shall be prepared by Mortgagee or Borrower, and shall contain such information as Mortgagee shall reasonably request, including Mortgagee's address and telephone number, subject to all applicable zoning and building codes.

Section 6.33 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Mortgage may be detached from any counterpart of this Mortgage without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Mortgage identical in form hereto but having attached to it one or more additional signature pages.

Section 6.34 Joint and Several Liability. Notwithstanding anything contained herein to the contrary, the breach of any or all of the covenants, representations, warranties, obligations or liabilities by Borrower under this Mortgage, after expiration of any applicable notice and cure period provided for in this Mortgage or in any of the other Loan documents shall constitute a Default under this Mortgage.

Section 6.35 Conflicts. In the event of any conflict between the terms hereof and the terms of the Note, the terms of this Mortgage shall govern.

Section 6.36 Intentionally Omitted.

Section 6.37 Priority of Lien. This Mortgage is shall be and be deemed a valid and enforceable lien and security interest against the Property.

Section 6.38 Management of Mortgaged Property. Mortgagor agrees that, upon the termination for any reason of the current management company (if any) or the entity of any new management company agreement, Mortgagor shall deliver notice to Mortgagee of such new professional, leasing or property management company, together with a copy of the agreement and such management company shall enter into a subordination and assignment agreement in form reasonably acceptable to Mortgagee (and such other documents as reasonably requested by Mortgagee in connection with the Loan). The foregoing management company shall be reasonably acceptable to Mortgagee and shall be terminable by Mortgagor and/or its successors and assigns at any time without cause upon 30 days prior notice.

Section 6.39 Leases and Purchase Agreements. Any foreclosure of the Mortgage and any other transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness may, at Mortgagee's option, be subject to the rights of any tenants or purchasers of all or any part of the Mortgaged Property, and any failure to make any such tenant or purchaser parties defendant to any foreclosure proceedings or to foreclosure or otherwise terminate the rights of such parties will not be, nor be asserted by Mortgagor to be, a defense to any such foreclosure proceedings or to any proceedings seeking collection of all or any part of the Indebtedness.

Section 6.40 Future Advances. This Mortgage is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of the Mortgagee, only with the consent of the Mortgagor, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time shall not exceed Ten Million Two Hundred Thousand and 00/100 Dollars (\$10,200,000.00), plus interest thereon, and any disbursements made for the payment of taxes, levies, insurance, or other advances made to protect the priority of the lien granted hereby or the condition of the Property.

Section 6.41 Covenants and Representations re Agreements. Borrower hereby covenants and agrees with regard to any construction contract, engineering agreement, architecture agreement or other agreements (in excess of \$50,000.00) related to the development, design and construction of the intended project to be constructed on the Land as disclosed by the plans and related documents delivered to Mortgagee prior to the date hereof (collectively, the "Agreements"): (a) to perform faithfully every material obligation which the Borrower is required to perform under each of the Agreements; (b) to use commercially reasonable efforts to enforce, or to secure the performance of, at its sole cost and expense, every material obligation to be performed by the other party to each of the Agreements; (c) promptly to give notice to Mortgagee of any notice of default received by the Borrower from the other party to any of the Agreements and any notice of default given by the Borrower to the other party to any of the Agreements, together with a copy of such notice; (d) not to further assign the Agreements or any amounts due or to become due or to which the Borrower may now or hereafter become entitled thereunder, and not to consent to an assignment by the other party to the Agreements; (e) not to waive, condone or in any manner discharge the other party to the Agreements from their material obligations under any of the Agreements; (f) not to voluntarily cancel, or accept surrender or termination of any of the Agreements; (g) not to materially modify or amend, by sufferance or otherwise, any of the Agreements or any of the material terms, provisions or covenants thereof; and (h) to appear in and defend, at Borrower's sole cost and expense, any material action or proceeding arising under, growing out of or in any manner connected with any of the Agreements or the obligations, duties or liabilities of the Borrower or the other party to the Agreements thereunder. The Borrower hereby represents and warrants to Mortgagee that the Borrower has not executed an assignment of any of the Agreements or of any of its right, title and interest therein or the amounts due or to become due thereunder. The Borrower will provide Mortgagee with copies of any and all material amendments, modifications, or changes to the Agreements, will comply with the terms

and conditions of the Loan Documents with respect thereto, and will not make any material amendments, modifications or changes to such Agreements without first delivering such documentation to Mortgagee.

Section 6.42 Non-Recourse Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, Lender hereby covenants and agrees (i) that the obligations and liabilities of the Mortgagor under this Mortgage and the other Loan Documents, including, without limitation, to pay the Indebtedness and/or to perform any of the Obligations and/or to pay, perform and/or observe any other obligations of the Borrower under this Mortgage or in any of the other Loan Documents, shall not be enforced by any action or proceeding wherein damages or any money judgment shall be sought or obtained against the Borrower, except in a foreclosure action against the Mortgaged Property, but any judgment in any such foreclosure action shall be enforceable only against the Mortgagor's interest then held in the Mortgaged Property; (ii) not to sue the Borrower or bring any action or proceeding against the Borrower to enforce any of the obligations or liabilities of Borrower under or by reason of or in connection with the Loan, this Mortgage or any of the other Loan Documents wherein damages or any money judgment shall be sought or obtained against the Borrower, except in a foreclosure action against the Mortgaged Property, but any judgment in any such foreclosure action shall be enforceable only against the Mortgagor's interest then held in the Mortgaged Property; and (iii) to irrevocably waive any and all rights to sue for, seek or demand any deficiency or other monetary judgment against the Borrower in any such foreclosure action, under or by reason of or in connection with the Loan, this Mortgage or any of the other Loan Documents.

