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MORTGAGE,  
SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND  
FIXTURE FILING

made by

**CYGNUS HOME SERVICE, LLC,**  
as Mortgagor,

in favor of

**DENEB REAL ESTATE, LLC,**  
as Mortgagee

THIS MORTGAGE SECURES FUTURE ADVANCES

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When Recorded Return To: JE  
First American Title Insurance Company  
National Commercial Services  
121 S. 8th Street, Suite 1250  
Minneapolis, MN 55402  
File No: NCS 392



THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this “**Security Instrument**”), dated as of May 1, 2020, is made by **CYGNUS HOME SERVICE, LLC**, a Minnesota limited liability company, successor in interest to Schwan’s Home Service, Inc., a Minnesota corporation, and successor in interest to Schwan’s Sales Enterprises, Inc., a Minnesota corporation (the “**Mortgagor**”), in favor of **DENEB REAL ESTATE, LLC**, a South Dakota limited liability company (the “**Mortgagee**”).

## ARTICLE I.

### DEFINITIONS

**Section 1.01. Definitions.** In addition to the terms defined elsewhere in this Security Instrument, the following terms shall have the meanings specified in this Section 1.01, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular.

“**Borrower**” means US Bank Trust National Association SD, as trustee of the Paul M. Schwan 1992 GST Family Trust.

“**Credit Agreement**” means that certain Credit Agreement dated as of October 28, 2019, by and among the Borrower, the Mortgagor, Holdings and the Mortgagee, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Default**” means any event or condition that with notice or passage of time, or both, would constitute an Event of Default.

“**Default Rate**” has the meaning specified in the Credit Agreement.

“**Environmental Law**” means any federal, state, county, municipal or local law, statute, ordinance, rule, regulation, administration order, or permit now in effect or hereinafter enacted, pertaining to the public health, safety, dangerous toxic or hazardous substances, industrial hygiene, or the environmental conditions on, under or about the Mortgaged Property.

“**Event of Default**” has the meaning specified in the Credit Agreement.

“**GAAP**” has the meaning specified in the Credit Agreement.

“**Guarantor**” means collectively, the Mortgagor and Holdings.

“**Hazardous Materials**” means dangerous, toxic, or hazardous pollutants, contaminants, chemicals, wastes, materials or substances, as defined in or governed by the provisions of any Environmental Law and including, without limitation, toxic mold, PCBs, petroleum, asbestos and asbestos-containing materials.

“**Holdings**” means Cygnus Holdings, LLC, a South Dakota limited liability company.

“**Lien**” has the meaning specified in the Credit Agreement.

“**Loan Documents**” shall mean this Security Instrument, the Credit Agreement, each other document evidencing or securing the Obligations, and each of the other “Loan Documents” (as defined in the Credit Agreement).

“**Material Adverse Effect**” has the meaning specified in the Credit Agreement.

“**Maximum Debt Limit**” means \$100,000,000 at any time outstanding.

“**Mortgaged Property**” has the meaning specified in Section 2.01.

“**Obligations**” has the meaning specified in the Credit Agreement.

“**Permitted Encumbrances**” means the items set forth on Schedule B-1 of the title insurance policy issued to the Mortgagee insuring the lien of this Security Instrument and Liens permitted under Section 6.2 of the Credit Agreement.

“**Proceeds**” means all insurance proceeds payable under any property insurance policy maintained by the Mortgagor on the Mortgaged Property.

“**Term Loan**” has the meaning specified in the Credit Agreement.

“**Uniform Commercial Code**” has the meaning specified in the Uniform Commercial Code of the state in which the Mortgaged Property is located.

## ARTICLE II.

### GRANTING CLAUSES

**Section 2.01. Granting Clauses.** In order to secure (a) the repayment of the Obligations, and (b) the performance of all of the covenants and agreements of the Mortgagor contained in the this Security Instrument and in the Guaranty, the Mortgagor, in consideration of the premises, does hereby grant, bargain, sell, alienate, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm unto the Mortgagee, and its respective successors and assigns, WITH POWER OF SALE, the following up to the Maximum Debt Limit (all of which are hereinafter collectively called the “**Mortgaged Property**”):

All right, title and interest of the Mortgagor in and to the in real property described in Exhibit A hereto (hereinafter called the “**Land**”), together with all of its right, title and interest in (i) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land; (ii) all lighting, heating, ventilating, air-conditioning, sprinkling and plumbing fixtures, water and power systems, engines and machinery, boilers, furnaces, oil burners, elevators and motors, communication systems, dynamos, transformers, electrical equipment and all other fixtures of every description located in or on, or used, or intended to be used in connection with the Land or any building now or hereafter located thereon; (iii) all hereditaments, easements, appurtenances, riparian rights, rents, issues, profits, condemnation awards, mineral rights and water rights now or hereafter belonging or in any way pertaining to the Land or to any building now or hereafter located thereon and all the estates, rights and interests of the Mortgagor in the Land; (iv) all building materials, furniture, furnishings, maintenance equipment and all other personal property now or hereafter located in, or on, or used, or intended to be used in connection with the Land or any building now or hereafter located thereon and all replacements and additions thereto; (v) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to, of or for any and all of the foregoing; and (vi) any and all after-acquired interest of the Mortgagor in any of the foregoing, including the Land.

TOGETHER WITH all easements, rights, rights-of-way, strips and gores of land, alleys, sewer rights, water and water rights relating to the Land, including reversions and remainders, if any, of the



Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street or highway adjoining the Land.

TOGETHER WITH all leases, subleases, licenses, and other agreements affecting the use, enjoyment or occupancy of the Land, now or hereafter entered into, together with any extensions thereof and guarantees relating thereto (collectively, the “**Leases**”), and all rents, issues, revenues, profits, fees, charges, accounts, income, and other sums payable under the Leases, all tenant security and other deposits, oil and gas or other mineral royalties, bonuses and rents, revenues, issues and profits relating to the Land (collectively, the “**Rents**”).

TOGETHER WITH all judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the Land or any part thereof or any improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said Land or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, “**Condemnation Awards**”).

