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OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH POWER OF SALE)

by

TKG SUGARLAND VILLAGE, L.L.C.,
a Missouri limited liability company ,
as Mortgagor,

to and in favor of

BANK OF AMERICA, N.A.,
a national banking association, as administrative agent,
as Mortgagee

This document serves as a Fixture Filing under Section 34.1-9-502 of
the Wyoming Uniform Commercial Code.

THIS INSTRUMENT IS AN OPEN-END REAL PROPERTY MORTGAGE AND SECURES
PRESENT AND FUTURE INDEBTEDNESS, OBLIGATIONS AND ADVANCES UP TO A
MAXIMUM AMOUNT OF \$100,000,000 PLUS INTEREST THEREON AND ALL OTHER SUMS
DUE HEREUNDER OR SECURED HEREBY.



**OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH POWER OF SALE)**

(This Documents serves as a Fixture Filing under Section 34.1-9-502 of the
Wyoming Uniform Commercial Code)

THIS OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is dated February 9, 2016, to be effective on February 17, 2016 by TKG SUGARLAND VILLAGE, L.L.C., a Missouri limited liability company ("Mortgagor"), in favor and for the benefit of BANK OF AMERICA, N.A., a national banking association, as "Administrative Agent" under the Loan Agreement for the benefit of the Lenders (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of One Hundred Million and No/100 Dollars (\$100,000,000). This Mortgage secures future advances and shall have lien priority in accordance with applicable law allowing such priority, all as more particularly set forth in Section 6.26 of this Mortgage.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Borrower": means, collectively, Mortgagor, TKG Country Hills, L.L.C., a Missouri limited liability company, TKG Riverside Plaza, L.L.C., a Missouri limited liability company, and TKG Powder Basin, L.L.C., a Missouri limited liability company.

"Claims": any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind of character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable.

"Current Partner": a Person who on the date hereof was the holder of a direct or indirect equity interest in Mortgagor.

"Default Rate": is defined in the Loan Agreement.

"Encumbrance": as to any item of real or personal property, any easement, right of way, license, condition, or restrictive covenant, or zoning or similar restriction, that is not a security interest but is enforceable by any Person other than the record owner of such property.



"Governmental Authority": the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Holder": is defined in Section 1.5.

"Law": is defined in Section 2.1(g).

"Lease": is defined in Section 3.1.

"Legal Requirements": is defined in Section 2.1(g).

"Lender": individually and collectively, Bank of America, N.A., a national banking association, and the other financial institutions that are parties to the Loan Agreement, together with their respective successors and assigns.

"Lien": any mortgage, pledge, hypothecation, assignment (as security), deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever having substantially the same economic effect as any of the foregoing (including, without limitation, any conditional sale or other title retention agreement and any capital lease).

"Loan": the loan by Holders to Mortgagor, the repayment obligations in connection with which are evidenced by the Promissory Notes.

"Loan Agreement": the Loan Agreement dated of even date herewith among Borrower, as borrower, Mortgagee, as Administrative Agent, and the Lenders party thereto, as amended, restated, extended, renewed, replaced or otherwise modified from time to time.

"Maximum Amount": is defined in Section 6.11.

"Mortgagee": Bank of America, N.A., as "Administrative Agent" under the Loan Agreement for the benefit of the Lenders, whose address is 135 S. LaSalle, Mail Location IL4-135-06-41, Chicago, IL 60603, Attn: Carolyn LaBatte-Leavitt, Facsimile: 312-453-3118, and any successor "Administrative Agent" under and as defined in the Loan Agreement, as Mortgagee.

"Mortgagor": TKG Sugarland Village, L.L.C., a Missouri limited liability company, whose address is 211 N. Stadium Blvd., Suite 201, Columbia, Missouri 65203, and its permitted successors and assigns, as Mortgagor.

"Permitted Encumbrances": is defined in Section 2.1(b).

"Permitted Transferee": is defined in the Loan Agreement.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.