Section 6.43 Force Majeure. Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, any of the dates by which the Borrower is required to perform any obligation under this Mortgage or in any of the other Loan Documents shall be extended for a period of time equal to the number of days during which the Borrower is prevented from performing any such obligation by reason of "force majeure". The term "force majeure" as used in this section shall include the occurrence of any of the following events: the enactment of any law or issuance of any governmental order, rule or regulation establishing rationing or priorities in the use of materials or restricting the use of labor; delays due to labor strikes, lockouts, acts of terrorism, acts of God, enemy action, civil commotion, fire or other casualty, or other emergency, cause or event; in each instance beyond the reasonable control of the Borrower.

Section 6.44 Except as otherwise expressly provided herein or in the other Loan Documents, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Mortgage or any other Loan Document by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon the Note, this Mortgage and the other Loan Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by the Note, this Mortgage and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of each of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender. Lender, by accepting the Note and this Mortgage, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding, under or by reason of or under or in connection with the Note, this Mortgage or the other Loan Documents.

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$5,100,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE, IF ANY.

**MORTGAGOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED WITHOUT
CHARGE A TRUE COPY OF THIS MORTGAGE.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

Signed, sealed and delivered in the presence of

BH3 DJ SUB LLC
a Florida limited liability company

Print Name: Chime Gendreau

By: [Signature]
Name: Gregory Freedman
Title: Authorized Signatory

Print Name: Jacqueline Sultan

STATE OF FLORIDA)
COUNTY OF Broward) ss:

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 7th day of May, 2020 by Gregory Freedman, as the Authorized Signatory of BH3 DJ Sub LLC, a Florida limited liability company, on behalf of said company. Such person [] is personally known to me or [] has produced FL Drivers License as identification.

[Seal]:

[Signature]
Notary Public, State of Florida

Print: Jacqueline Sultan

My Commission Expires: 10/26/2023

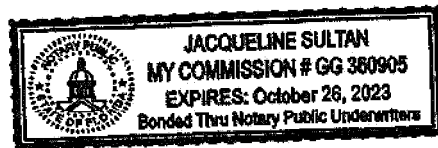


EXHIBIT A
MORTGAGED PROPERTY DESCRIPTION

Lots 13 through 22, inclusive, Block 257, and all of that part of Block 257 lying South of said Lot 22 and East of alley in the Township of Progresso, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands lying and being in Broward County, Florida.

EXHIBIT B
PERMITTED ENCUMBRANCES

1. Resolution No. 95-86 of the City Commission of the City of Fort Lauderdale, recorded November 16, 2004 in Official Records Book 38544, Page 1743, of the Public Records of Broward County, Florida.

2. Ordinance No. 2005-20 of the Board of County Commissioners of Broward County, Florida, recorded July 15, 2005 in Official Records Book 40082, Page 1796, of the Public Records of Broward County, Florida.

EXHIBIT C
PERMITTED TRANSFERS

Permitted Transfer: Means any of the following: (a) any Transfer (as hereinafter defined), directly as a result of the death or legal incapacity of a natural person, or made to family members for bona fide estate planning purposes of any interests previously held by such person to the Person (as hereinafter defined) or Persons lawfully entitled thereto, (b) any lease of space in the Property in accordance with the terms and provisions of Section 2.13 of this Mortgage, (c) mechanic's liens, and other liens that are being contested and/or bonded off by Borrower in compliance with Section 2.5 of this Mortgage, (d) any Transfer of membership interests made to or among the existing members in BH3 DJ Flagler LLC, a Delaware limited liability company, and (e) any Transfer of membership interests not exceeding 49% of the direct or indirect membership interests in BH3 DJ Flagler LLC, a Delaware limited liability company. All transfers of membership interests in BH3 DJ Flagler LLC, a Delaware limited liability company, are subject to compliance with applicable OFAC requirements.

As used in this Mortgage, the term "Person" shall mean any natural person, corporation, limited liability company, partnership (general or limited), limited liability partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision or any other entity, whether acting in an individual, fiduciary or other capacity.

As used in this Mortgage, the term "Transfer" shall mean any sale (including any installment sale), conveyance, assignment, mortgage, pledge, lease (including any ground lease), encumbrance, alienation or grant of lien (other than Permitted Encumbrances) on, grant of any option with respect to or grant of any other interest in the Property, any part thereof or any interest therein (including any legal, beneficial or economic interest in Borrower and any rights in or restricting the use or development of the Property), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record.