TOGETHER WITH all tenements, hereditaments and appurtenances belonging or otherwise pertaining to the aforesaid property or any part thereof, with all reversions, remainders, rents, income, revenues, profits, cash, proceeds, products and benefits at any time derived, received or had from any or all of the above-described property of the Mortgagor and all deposits or other accounts into which the same may be deposited.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its respective successors and assigns forever, to secure the payment and performance of the Obligations, including, without limitation, the due performance of the covenants, agreements and provisions herein contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

PROVIDED ALWAYS, and this Security Instrument is upon the express condition that, if Mortgagor or Borrower pays to Mortgagee the Obligations and all other sums payable by Mortgagor to Mortgagee as are secured hereby, in accordance with the provisions of the Credit Agreement, the Guaranty and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Mortgagor complies with all the terms and conditions contained herein, then this Mortgage and the estate hereby granted shall cease and become void

### ARTICLE III.

#### COVENANTS OF THE MORTGAGOR

The Mortgagor covenants with the Mortgagee as follows:

**Section 3.01. Authority to Execute and Deliver this Security Instrument; All Action Taken; Enforceable Obligations.** The Mortgagor is authorized under its articles of organization and operating agreement and all applicable laws and by corporate or organizational action, to execute and deliver this Security Instrument; and this Security Instrument is, and any amendment, supplement or restatement of this Security Instrument, when executed and delivered will be, the legal, valid and binding obligations of the  
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Mortgagor which are enforceable in accordance with their respective terms.

**Section 3.02. Authority to Security Instrument Property; No Liens; Exception for Permitted Encumbrances; Mortgagor to Defend Title and Remove Liens.** To its knowledge, the Mortgagor has good and marketable title to the Mortgaged Property and the Mortgaged Property is free and clear of any Lien affecting the title thereto, except Permitted Encumbrances. The Mortgagor will, until all Obligations have been paid in full, maintain and preserve the Lien of this Security Instrument superior to all other Liens, other than Permitted Encumbrances, and subject to the Permitted Encumbrances, will forever warrant and defend the title to the Mortgaged Property against any and all claims and demands.

**Section 3.03. No Encumbrances on Mortgaged Property.** The Mortgagor will not create, incur, suffer or permit to exist any Lien on any of the Mortgaged Property, except for Permitted Encumbrances. Except for claims giving rise to Permitted Encumbrances, the Mortgagor will promptly pay or discharge any and all obligations for or on account of which any such Lien might exist.

**Section 3.04. Sale or Transfer of Mortgaged Property.** The Mortgagor shall not sell, lease or transfer any of the Mortgaged Property to any person or entity except as permitted in Section 6.4 of the Credit Agreement.

**Section 3.05. Payment of Obligations.** The Mortgagor will duly and punctually pay all amounts due and payable under the Guaranty, at the dates and places and in the manner provided in the Guaranty, and all other sums becoming due and payable hereunder.

**Section 3.06. Preservation of Franchises and Compliance with Laws.** The Mortgagor will take or cause to be taken all such reasonable action as may from time to time be necessary to obtain, preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter granted or upon it conferred necessary to the operations of the Mortgagor, and will comply in all material respects with all laws, ordinances, regulations, and requirements applicable to it or the Mortgaged Property.

**Section 3.07. Maintenance of Mortgaged Property.** The Mortgagor will at all times maintain and preserve the Mortgaged Property and each and every material part and parcel thereof in good repair, working order and condition, ordinary wear and tear excepted, and in material compliance with all applicable laws, ordinances, regulations, and requirements, and will from time to time make all needed and proper repairs, renewals, and replacements (in the case of damage or destruction for which Proceeds have been paid to the Mortgagee, to the extent the Mortgagee makes any such Proceeds related to such repairs, renewals and replacements available for such purpose), and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times keep the Mortgaged Property in good condition and repair.

**Section 3.08. Insurance; Restoration of Damaged Mortgaged Property.**

(A) **Maintenance of Insurance.** The Mortgagor shall keep the Mortgaged Property continuously insured during the term of this Security Instrument and shall furnish the following to the Mortgagee:

(i) Insurance against loss or damage by fire, vandalism, explosion and from such other hazards as are presently included in standard "all risk or "special cause of loss" form policies, and an endorsement providing that such insurance shall not be voided by reason of the occupancy by any tenant of the Mortgaged Property. The amount of such insurance shall be as required by the Mortgagee from time to time, but not less than one hundred percent (100%) of the "full replacement cost" of the buildings, structures, improvements and fixtures without deduction for depreciation (but excluding the {03778071.1})



value of roads, foundations and similar improvements). During any period while buildings and/or tenant improvements on the Mortgaged Property are being constructed or reconstructed, the fire insurance required pursuant to this subsection shall be in the form of a builders "all risk" policy on a completed value, non-reporting basis, including collapse and transit coverage, with deductibles and a soft cost endorsement in amounts reasonably satisfactory to the Mortgagee and such other endorsements as the Mortgagee may reasonably require. Self-insurance for any insurance policy required to be maintained under this subsection (i) is prohibited.

(ii) Rent insurance against loss of income arising out of damage or destruction by fire or the perils of "all risk," or "special cause of loss" casualty insurance in an amount equal to twelve (12) months' gross rental income to the owner of the Mortgaged Property, or, if appropriate, business interruption insurance in an amount as required by the Mortgagee from time to time, but not to exceed the Mortgagee's reasonable estimate of the annual taxes and insurance for the Mortgaged Property.

(iii) Commercial general liability insurance on an "occurrence" basis against claims for bodily injury or death and property damage occurring upon, in or about the Mortgaged Property in such amounts as the Mortgagee may from time to time reasonably require, but in no event less the minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

(iv) Worker's compensation insurance in an amount equal to the Mortgagor's full statutory liability and covering all of the Mortgagor's employees on the Mortgaged Property, together with employer's liability insurance in such an amount as the Mortgagee may from time to time reasonably require.

(v) Flood hazard insurance satisfactory to the Mortgagee providing for full repair and replacement cost coverage, or evidence that flood insurance is not required by law for the Mortgaged Property.

(vi) If applicable, broad form boiler and machinery insurance on all equipment and pressure-fired vehicles or apparatus situate on the Mortgaged Property, and providing for full repair and replacement cost coverage.

(vii) Such other insurance on the Mortgaged Property, or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time reasonably be required by the Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, including, without limitation, terrorism, wind-storm, earthquake and hurricane insurance.

(b) All insurance shall be subject to the approval of the Mortgagee as to insurance companies, amounts, contents and form of policies and expiration dates, and shall contain a non-contributory mortgagee clause in favor of and satisfactory to the Mortgagee excluding the Mortgagee from the operation of any coinsurance clause contained in any such policy and, as to the policies required under subsections (i), (ii) and (v) above, naming the Mortgagee as loss payee. The policy required under subsection (iii) hereof shall name Mortgagee as an additional insured party. All such policies shall be issued by companies licensed in the State where the Mortgaged Property is situated and having a Best's financial rating of A- or better and a size class rating of VII or larger. Such policies shall provide for the payment of all costs and expenses incurred by the Mortgagee in the event of any contested claim and shall not be canceled or otherwise terminated without at least thirty (30) days' prior written notice to the Mortgagee.