"Promissory Note": the Promissory Note dated of even date herewith made by Borrower and payable to the order of Lender, in the maximum aggregate principal face amount of \$66,525,000.00, which bears interest as therein provided, contains a provision for, among other things, the payment of attorneys' fees, and having a maturity date of February 15, 2019, subject to extension to February 15, 2021, and provide that the principal balance evidenced thereby shall bear interest at a floating rate of interest subject to change from time to time, as the same may be amended, restated, extended, renewed, replaced or otherwise modified from time to time, all as described in the Loan Agreement.

"Rents": is defined in Section 3.1.

"State" means the state in which the Land is located.

"Swap Contract" means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into prior to the date hereof or any time after the date hereof, between Swap Counterparty and Mortgagor (or its Affiliate (as defined in the Loan Agreement)), together with any related schedule and confirmation, as amended, supplemented, superseded or replaced from time to time.

"Swap Counterparty" means any Lender or an Affiliate of any Lender, in its capacity as counterparty under any Swap Contract.

"Swap Transaction" means any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, collar transaction, floor transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, entered into prior to the date hereof or anytime after the date hereof between Swap Counterparty and Mortgagor (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties' intent that such obligations shall be secured by this Mortgage in connection with the Loan.

"UCC": the Wyoming Uniform Commercial Code, as in effect from time to time.

(b) Capitalized terms used and not otherwise defined herein shall have the meaning provided in the Loan Agreement. Any term used or defined in the UCC, as in effect from time to time, and not defined in this Mortgage or the Loan Agreement, has the meaning given to the term in the UCC, as in effect from time to time, when used in this Mortgage.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and the sum of TEN DOLLARS (\$10.00) cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are acknowledged by Mortgagor, Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Mortgagee, with GENERAL WARRANTY AND POWER OF SALE, the following: (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively the "Improvements"); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all common area and other use rights, tenements,



hereditaments, streets, roads, alleys, easements, right-of-ways, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining or appurtenant to any of the Land or the Improvements, (2) any strips or gores between the Land and abutting or adjacent properties, (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements, and (4) all water and water rights or shares of stock evidencing water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and 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 (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to all (i) plans and specifications for the Improvements, (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Contracts, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof, but excluding Mortgagor's liability for any breach by Mortgagor under any of the foregoing, (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Holder to debit and/or credit payments due with respect to the Loan or any Swap Contract, all rights to the payment of money from any Swap Counterparty under any Swap Contract, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract, (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof), (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance



provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto, (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3, (iii) all commercial tort claims against third parties which Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the Lease creating the leasehold estate; TO HAVE AND TO HOLD all of the foregoing rights, interests and properties described in clauses (a) through (d) above, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, and its or their successors or substitutes, and to its or their successors and assigns, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness," including any and all renewals, or extensions of the whole or any part thereof (and any such renewals or extensions shall not impair in any manner the validity or priority of this Mortgage).

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee, for the ratable benefit of Administrative Agent and Holder, a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Borrower under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the UCC, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same, including all such rights that arise or could otherwise exist under this Mortgage when considered as a Fixture Filing.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Note"; Lenders and any subsequent holder(s) at the time in question of the Note or any of the Secured Indebtedness (as defined below) are collectively referred to herein as "Holder"; (b) all indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Borrower to Holder now or hereafter incurred or



arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement, or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, any Swap Contracts or other agreement between any Borrower and Holder, or among any Borrower, Holder and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, this Mortgage, the Loan Agreement, any Swap Contracts and such other documents, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents"); and (c) any and all sums which Mortgagee or Holder may reasonably expend or obligate itself to reasonably expend to cure any breach or default of Mortgagor under this Mortgage, together with interest on all such sums from the respective dates upon which Mortgagee or Holder may expend, or become obligated to expend, the same, at the Default Rate, (d) any and all amounts which Mortgagee or Holder may expend or become obligated to expend in collecting the Secured Indebtedness or the rents herein assigned, in foreclosing the lien of this Mortgage or in exercising or attempting to exercise any right or remedy hereunder or with respect hereto consequent upon any default of Mortgagor hereunder, including, but not limited to, attorneys' fees as provided in the Promissory Notes, court costs, expenses incurred or supplemental additional abstracts, receivers', appraisers', and watchmen's fees and other expenses reasonably incurred to protect and preserve the Property or in maintaining the priority of this Mortgage together with interest on all such sums from the respective dates upon which Mortgagee or Holder may expend, or become obligated to expend, the same to be at the Default Rate; (e) all other loans and future advances made by Holder to Borrower and all other debts, obligations and liabilities of Borrower of every kind and character now or hereafter existing in favor of Mortgagee or any Holder under the Loan Documents, including all Obligations, whether direct or indirect, primary or secondary, joint or several, fixed or contingent, secured or unsecured, and whether originally payable to Holder or to a third party and subsequently acquired by Holder, it being contemplated that Borrower may hereafter become indebted to Holder for such further debts, obligations and liabilities; provided, however, and notwithstanding the foregoing provisions of this clause (e), this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Holder is by applicable law prohibited from obtaining a lien on real estate nor shall this clause (e) operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants to each Holder and Mortgagee as follows:

(a) Payment and Performance. Borrower will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and indefeasible title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any,



set forth under the heading "Permitted Encumbrances" in Exhibit B hereto, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet due and payable, (iv) liens imposed by any laws, such as mechanics', workmen's, materialmen's, landlords', carriers', or other like liens arising in the ordinary course of business which secure payment of obligations which are not past due or which are being diligently contested in good faith by appropriate proceedings and insured over as required by the terms of this Mortgage and the other Loan Documents, and (v) other liens and security interests (if any) in favor of Mortgagee for the benefit of the Holder, (the matters described in the foregoing clauses (i), (ii), (iii), (iv) and (v) being herein called the "Permitted Encumbrances"). Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee or Holder and their successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Holder, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee and/or Holder, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Holder (as the case may be), and the party (Mortgagee or Holder, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Holder such evidence of the payment thereof as Mortgagee may require.

(d) Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense all insurance required under the Loan Agreement.

(e) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee after and during the continuance of any Default, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date



thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. To the extent permitted by law, any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be comingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred and is continuing, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in accordance with the terms of the Loan Agreement and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(f) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice pursuant to the terms of the Loan Agreement. All costs and expenses (including but not limited to reasonable attorneys' fees) incurred by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Holder pursuant to this Mortgage.

(g) Compliance with Legal Requirements. The Mortgagor, the Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with the terms, conditions, covenants, representations and warranties of the Loan Documents and all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property. If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.



(h) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, ordinary wear and tear excepted, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, not to be unreasonably withheld so long as no Default then exists, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural or other alteration to the Property which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, subject to the terms of the Loan Agreement, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) No Other Liens.

(i) Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Mortgagee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Mortgagee in its sole and absolute discretion, Mortgagor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Mortgagor does so diligently and without prejudice to Mortgagee or delay in completing construction of the Improvements. Mortgagor shall give Mortgagee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property. Mortgagor agrees that it shall indemnify and hold Mortgagee and Holder harmless against any loss or liability, cost or expense, including any judgments, attorneys' fees and costs, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage.

(ii) Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee.

(iii) If Mortgagee consents to the voluntary grant by Mortgagor of any deed of trust or mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as may be specified in the Loan Agreement prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Holder.

(j) Operation of Property. Mortgagor will operate the Property in a prudent manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Holder, not to be unreasonably withheld so long as no Default then exists. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Holder, not to be unreasonably withheld so long as no Default then exists, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(k) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor.



All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Holder in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(l) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Holder in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor (and of each guarantor, if any) enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), organizational structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further



perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its organizational structure without first obtaining the prior written consent of Mortgagee. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least 30 days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor's principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least 30 days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(m) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants and agreements with respect to environmental matters set forth in the Loan Agreement and the Environmental Agreement (as defined therein).