(c) The Mortgagor will deliver the originals (or certified copies) of all such policies or certificates evidencing such insurance, together with copies of such policies manually certified by the entity issuing such certificates to the Mortgagee, and, not less than fifteen (15) days prior to the expiration date of each such policy, will deliver to the Mortgagee a renewal policy or policies or certificates evidencing insurance if the policies are master policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Mortgagee. The Mortgagor will not permit any condition to exist on the Mortgaged Property which would invalidate the insurance thereon.

(d) The Mortgagor shall promptly comply with and conform to all provisions of each insurance policy and all requirements of the insurers thereunder, applicable to the Mortgagor or the Mortgaged Property, even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of the Mortgaged Property.

(e) If the Mortgagee shall acquire title to the Mortgaged Property pursuant to proceedings under this Security Instrument, or by a deed in lieu of foreclosure, then all of the Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in the Mortgagee.

(B) **Notice of Damage or Destruction; Adjusting Loss.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, the Mortgagor shall promptly give written notice thereof to the insurance carrier and the Mortgagee, and shall not adjust any damage or loss that is estimated by the Mortgagee in good faith to exceed \$100,000.00 unless the Mortgagee shall have joined in such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence thereof or if a Default or Event of Default shall exist at any time, the Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, the Mortgagor does hereby irrevocably authorize, empower and appoint the Mortgagee as attorney-in-fact for the Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of the Mortgagor.

(C) **Application of Insurance Proceeds.** Proceeds in excess of \$100,000.00 shall be paid to the Mortgagee. At its option (but subject to Section 3.08(D) below), whether or not its security is impaired, the Mortgagee shall have the right to apply such Proceeds (after first deducting therefrom the Mortgagee's reasonable and documented expenses incurred in collecting the same, including but not limited to reasonable and documented attorneys' fees) to the reduction of the Obligations or to payment for the restoration, repair, replacement or rebuilding of the Mortgaged Property that is damaged or destroyed, in such manner as the Mortgagee may determine, subject to the terms of Section 6.3 of the Credit Agreement. Any application of Proceeds shall not extend or postpone the due dates of any installments of principal or interest payable under the Credit Agreement or change the amount of such installments.

(D) **Application to Restoration.** Notwithstanding the provisions of Section 3.08(C), the Mortgagee shall make all Proceeds paid to it pursuant to the provisions of Section 3.08(C) (after first deducting therefrom the Mortgagee's reasonable and documented expenses incurred in collecting the same, including reasonable and documented attorneys' fees and expenses) available to the Mortgagor for the purpose of reimbursing the Mortgagor for the Mortgagor's reasonable out-of-pocket costs of restoration, repair, replacement or rebuilding of the improvements on the Land, in accordance with any and all procedures reasonably required by the Mortgagee (and shall not be applied toward the payment of the Obligations until after restoration, repair, replacement or rebuilding of the improvements on the Land) provided each of the following conditions shall be met:



(1) There shall at the time of the casualty and at all times thereafter have occurred and be continuing no Default or Event of Default;

(2) The Mortgagor shall notify the Mortgagee of the Mortgagor's intention to perform such restoration, repair, replacement or rebuilding within thirty (30) days of the adjusting of the loss or casualty;

(3) The Mortgagee shall receive evidence reasonably satisfactory to the Mortgagee that the improvements on the Land have been fully restored, repaired, replaced or rebuilt or that by application of the Proceeds will be fully restored, repaired, replaced or rebuilt to a condition substantially similar to that existing immediately prior to the damage or destruction (or as otherwise reasonably approved by the Mortgagee), free and clear of all liens other than the Permitted Liens;

(4) If, in the commercially reasonable judgment of the Mortgagee, the Proceeds shall be insufficient to restore, repair, replace or rebuild the improvements on the Land to a condition substantially similar to that existing immediately prior to the damage or destruction (or as otherwise reasonably approved by the Mortgagee), the Mortgagor shall demonstrate to the Mortgagee the availability of funds in the amount of the insufficiency and such funds shall be applied on account of the restoration prior to any Proceeds; and

(5) In the commercially reasonable judgment of the Mortgagee, the restoration, repair, replacement or rebuilding of the improvements on the Land can be completed at least sixty (60) days prior to the maturity date of the Term Loan.

Any Proceeds remaining after reimbursement of the Mortgagor for the cost of restoring, repairing, replacing or rebuilding the improvements on the Land, as described above, and any Proceeds available upon the occurrence and continuance of any Default or Event of Default, may, at the Mortgagee's option, be applied to partial prepayment of the Obligations or paid to the Mortgagor. Any such application of Proceeds to the payment of the Obligations shall be without prepayment premium or penalty and shall not extend or postpone the due dates of the monthly installments payable under the Credit Agreement or change the amount of such installments.

(E) **Reimbursement of the Mortgagee's Expenses.** The Mortgagor shall promptly reimburse the Mortgagee upon demand for all of the Mortgagee's reasonable and documented expenses incurred in connection with the collection of the Proceeds, including but not limited to reasonable and documented attorneys' fees, and all such expenses, together with interest from the date of disbursement at the Base Rate (as defined in the Credit Agreement) or following and during the continuation of an Event of Default at the Default Rate as stated and defined in the Credit Agreement (unless collection of interest from the Mortgagor at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from the Mortgagor under applicable law), shall be additional amounts secured by this Security Instrument.

**Section 3.09. Mortgagee Right to Expend Money to Protect Mortgaged Property.** From time to time, the Mortgagee may, in its sole discretion, but shall not be obligated to, advance funds on behalf of the Mortgagor, in order to ensure compliance with any covenant or agreement of the Mortgagor made in or pursuant to this Security Instrument or to preserve or protect any right or interest of the Mortgagee in the Mortgaged Property, including, without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property (other than Permitted Encumbrances); provided, however, that the making of any such advance by the Mortgagee shall not constitute a waiver by the Mortgagee of any Event of Default with respect to which such advance is {03778071.1}





made or excuse the Mortgagor from any performance required hereunder. The Mortgagor shall pay to the Mortgagee upon demand all such advances made by the Mortgagee with interest thereon at the Default Rate. All such advances and accrued interest shall be secured by this Security Instrument.

**Section 3.10. Further Assurances.** Upon the request of the Mortgagee, the Mortgagor shall promptly do all acts and things, including the execution, acknowledgment and delivery of such amendments thereto and other instruments and documents as the Mortgagee may request, to enable the Mortgagee to perfect and maintain the Lien of this Security Instrument and/or the Mortgagee's rights and remedies hereunder. In the event the Mortgagor fails to take any action required under this Section 3.10, the Mortgagee may take any such action and make, execute and record any such instruments and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee as its attorney-in-fact to take such actions, which appointment is coupled with an interest and irrevocable.