(n) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, deeds of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the Secured Indebtedness, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(o) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Holder on demand to the extent paid by Mortgagee and/or Holder: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other costs and expenses of every character incurred by Borrower or Mortgagee and/or Holder in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all



amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor hereunder or of Borrower under any other Loan Document.

(p) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee and Holder from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the terms "Holder" and "Mortgagee" shall include Holder and Mortgagee, respectively, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Holder respectively and the directors, officers, partners, employees, attorneys, agents and representatives of each of them. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Mortgagor to Mortgagee and/or Holder shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee and/or Holder pursuant to this Mortgage. Upon demand by Mortgagee or Holder, Mortgagor shall diligently defend any Indemnified Matter which affects the Property or is made or commenced against Mortgagee and/or Holder, whether alone or together with Mortgagor, any Holder, or any other person, all at Mortgagor's own cost and expense and by counsel to be approved by Mortgagee in the exercise of its reasonable judgment. In the alternative, at any time Mortgagee or Holder, may elect to conduct its own defense through counsel selected by Mortgagee and/or Holder, and at the cost and expense of Mortgagor. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other Person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately withdrawn or defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee and/or Holder at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor or any other Borrower of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any Default, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the



date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness the termination of any and all Swap Contracts, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(q) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and, unless the payment thereof by Mortgagor is prohibited by law, any stamp, documentary, recordation and transfer taxes or other taxes (excluding Excluded Taxes) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee or Holder, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee or Holder the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness, or Mortgagee or Holder, then, and in any such event, Mortgagor, upon demand by Mortgagee or Holder, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee or Holder respectively therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(r) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within fifteen (15) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements in clauses (i), (iv) and (v) are untrue, Mortgagor shall, alternatively, specify the reasons therefor.

(s) Letter-of-Credit Rights. If Mortgagor is at any time a beneficiary under a letter of credit (whether or not the letter of credit is evidenced by a writing) relating to the properties, rights, titles and interests referred to in Section 1.3 of this Mortgage now or hereafter issued in favor of Mortgagor, Mortgagor shall promptly notify Mortgagee thereof and, at the request and option of Mortgagee, Mortgagor shall, pursuant to an agreement in form and substance satisfactory to Mortgagee,



either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Mortgagee of the proceeds of any drawing under the letter of credit or (ii) arrange for Holder to become the transferee beneficiary of the letter of credit, with Mortgagee agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 5.3 of this Mortgage.

Section 2.2. Performance by Mortgagee or Holder on Mortgagor's Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagee to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the Secured Indebtedness, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee or the Holder pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the Secured Indebtedness. To the extent imposed, the default rate shall apply to all sums outstanding under the Loan after an event of default and also after entry of a judgment or judgments against Borrower (whether by confession of judgment under a warrant of attorney, in a mortgage foreclosure action or otherwise), and whether or not any event described in Section 5.1(r) of the Loan Agreement has occurred. Said judgment(s) shall bear interest at the default rate until satisfied in full. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate or affidavit of Mortgagee or any of Mortgagee's officers or agents.

Section 2.3. Absence of Obligations of Holder and Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) neither Mortgagee nor Holder assumes or shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee or Holder shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee and Holder elects otherwise by written notification.



Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE 3

Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby unconditionally, absolutely and presently sells, grants, transfers, releases, conveys and assigns to Mortgagee for the benefit of Holder all Rents and all of Mortgagor's rights in and under all Leases. This grant, transfer, assignment and conveyance of Leases gives Mortgagee the present unconditional and absolute right and title to the Leases and Rents and to collect and receive the Rents. So long as no Default (hereinafter defined) has occurred and is continuing, Mortgagor shall have a limited revocable license (which license shall terminate automatically and without further notice upon the occurrence of a Default) in the place and stead of Mortgagee, to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred and is continuing, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee for amounts due and payable to Mortgagee or the Lenders before being used for any other purpose. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after and during the continuance of a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or under the Loan Documents or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the



name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers, rights and remedies granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release or satisfaction of record of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, issues and profits, and all revenue, income, accounts, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law, together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents.

Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) unless otherwise stated in a Permitted Encumbrance or as otherwise disclosed in the Loan Agreement, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (d) no Rents have been or will be waived, released, discounted, set off or compromised except in the ordinary course of Mortgagor's business; (e) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (f) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations with respect to Rents and occupancy under the Leases to the extent enforcement is prudent under the circumstances; (g) Mortgagor will not without the prior written consent of Mortgagee, waive, release, discount, set off, compromise, reduce or defer any Rent except in the ordinary course of Mortgagor's business, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant except in the ordinary course of Mortgagor's business, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, (h) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more; (i) Mortgagor shall as often as requested by Mortgagee, within



ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (j) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records relating thereto; (k) there shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (l) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee within thirty (30) days after notice from the Mortgagee.

Section 3.4. No Liability of Holder. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee or Holder a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's or Holder's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee or Holder liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

ARTICLE 4

Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Default under other Loan Documents. The occurrence of a "Default" or "Event of Default" under the Loan Agreement or any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.



(b) Other Obligations. Mortgagor fails to promptly perform or comply with any of the covenants, agreements or conditions set forth in this Mortgage (other than those expressly described in other Sections of this Article 4), and such failure continues uncured for a period of thirty (30) days after Notice from Mortgagee to Mortgagor.

(c) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept, and such failure is not cured within the applicable notice and cure period (if any) provided for herein or in such other Loan Document.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee or Holder in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document. Mortgagee (with the consent or approval of such of the parties constituting Holder as may from time to time be required under the Loan Agreement) may, in its sole discretion, waive a default under this paragraph, but neither Mortgagee nor Holder shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Holder may require. NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND PAYMENT ON DEMAND, AND ANY AND ALL SWAP CONTRACTS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY.

(f) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(g) Transfer of Ownership of Mortgagor. The sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (with the consent or approval of such of the parties constituting Holder as may from time to time be required under



the Loan Agreement) (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer), except to a Permitted Transferee.

(h) Grant of Easement, Etc. Without the prior written consent of Mortgagee (with the consent or approval of such of the parties constituting Holder as may from time to time be required under the Loan Agreement), not to be unreasonably withheld so long as no Default then exists, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(i) Abandonment. The owner of the Property abandons any of the Property.

(j) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee or Holder has consented, and without hereby implying Mortgagee's or Holder's consent, to any such lien, security interest or assignment not created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(k) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(l) Condemnation. There is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(m) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State where the Property is located and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(n) [Reserved.]

(o) Enforceability; Priority. Any Loan Document shall for any reason without Holder's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Holder; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(p) Other Indebtedness. A default or event of default occurs (after giving effect to any applicable notice or cure period) under any document executed and delivered in connection with any



other indebtedness (to Mortgagee or any other person or entity) of Mortgagor or the owner of the Property.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Holder to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee or by Holder shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee or any Holder, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

ARTICLE 5

Remedies

Section 5.1. Certain Remedies. If a Default shall occur and be continuing, Mortgagee, for the benefit of Holder, may (but shall have no obligation to) or shall at the direction of the Required Lenders, exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration; Termination. Mortgagee may, for the benefit of Holder, at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable, terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement with or for the benefit of Mortgagor, and may terminate any and all Swap Contracts. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Contracts shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee, for the benefit of Holder, may: (1) collect and/or sue for the Rents in Mortgagee's (or any Holder's) own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Foreclosure. Mortgagee, for the benefit of Holder, may institute, notwithstanding any Law to the contrary, any appropriate action or proceeding to foreclose this Mortgage, either by advertisement and sale as provided for in Wyoming Statute §34-4-101 et. seq., or judicially at the election of Mortgagee, and may proceed to obtain any remaining deficiency judgment and execution for all indebtedness secured hereby.