**Section 3.11. Condemnation, Etc.**

(A) The Mortgagor hereby irrevocably assigns to the Mortgagee all Condemnation Awards which become payable to the Mortgagor by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called a "**Taking**"). Promptly upon receipt by the Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, the Mortgagor shall give notice thereof to the Mortgagee. The Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. The Mortgagor, notwithstanding that the Mortgagee may not be a party to any such proceeding, shall promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by the Mortgagor therein. The Mortgagor shall not enter into any agreement permitting or consenting to the Taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless the Mortgagee shall first have consented thereto in writing. All Condemnation Awards shall be adjusted jointly by the Mortgagor and the Mortgagee. All Condemnation Awards shall be paid to the Mortgagee, which shall hold them subject to the terms of Section 3.08 hereof regarding the disposition of Proceeds; provided, however, that if the Mortgagee, using commercially reasonable judgment, determines that the Mortgaged Property cannot be restored to an economically viable unit, the Mortgagee may apply the Condemnation Award, after first deducting the Mortgagee's reasonable and documented expenses incurred in the collection thereof, to the payment of the Obligations, whether or not due and in such order of applications as the Mortgagee may determine.

(B) If the Taking involves a taking of any building or other improvement now or hereafter located on the Land, the Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and, at the request of the Mortgagee (and provided that the Condemnation Award is made available to the Mortgagor for such purposes), complete repair or restoration of the Mortgaged Property as nearly as possible to its respective size, type and character immediately prior to the Taking, whether or not the Condemnation Award is adequate to complete such repair or restoration. The Mortgagor shall promptly reimburse the Mortgagee upon demand for all of the Mortgagee's reasonable and documented expenses (including reasonable and documented attorney's fees) incurred in the collection of awards and their disbursement in accordance with this paragraph, and all such expenses, together with interest from the date of disbursement at the Base Rate or following and during the continuation of an Event of Default at the Default Rate (unless collection of interest from the Mortgagor at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from the Mortgagor under applicable law), shall be additional amounts secured by this Security Instrument.

**Section 3.12. Conflict with Security Instrument Terms.** The provisions of this Security Instrument and the Credit Agreement shall be cumulative and not mutually exclusive, notwithstanding any inconsistencies.

**Section 3.13. Environmental Representations, Warranties and Covenants.** The Mortgagor makes the following representations, warranties and covenants:

**(A) Use of the Mortgaged Property.**

(1) The Mortgagor shall use, handle, transport or store Hazardous Materials only in: (i) a good and prudent manner in the ordinary course of business; and (ii) material compliance with all applicable Environmental Laws.

(2) The Mortgagor shall not conduct or allow to be conducted, in material violation of any Environmental Law, any business, operations or activity on the Mortgaged Property, or, except in compliance with all applicable Environmental Laws, employ or use the Mortgaged Property to generate, release, use, handle, manufacture, treat, store, process, transport or dispose of any Hazardous Materials, or any other substance which is prohibited, controlled or regulated under any applicable law. The Mortgagor shall not use the Mortgaged Property in a way that poses a threat or nuisance to public safety, health or the environment, or cause or allow to be caused a known or suspected release of Hazardous Materials, on, under, or from the Mortgaged Property except in material compliance with all Environmental Laws.

(3) The Mortgagor shall not do or permit any act or thing, business or operation that poses an unreasonable risk of harm, or materially impairs or may materially impair the value of the Mortgaged Property or any part thereof.

(4) All underground tanks, wells, septic tanks, ponds, pits, or any other storage tanks (whether currently in use or abandoned) on the Mortgaged Property, if any, are, and shall be, maintained in material compliance with all applicable Environmental Laws.

**(B) Notice of Environmental Problems or Litigation.** Neither the Mortgagor nor any of its tenants have given, nor were they required to give, nor have they received, any notice, letter, citation, order, warning, complaint, inquiry, claim or demand that: (1) the Mortgagor and/or any tenants have materially violated, or are about to materially violate, any Environmental Law, judgment or order; (2) there has been a release, or there is a threat of release, of Hazardous Materials from the Mortgaged Property that could reasonably be expected to result in a Material Adverse Effect; (3) the Mortgagor and/or its tenants may be or are liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release or a threatened release of Hazardous Materials; or (4) the Mortgaged Property is subject to a Lien in favor of any Governmental Authority for any liability, costs or damages, under any Environmental Law arising from, or costs incurred by such Governmental Authority in response to, a release or a threatened release of Hazardous Materials. The Mortgagor further represents and warrants that no conditions currently exist or are currently reasonably foreseeable that would subject the Mortgagor to any such investigation, litigation, or administrative enforcement or to any damages, penalties, injunctive relief, or cleanup costs under any Environmental Law that could reasonably be expected to result in a Material Adverse Effect. Upon receipt of any such notice, the Mortgagor and its tenants shall promptly provide a copy to the Mortgagee.

**(C) Remediation.** The Mortgagor shall promptly perform all remediation, removal or other response ("Remedial Work") required under any Environmental Law as a result of the presence, storage, use, disposal, transportation, discharge or release of any Hazardous Materials on, under or about

the Mortgaged Property. All Remedial Work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer; (ii) pursuant to a detailed written plan for the Remedial Work approved by any Governmental Authority or private agencies or persons with a legal or contractual right to such approval; (iii) with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and (iv) only following receipt of any required permits. The selection of the contractors and consulting environmental engineer to perform and supervise the Remedial Work, the contracts entered into with such parties, any disclosures to or agreements with any Governmental Authority or private agencies or parties relating to Remedial Work and the written plan for the Remedial Work (and any changes thereto) each shall, at the Mortgagee's option, be subject to the Mortgagee's prior written approval, which approval shall not be unreasonably withheld or delayed. In addition, the Mortgagor shall submit to the Mortgagee, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, comments or approvals from any Governmental Authority, proposed Remedial Work contracts and similar information prepared or received by the Mortgagor in connection with any Remedial Work. All costs and expenses of such Remedial Work shall be paid by the Mortgagor, including, without limitation, the Mortgagee's reasonable attorneys' and consultants' fees incurred in connection with the monitoring or review of such Remedial Work. The Mortgagee shall have the right but no obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any alleged violation of an Environmental Law.

(D) **Right of Inspection.** Upon reasonable notice and if Mortgagee reasonably suspects a material violation of an Environmental Law with respect to the Mortgaged Property, the Mortgagor hereby authorizes (and will cause any tenants to authorize) the Mortgagee, its agents, attorneys, employees, consultants, contractors, successors and assigns to enter upon and inspect the Mortgaged Property and facilities thereon, and perform such tests, including without limitation, subsurface testing, soils and groundwater testing, and other tests which may physically invade the Mortgaged Property, as the Mortgagee, in its sole discretion, determines are necessary to protect its security interest; provided, however, that under no circumstances shall the Mortgagee be obligated to perform such inspections or tests.

(E) **Indemnity.** The Mortgagor agrees to indemnify and hold the Mortgagee, its directors, employees, agents, and its successors and assigns, harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remedial action requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including without limitation attorney's fees and reasonable and documented expenses) arising directly or indirectly, in whole or in part, out of any failure of the Mortgagor to comply with the environmental representations, warranties, and covenants contained herein.

(F) **Continuation of Representations, Warranties, Covenants and Indemnities.** The Mortgagor's representations, warranties, covenants, and indemnities contained herein shall survive the occurrence of any event whatsoever, including, without limitation, the satisfaction of the Obligations secured hereby, the reconveyance or foreclosure of this Security Instrument, the acceptance by the Mortgagee of a deed in lieu of foreclosure, or any transfer or abandonment of the Mortgaged Property.

(G) **Corrective Action.** In the event the Mortgagor is in breach of any of its representations, warranties or agreements as set forth above, then, without limiting the Mortgagee's other rights hereunder, the Mortgagor, at its sole expense, shall take all actions required, including, without limitation, environmental cleanup of the Mortgaged Property, to comply with the representations, warranties, and covenants contained herein and with all applicable legal requirements and, in any event, shall take all actions deemed necessary under all applicable Environmental Laws.

**Section 3.14. Non-Homestead Property.** The Mortgaged Property is not homestead property.  
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**Section 3.15 Representations and Warranties Regarding the Mortgaged Property.** The Mortgagor hereby represents and warrants to the Mortgage as follows:

(i) There is no suit, action, investigation or proceeding pending or threatened against or affecting the Mortgagor or the Mortgaged Property before or by any court, administrative agency or other governmental authority which if adversely decided would have a material adverse effect on the business, operations or condition (financial or otherwise) of Mortgagor or the Mortgaged Property or which brings into question the validity of the transactions contemplated by the Loan Documents.

(ii) No consent, approval or other authorization of or by any court, administrative agency or other governmental authority is required in connection with the execution or delivery by the Mortgagor of this Security Instrument.

(iii) The Mortgagor conducts its business solely under the name set forth in the caption to this Security Instrument and under the tradename Schwan's Home Delivery and makes use of no trade names in connection therewith.

(iv) All necessary approvals for the use and occupancy of the Mortgaged Property from all Governmental Authorities, including, without limitation, zoning, use, building permits and certificates of occupancy, have been obtained and are final, unappealed, and unappealable, and remain in full force and effect without restriction or modification.

(v) No notice of a Taking of all or any part of the Mortgaged Property has been received by the Mortgagor and the Mortgagor has no knowledge that any Taking is contemplated.

(vi) No part of the Mortgaged Property has been damaged as a result of any fire, explosion, accident, flood, or other casualty which has not been fully restored.

(vii) The Mortgagor has no knowledge of any activity or condition on the Mortgaged Property which is in violation of any applicable law, including, without limitation, those pertaining to zoning, building, fire prevention, and environmental protection.

(viii) To Mortgagor's knowledge, none of the personal property which forms part of the Mortgaged Property is subject to any existing lien or security interest. No material part of the equipment, furnishings or other personal property used or to be used in connection with operation and maintenance of the Mortgaged Property is leased by the Mortgagor.

(ix) With the exception of the Transition Services Agreement dated February 25, 2019, between Schwann's Company and the Mortgagor, a complete copy of which has been given to the Mortgagee, there are no agreements of sale, rights of first refusal, purchase options, leases, licenses or other occupancy agreements affecting all or any portion of the Mortgaged Property.

(x) To the best of Mortgagor's knowledge and belief, the Mortgaged Property complies with the Americans With Disabilities Act (the "ADA"), and, to the extent applicable, the Fair Housing Act. The Mortgagor will maintain the Mortgaged Property in full compliance with the ADA and the Fair Housing Act (if applicable to the Mortgaged Property), and will undertake all alterations and additions to the Mortgaged Property as may be necessary to comply with the ADA.

(xi) The Mortgaged Property is separately assessed for real estate taxes.

(xii) There are no currently effective management and/or leasing brokerage agreements affecting the Mortgaged Property.

**Section 3.16 Taxes and Other Charges.** The Mortgagor shall pay when due and payable and before interest or penalties are due thereon, all taxes, assessments, water and sewer rents and all other charges or claims which may be assessed, levied, or filed at any time against the Mortgagor, the Mortgaged Property or any part thereof or against the interest of the Mortgagee therein, or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial sale, and the Mortgagor shall produce to the Mortgagee not later than such dates receipts for the payment thereof; provided that if the Mortgagor in good faith and by appropriate legal action shall contest the validity of any such item, or the amount thereof, and shall have established on its books or by deposit of cash with the Mortgagee, as the Mortgagee may elect, a reserve for the payment thereof in such amount as the Mortgagee may require, then the Mortgagor shall not be required to pay the item or to produce the required receipts while the reserve is maintained and so long as the contest operates to prevent collection, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to the Mortgagor. If such contest is terminated or discontinued adversely to the Mortgagor, the Mortgagor shall promptly (and in all events at least thirty (30) days before any of the Mortgaged Property may be sold because of non-payment of such tax or charge) pay such contested tax or charge and all costs and penalties and deliver evidence of such payment acceptable to the Mortgagee promptly thereafter.

#### ARTICLE IV.

#### REMEDIES OF THE MORTGAGEE

**Section 4.01. Intentionally Omitted.**

**Section 4.02. Acceleration of Maturity.** If an Event of Default shall have occurred and be continuing, the Mortgagee may declare the Obligations to be due and payable immediately by a notice in writing to the Mortgagor, and upon such declaration, all Obligations shall become due and payable immediately without presentment, demand or further notice of any kind.

**Section 4.03. Remedies of the Mortgagee.** If one or more Events of Default shall have occurred and be continuing, the Mortgagee (personally or by attorney), in its discretion, may:

(A) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, profits and proceeds pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable;

(B) proceed to protect and enforce the rights of the Mortgagor and the rights of the Mortgagee by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in the Credit Agreement or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit, the Mortgagee shall have the right to have appointed a receiver of the Mortgaged Property and of all rents, income, revenues, profits and proceeds pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the

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time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver, the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment ex parte;