(d) Uniform Commercial Code. Without limitation of Mortgagee's and Holder's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee, for the benefit of Holder, may exercise its rights of enforcement with respect to the Collateral or any part thereof under the UCC, as in effect from time to time (or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; (3) written notice mailed to Mortgagor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Mortgagee fails to comply with this clause (3) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the UCC, as in effect from time to time (or under the Uniform Commercial Code, in force from time to time, in any other state to the extent the same is applicable law); (4) [reserved]; (5) in the event of a foreclosure sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.3 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house legal services) incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee for the benefit of Holder; (10) Mortgagee may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Mortgagee may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (12) Mortgagor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Mortgagor acknowledges that the Collateral may be sold at a loss to Mortgagor, and that, in such event, Mortgagee and Holder shall have no liability or responsibility to Mortgagor for such loss provided such sale was made in accordance with the terms of this Mortgage and applicable law.

(e) Lawsuits. Mortgagee, for the benefit of Holder, may proceed by a suit or suits in equity or at law, whether for collection of the Secured Indebtedness, the specific performance of any



covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) Entry on Property. Mortgagee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property. Mortgagee shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Mortgagee in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Mortgagee pursuant to this Section, neither Mortgagee nor Holder shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property or any part thereof, or from any act or omission of Mortgagee in managing the Property unless such loss is caused by the willful misconduct or gross negligence of Mortgagee, nor shall Mortgagee or Holder be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section.

(g) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

(h) Receiver. Mortgagee, on behalf of Holder, shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives notice of such appointment, of any request therefor or hearing in connection therewith, and any and all defenses to such appointment, agrees not to oppose any application therefor by Mortgagee, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Mortgagee or Holder to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Mortgagee or Holder of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Mortgagee or Holder in connection with any such receivership, plus interest thereon at the Default Rate, shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Holder pursuant to this Mortgage.

(i) Management of the Property. Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 5.1(h), Mortgagee or Holder or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any



and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Mortgagor (the costs of completing such Improvements shall be Expenses secured by this Mortgage and shall accrue interest as provided in the Loan Agreement and the other Loan Documents). Mortgagee or Holder or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Default, and the enforcement of such remedies, once commenced, shall continue for so long as Mortgagee or Holder shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Default.

(j) Termination of Commitment to Lend. Holder may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(k) Other Rights and Remedies. Mortgagee, on behalf of Holder, and Holder may exercise any and all other rights and remedies which Mortgagee or Holder may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. [Reserved]

Section 5.3. Proceeds of Foreclosure. The proceeds of any sale held by Mortgagee or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith: FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all reasonable attorneys' fees and legal expenses, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, reasonable fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and to the payment of the other Secured Indebtedness, including specifically without limitation the principal, accrued interest and attorneys' fees due and unpaid on the Note and the amounts due and unpaid and owed to Holder and/or Mortgagee under this Mortgage and the amounts due and unpaid and owed to Holder (or its affiliates) under any Swap Transaction, the order and manner of application to the items in this clause FIRST (all with interest at the rate per annum provided in the Note) to be in Mortgagee's sole discretion as provided in the Loan Agreement; and SECOND, the remainder, if any there shall be, shall be paid to the holder or beneficiary of any inferior lien as may be entitled thereto by law; provided, however, that if Mortgagee is uncertain which person or persons are so entitled, Mortgagee may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the Secured Indebtedness and shall be reimbursable (without limitation) from such remainder. Any remaining funds may be paid to Mortgagor, or to Mortgagor's heirs, devisees, representatives, successors or assigns, or such other persons holding a right thereto.

Section 5.4. Mortgagee as Purchaser. Mortgagee and any Holder shall have the right to become the purchaser at any foreclosure sale.