(C) immediately foreclose this Security Instrument and, in any foreclosure proceeding the court shall, upon application, at once, and without notice to Mortgagor, or any party claiming under said Mortgagor, and without giving bond on such application (such notice and bond being hereby expressly waived) and also without reference to the then value of the Mortgaged Property, to the use of said Mortgaged Property as a homestead, or to the solvency or insolvency of any person liable for any of the Obligations secured hereby, appoint a receiver for the benefit of the legal holder of the Obligations secured hereby, to take possession of the Mortgaged Property, with power to collect rents, issues, and profits of the Mortgaged Property, then due or to become due, during the pendency of such foreclosure suit, and until the time to redeem the same shall expire (such rents, issues and profits being hereby expressly assigned and pledged as additional security for the payment of the Obligations secured by this Security Instrument); this provision for appointment of a receiver being expressly a condition upon which the loan hereby secured was made; and Mortgagor hereby further consents that said receiver may, out of the said rents, pay prior or subordinate liens, the taxes, assessments, water rates and insurance on Mortgaged Property, then due or unpaid or accruing whether before or after the filing of such bill, and for any necessary repairs thereon, and management and rental fees and any other proper charges, and the amount of any deficiency decree; provided that, in case of any default or breach, as aforesaid, as a concurrent (and not alternative or exclusive) remedy and measure for making effective the terms provisions and purposes hereof, it shall be lawful for Mortgagee, its agent or attorney forthwith (either with or without process of law, forcibly or otherwise) to enter upon and take possession of said Mortgaged Property and to expel and remove any person, goods or chattels, occupying or upon the same, to collect and to receive all the rents, issues and profits therefrom, from time to time, to manage and control the same and make all necessary repairs, and lease the same or any part thereof at such rentals as in its sole discretion it may deem just and reasonable, and after deducting all reasonable attorneys' fees and all expenses incurred in the protection, care, repair and management of said Mortgaged Property, apply the remaining income upon the Obligations hereby secured in the same manner as is hereafter provided upon the sale of said Mortgaged Property under foreclosure; and said Mortgagor hereby expressly releases and waives any and all right to possession, control or management of the Mortgaged Property, or to the rents, issues and profits therefrom, after any default or breach of the terms or provisions of this Security Instrument and said Mortgagor hereby further expressly releases and waives any and all damages and claims for damages occasioned by such expulsion, and

(D) sell or cause to be sold all of the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction and convey the same to purchaser in fee simple, as provided by law, at such place in any county in which the property to be sold, or any part thereof, is located, at such time, upon such notice, and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said county or, if no such newspaper is published in such county, in a newspaper of general circulation in such county, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this Section 4.03(D) may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned. Notwithstanding the foregoing, in the event another or different notice of sale or another or different manner of conducting the same shall be required by law, the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions {03778071.1}

of law. The costs and expenses incurred by the Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Security Instrument shall be secured by this Security Instrument. The Mortgagor is to remain liable for any deficiency.

Each remedy herein specifically given shall be in addition to every other right now or hereafter given or existing at law or in equity, and each and every right may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee and the exercise or the beginning of the exercise of one right shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right. The Mortgagee shall have all rights and remedies available under the law in effect now and/or at the time such rights and remedies are sought to be enforced, whether or not they are available under the law in effect on the date hereof.

**Section 4.04. Application of Proceeds from Remedial Actions.** Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied to the Obligations in such order and manner as the Mortgagee shall elect in its sole discretion, and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

**Section 4.05. Expenses of Exercising Rights, Powers and Remedies.** The reasonable and documented expenses (including any receiver's fees, attorneys' fees, appraisers' fees, environmental engineers' and/or consultants' fees, costs incurred for documentary and expert evidence, stenographers' charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree of foreclosure) of procuring all abstracts of title, continuations of abstracts of title, title searches and examinations, title insurance policies and commitments and extensions therefor, Torrens duplicate certificates of title, Uniform Commercial Code and chattel lien searches, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute any foreclosure action or to evidence to bidders at any sale which may be had pursuant to any foreclosure decree the true condition of the title to or the value of the Mortgaged Property, and agent's compensation) incurred by the Mortgagee after the occurrence of any Event of Default and/or in pursuing the rights, powers and remedies contained in this Security Instrument shall be immediately due and payable by the Mortgagor, with interest thereon from the date incurred at the rate set forth in Section 3.09 hereof, and shall be added to the indebtedness secured by this Security Instrument.

**Section 4.06. Restoration of Position.** In case the Mortgagee shall have proceeded to enforce any right under this Security Instrument by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property subject to the lien hereof.

**Section 4.07. Marshalling.** The Mortgagor, for itself and on behalf of all persons, parties and entities which may claim under the Mortgage, hereby waives all requirements of law relating to the marshalling of assets, if any, which would be applicable in connection with the enforcement by the Mortgagee of its remedies for an Event of Default hereunder, absent this waiver. The Mortgagee shall not be required to sell or realize upon any portion of the Mortgaged Property before selling or realizing upon any other portion thereof.

**Section 4.08. Remedies Cumulative; No Election.** Every right or remedy herein conferred upon or reserved to the Mortgagee shall be cumulative and shall be in addition to every other right and remedy given hereunder or under the Credit Agreement or now or hereafter existing at law, or in equity, or by {03778071.1}

statute. The pursuit of any right or remedy shall not be construed as an election.

**Section 4.09. Waiver of Appraisal Rights.** The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law.

**Section 4.10. Sale of Mortgaged Property.** In the event of a sale under this Security Instrument, whether by virtue of judicial proceedings or advertisement or otherwise, the Mortgaged Property may, at the option of Mortgagee, be sold as an entirety or in such other manner and order as Mortgagee in its sole discretion may elect.

## ARTICLE V.

### POSSESSION UNTIL DEFAULT; SATISFACTION

**Section 5.01. Possession Until Default.** Until one or more Events of Default shall have occurred and be continuing, the Mortgagor shall be permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, including, without limitation, to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, products, profits and proceeds thereof or therefrom, subject to the provisions of this Security Instrument.

**Section 5.02. Satisfaction.** If the Mortgagor shall well and truly pay or cause to be paid the Obligations at the times and in the manner provided in the Guaranty, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder, and shall keep and perform all covenants herein and in the other Loan Documents required to be kept and performed by it, and there are no further obligations to make advances to the Borrower under the Credit Agreement, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall, upon the written request of the Mortgagor, revert to the Mortgagor and the estate, right, title and interest of the Mortgagee shall thereupon cease, determine and become void, and the Mortgagee, in such case, at the Mortgagee's cost and expense, shall enter satisfaction of this Security Instrument upon the record.

## ARTICLE VI.

### MISCELLANEOUS

**Section 6.01. Property Deemed Real Property.** It is hereby declared to be the intention of the Mortgagor that all the Mortgaged Property, including, without limitation, all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, acquisition, ownership, use or operation of the buildings or improvements located on the real property encumbered hereby, and all other property physically attached to any of the foregoing, including fixtures now or in the future attached to any of the foregoing, shall be deemed to be real property.

**Section 6.02. Security Instrument to Bind and Benefit Successors and Assigns.** All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the {03778071.1}



Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagee shall pass to and inure to the benefit of the successors and assigns of the Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgments and other instruments as may be requested by the Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of the Mortgagee hereunder or under the Credit Agreement or in and to any of the Mortgaged Property.

**Section 6.03. Headings.** The descriptive headings of the various articles and sections of this Security Instrument were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

**Section 6.04. Notices.** All demands, notices, reports, approvals, designations or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by nationally recognized courier service guarantying overnight delivery, registered or certified mail, postage prepaid, or delivered by hand, addressed to the proper party or parties at the following address:

As to the Mortgagor:                   Cygnus Home Service, LLC  
115 West College Drive  
Marshall, MN 56258  
Attn.: Law Department

With a copy to:

Woods, Fuller, Shultz & Smith, P.C.  
PO Box 5027  
Sioux Falls, SD 57117

As to the Mortgagee:               Deneb Real Estate, LLC  
1601 E. 69th Street  
Sioux Falls, SD 57108  
Attn: Matt Bock

Either such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation, the address designated shall be deemed to be the address of such party in lieu of the address given above.

**Section 6.05. Severability.** The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Security Instrument shall not affect the remaining portions hereof.

**Section 6.06. Governing Law.** The effect and meaning of this Security Instrument, and the rights of all parties hereunder, shall be governed by, and construed according to, the laws of the State in which the land is located, except to the extent governed by federal law.

**Section 6.07. Indemnification by the Mortgagor of the Mortgagee.** The Mortgagor agrees to indemnify and save harmless the Mortgagee against any liability or damages which the Mortgagee may incur or sustain in the exercise and performance of its rightful powers and duties hereunder, including any liability or damages arising from the Mortgagor's failure to comply with any Environmental Law or the like applicable to the Mortgaged Property. For such indemnity, the Mortgagee shall be secured under this Security Instrument in the same manner as the Obligations and all amounts payable under this Section shall be paid to the Mortgagee with interest at the rate specified in Section 3.09. The Mortgagor's obligations under this Section shall survive the exercise by the Mortgagee of its rights and remedies hereunder, any {03778071.1}

foreclosure on all or any part of the Mortgaged Property and the cancellation or satisfaction of this Security Instrument.

**Section 6.08. Security Agreement.** This Security Instrument is both a real property Security Instrument and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property. THE MORTGAGOR HEREBY GRANTS TO MORTGAGEE, AS SECURITY FOR THE OBLIGATIONS, A SECURITY INTEREST IN THE MORTGAGED PROPERTY TO THE FULL EXTENT THAT THE MORTGAGED PROPERTY MAY BE SUBJECT TO THE UNIFORM COMMERCIAL CODE (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). If an Event of Default shall occur and be continuing, the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as the Mortgagee may deem reasonably necessary or advisable for the care, protection and preservation of the Collateral. The Mortgagor shall pay to the Mortgagee on demand any and all out-of-pocket expenses, including attorneys' fees and expenses, incurred or paid by the Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Collateral sent to the Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to the Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by the Mortgagee to the payment of the Obligations in such priority and proportions as provided for in the Credit Agreement.

**Section 6.9 Fixture Filing.** This instrument shall be deemed to be a fixture filing within the meaning of the Uniform Commercial Code, and for such purpose, the following information is given:

(A) (1) the name of the record owner of the Land is Cygnus Home Service, LLC, 115 West College Drive, Marshall, MN 56258;

(2) the organizational identification number of the debtor is 1070400600060.

(B) Name and address of Secured Party: Deneb Real Estate, LLC  
1601 E. 69th Street  
Sioux Falls, SD 57108  
Attn: Matt Bock

(C) Description of the types (or items) of property covered by this fixture filing: See granting clauses.

(D) Description of real estate to which the collateral is attached or upon which it is or will be located: See Exhibit A hereto.

Some of the above-described collateral is or is to become fixtures upon the above described real estate, and this Security Instrument constitutes a fixture filing and is to be filed for record in the public real estate records.

The Mortgagor hereby acknowledges receipt of a copy of this Security Instrument in compliance with the Mortgagee's obligation to deliver a copy of the fixture filing to the Mortgagor pursuant to Section 9.1-502(f) of the Uniform Commercial Code.

## ARTICLE VII.

### ASSIGNMENT OF LEASE AND RENTS

**Section 7.01. Assignment of Leases and Rents.** The Mortgagor does hereby unconditionally and absolutely sell, assign and transfer unto the Mortgagee, all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of any lease or any agreement or license for the use or occupancy of the Mortgaged Property, whether now existing or hereafter entered into during the term of this Security Instrument, any guarantee of any tenant's obligations under any lease, all security deposits, all proceeds from settlements relating to terminations of leases and all claims for damages arising from rejection of any lease under any federal or state bankruptcy law, it being the intention of this Security Instrument to establish an absolute transfer and assignment of all such leases and agreements and all of the rents and profits from the Mortgaged Property to the Mortgagee. The Mortgagor does hereby appoint irrevocably the Mortgagee as the Mortgagor's true and lawful attorney in the Mortgagor's name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, however, that the Mortgagor shall have a revocable license to collect and retain such rents and profits unless and until an Event of Default exists under this Security Instrument, at which time the foregoing license shall be automatically revoked without further notice to the Mortgagor.

Upon the occurrence and during the continuance of an Event of Default, upon demand of the Mortgagee, the Mortgagor shall surrender to the Mortgagee and the Mortgagee shall be entitled to enter upon and take and maintain possession of the Mortgaged Property and any leases thereunder and collect and retain any rents and profits from the Mortgaged Property and hold, operate, manage and control the Mortgaged Property and any such leases and to do such things in its discretion as may be deemed proper or necessary to enforce the payment or security of the rents and profits of the Mortgaged Property and the performance of the tenants' obligations under any leases of the Mortgaged Property, with full power to cancel or terminate any lease for any cause or on any basis which would entitle the Mortgagor to cancel the same and to elect to disaffirm any lease made subsequent to this Security Instrument or subordinated to the lien hereof. All rents and payments received by the Mortgagor after the Mortgagee has exercised any of its rights under this assignment shall be held by the Mortgagor in trust for the Mortgagee and shall be delivered to the Mortgagee immediately without demand.

The Mortgagee shall not be obligated to perform or discharge any obligation or liability of the landlord under any leases and the Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or under or by reason of this Security Instrument. Any amounts incurred by the Mortgagee in connection with its rights hereunder, including costs, expenses and attorneys' fees, shall bear interest thereon at the Default Rate, shall be additional Obligations and Mortgagor shall reimburse the Mortgagee therefor immediately upon demand. The Mortgagee may apply any of said rents and profits received to the costs and expenses of collection, including receivers' fees and attorneys' fees, to the payment of taxes, assessments and insurance premiums and expenditures for the maintenance of the Mortgaged Property, to the performance of the landlord's obligations under the lease, and to any Obligations in such order as the Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any Event of Default under this Security Instrument nor in any way operate to prevent the Mortgagee from pursuing any other remedy which it may now or hereafter have under the terms of this Security Instrument or the other Loan Documents nor shall it in any way be deemed to constitute the Mortgagee a mortgagee in

possession. The Mortgagor waives any right of set off against any person in possession of any portion of the Mortgaged Property.

**Section 7.02. Covenants With respect to Leases.** The Mortgagor shall not, without the Mortgagee's prior written consent, enter into, modify, amend, terminate, or accept a surrender of any lease, or waive, excuse, or in any manner release the tenant from any of its obligations under any lease. The Mortgagor will, at its own cost and expense, perform all of the obligations of the Mortgagor under any lease affecting the Mortgaged Property and use its best efforts to enforce all obligations of each tenant under each lease and will appear in and defend, at its own cost and expense, any proceeding arising out of the Mortgagor's interest in any lease. The Mortgagor will not borrow against, pledge or assign any rentals due under the leases, nor consent to a subordination or assignment of the interest of the tenants thereunder to any party other than the Mortgagee, nor accept payment of the rents thereunder for more than one (1) month in advance. The Mortgagor shall notify Mortgagee of default by any tenant of the Mortgaged Property. The Mortgagor will deliver copies of all lease amendments and new leases to the Mortgagee within thirty (30) days after execution whether or not the prior written consent of the Mortgagee was required for such amendment or new lease.

**Section 7.03. Mortgagee's Right to Perform Under Leases.** If the Mortgagor fails to perform any of its obligations under any lease affecting the Mortgaged Property, the Mortgagee shall have the right, but not the obligation, without further notice to the Mortgagor and without waiving or releasing the Mortgagor from any obligation contained in this Security Instrument, to remedy such failure and the Mortgagor shall repay upon demand all sums incurred by the Mortgagee in connection therewith, including, without limitation, the Mortgagee's reasonable attorney's fees, together with interest at the Default Rate.

## ARTICLE VIII.

### STATE SPECIFIC PROVISIONS

**Section 8.01. Advance Money Mortgage:** This Security Instrument secures money to be advanced from time to time pursuant to the Credit Agreement. This Security Instrument covers present and future advances in the aggregate amount of the indebtedness secured hereby, made by Mortgagee to or for the benefit of Borrower pursuant to the Credit Agreement and the lien of such future advances shall relate back to the date of this Security Instrument. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount.

In addition to the foregoing, this Mortgage secures unpaid balance of advances made, with respect to the Mortgaged Property, for the payment of taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Mortgaged Property or the lien of this Mortgage, expenses incurred by the Mortgagee by reason of default by the Mortgagor under this Mortgage or advances made under the Notes to enable completion of the improvements for which the construction loan evidenced by the Notes was originally made.

**Section 8.02. Remedies.** Upon the occurrence of an Event of Default:

(a) **Power of Sale.** WARNING: THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON DEFAULT MAY BE FORECLOSED BY STATUTORY ADVERTISEMENT AND SALE PURSUANT TO WYO. STAT. § 34-4-102. IN FORECLOSURE BY STATUTORY ADVERTISEMENT AND SALE, NO HEARING IS REQUIRED AND THE ONLY NOTICE REQUIRED IS THE PUBLICATION OF NOTICE IN A LOCAL NEWSPAPER IN ACCORDANCE WITH APPLICABLE LAW.

(b) Any sale conducted upon foreclosure of the Mortgaged Property shall be at public venue, between the hour of ten (10:00) o'clock in the forenoon, and five (5:00) o'clock in the afternoon, at the front door of the courthouse, or the place of holding the district court of the county within the county in which the Mortgaged Property to be sold, or some part of it, is situated, and shall be made by the sheriff or deputy sheriff of the county, to the highest bidder.

(c) Upon any sale of the Mortgaged Property by advertisement and sale, the sheriff or other officer, instead of executing a deed to the premises sold, shall give to the purchaser of the Mortgaged Property a certificate in writing describing the property purchased and the sum paid therefor. The certificate shall state that the purchaser is entitled to a deed for the property at the expiration of the period of redemption, unless the property is redeemed prior to that date as provided by law. The sheriff or other officer shall record in the office of the recorder of the county a duplicate of the certificate, signed and acknowledged by him, and the certificate or a certified copy thereof is admissible as evidence of the facts therein contained.

**Section 8.03. Section 8.04. Maturity Date.** The maturity date shall be October 28, 2029.

**Section 8.04. Waiver.** MORTGAGOR, ON BEHALF OF HIMSELF AND ALL PERSONS NOW OR HEREAFTER WITH AN INTEREST IN THE MORTGAGED PROPERTY, VOLUNTARILY AND KNOWINGLY HEREBY: ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE AGRICULTURAL REAL ESTATE AS DEFINED IN WYO. STAT. § 1-18-103; WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL OTHER RIGHTS TO REINSTATEMENT OR REDEMPTION AND ANY AND ALL OTHER RIGHTS AND BENEFITS UNDER ALL PRESENT AND FUTURE APPRAISEMENT, HOMESTEAD (REGARDLESS OF POSSESSION OF THE REAL PROPERTY THE PRINCIPALS), MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION AND MARSHALLING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, AND AGREES THAT NO DEFENSE, CLAIM OR RIGHT BASED ON ANY THEREOF WILL BE ASSERTED, OR MAY BE ENFORCED, IN ANY ACTION ENFORCING OR RELATING TO THIS MORTGAGE OR ANY OF THE MORTGAGED PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS OF REINSTATEMENT OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN WYO. STAT. § 1-18-103) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT. IN ADDITION, THE SPOUSE OF THE MORTGAGOR JOINS IN SECTION 14 OF THIS MORTGAGE AND WAIVES HER RIGHTS UNDER ANY HOMESTEAD EXEMPTION LAWS OR AS TENANTS BY THE ENTIRETIES, IF ANY, WITH RESPECT TO THE REAL PROPERTY AND THIS MORTGAGE.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Mortgagor has caused this Security Instrument to be executed as of the day and year first above written.

**CYGNUS HOME SERVICE, LLC**  
**a Minnesota limited liability company**

By:



Name: Jared Kemper

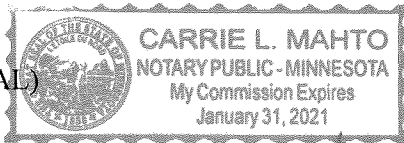
Title: Vice President & Corporate Secretary

STATE OF MINNESOTA )

COUNTY OF Dakota )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of June, 2020, by Jared Kemper, the Vice President and Corporate Secretary of **Cygnus Home Service, LLC, a Minnesota limited liability company**, on behalf of said company.

(SEAL)



  
Notary Public

My commission expires: 1/31/2021

EXHIBIT A

LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6 and 7, Block 2 of the amended Plat of Meyer and Demple's Subdivision,  
Sheridan County, Wyoming.