Section 5.5. Foreclosure as to Matured Debt. Upon the occurrence of a default, Mortgagee, for the benefit of Holder, shall have the right to proceed with foreclosure of the liens and security interests hereunder without declaring the entire Secured Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Secured Indebtedness; and any such sale shall not



in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part this Mortgage shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.3 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the Secured Indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other Secured Indebtedness in such manner and order and to such extent as specified in the Loan Agreement, and the remainder, if any, shall be applied as provided in clause SECOND of Section 5.3 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Secured Indebtedness.

Section 5.6. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Mortgagee shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.7. Discretion as to Security. Mortgagee, on behalf of Holder, may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

Section 5.8. Mortgagor's Waiver of Certain Rights. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, homestead, moratorium, reinstatement, marshaling or forbearance, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Secured Indebtedness, notice of election to mature or declare due the whole of the Secured Indebtedness and all rights to a marshaling of assets of Mortgagor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee or Holder under the terms of this Mortgage to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Mortgagee or Holder under the terms of this Mortgage to the payment of the Secured Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert pursuant to any provision of any statute or rule of law pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be



repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

Section 5.9. Power of Sale. In addition to the above rights and remedies with respect to foreclosure, if an event of Default shall have occurred, Mortgagee may (as permitted by law), at Mortgagee's sole discretion, commence and maintain a foreclosure sale by advertisement and sale as provided in Chapter 4 of Title 34 of the Wyoming Statutes to foreclose this Mortgage to sell, assign, transfer and deliver the whole or, from time to time, any part of the Property, or any interest in any part thereof, at any private sale or at public auction, for cash, on credit, or for other property, for immediate or future delivery, and for such price or prices and on such terms as Mortgagee may determine, or as may be required by law. Without limiting the authority granted in the immediately preceding sentence, Mortgagee shall, without demand on Mortgagor, after the lapse of such time as may then be required by law, and notice of default and notice of sale having been given and advertisement and other necessary measures accomplished as then required by law, sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels and in such order as Mortgagee may determine, shall be sold, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. Mortgagee, or the one conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Mortgagee, may bid at the sale.

ARTICLE 6

Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is an open-end mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), timber, accounts and general intangibles under the UCC, as, in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and the Mortgagee are set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee, for the benefit of Holder, may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee, for the ratable benefit of Holder, directly.



Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee for the benefit of Holder hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee or Holder may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee and/or Holder may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee for the benefit of Holder shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee for the ratable benefit of Holder of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness



in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Holder or Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Holder or Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the Secured Indebtedness. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made in accordance with the terms thereof by Holder and/or Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Holder's or Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment; Forum; Waiver of Jury Trial. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place(s) designated in the Loan Agreement. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any State court, or any United States federal court, sitting in the county in which the Secured Indebtedness is payable, and to the non-exclusive jurisdiction of any State court or any United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Mortgage or the Secured Indebtedness. Mortgagor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any State court in which the Property is located, or any United States federal court, sitting in the State in which the Secured Indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated at the end of this Mortgage, or at a subsequent address of Mortgagor of which Mortgagee received actual notice from Mortgagor in accordance with this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction. **TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE OF THIS MORTGAGE, WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT.**

Section 6.9. Subrogation to Existing Liens; Vendor's/Purchase Money Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Holder at Mortgagor's request, and Mortgagee, for the benefit of Holder, shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee, for the benefit of Holder, is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in



connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other Secured Indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's or purchase money lien is waived; and Mortgagee, for the benefit of Holder, shall have, and is hereby granted, a vendor's or purchase money lien on the Property as cumulative additional security for the Secured Indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's or purchase money lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor, Mortgagee, Lenders, and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and/or Holder and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee or Holder shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee, for the benefit of Holder, does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Holder (or to Mortgagee for the ratable benefit of Holder) 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 Amount. As used in this Section, the term "applicable law" shall mean the laws of the State where the Property is located or where the Secured Indebtedness is payable, or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.



Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Contracts and all other obligations, if any, of Holder for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee and/or Holder shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Contracts and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage may be made in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law, Mortgagor shall pay to Mortgagee for the ratable benefit of Holder, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) if the release instrument is delivered to Mortgagee for execution or Fifty and No/100 Dollars (\$50.00), if Holder is required to prepare the release instrument. In addition, Mortgagor shall pay to Holder a fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) for each other document or instrument which Mortgagor requires Mortgagee or Holder to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or

circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1986 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee's judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the mortgagors named in Section 1.1 hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee and Holder that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

Section 6.19. Execution; Recording. This Mortgage may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Holder or Mortgagee



shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and Holder, and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Holder, on the one hand, and Mortgagor, on the other hand, is solely that of lender and borrower. Neither Mortgagee nor Holder has any fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee and/or Holder or in any way make Mortgagee and/or Holder a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee or Holder and Mortgagor are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF WYOMING (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

Section 6.24. [Intentionally Omitted]

Section 6.25. [Intentionally Omitted]

Section 6.26. Open-End Mortgage. This Mortgage shall constitute an "Open-End Mortgage" as such term is commonly known, and shall secure future advances and shall have lien priority in accordance with applicable law. In addition to the other remedies available under the Loan Documents, any advances made shall be secured hereby and shall relate back to the date when this Mortgage was left for recording with the real estate records or County Clerk and Register of Deeds. By placing or accepting any such lien or encumbrance against any or all of the Property, the holder thereof shall be deemed to have agreed to the maximum extent possible under the law its lien or encumbrance shall be subject and subordinate in lien priority to this Mortgage and to any subsequent advances made under the Loan Documents, to all accrued and unpaid interest and to all other sums secured hereby.

Section 6.27. Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the Secured Indebtedness. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against

Mortgagor in connection with the Property or any other collateral for the Secured Indebtedness. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the Secured Indebtedness, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Secured Indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Section 6.28. Entire Agreement. The Loan Documents constitute the entire understanding and agreement among Mortgagor, Holder and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between or among Mortgagor, Holder and/or Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Holder or Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.29. Waiver of Doctrine of Merger; Survival of Obligations. Mortgagor agrees that its obligations and the rights and remedies of Lender under this Mortgage and under the other Loan Documents shall continue after and survive the entry of a judgment in foreclosure or a judgment under the Note (whether by confession of judgment or otherwise), it being the intention of Mortgagor and Lender that all such rights and remedies, including but not limited to, Mortgagor's obligation to reimburse Lender for taxes, insurance premiums, other charges, expenses to preserve the Property, including attorney's fees and disbursements and other out-of-pocket costs and expenses incurred by Lender in enforcing Lender's rights and remedies under this Mortgage and the other Loan Documents, including but not limited to those under Section 5.1 above, shall not merge into or be extinguished by, and shall survive entry of, a foreclosure judgment and entry of a judgment under the Note until paid in full.

Section 6.30. POWERS OF ATTORNEY. MORTGAGOR ACKNOWLEDGES AND AGREES TO THE EXTENT PERMITTED BY APPLICABLE LAW (a) THAT THE POWERS OF ATTORNEY GRANTED HEREIN, INCLUDING WITHOUT LIMITATION, IN SECTIONS 2.4 AND 5.1(k), ARE GIVEN IN CONNECTION WITH A COMMERCIAL TRANSACTION, AND (b) ADMINISTRATIVE AGENT'S OR LENDERS' EXERCISE OF THE POWERS OF ATTORNEY AS PROVIDED FOR HEREIN WOULD BE IN ACCORDANCE WITH MORTGAGOR'S REASONABLE EXPECTATIONS.

Section 6.31. Homestead Exemption. To the extent Mortgagor has a right to a homestead exemption provided by law, the Mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of Wyoming.

[Signatures appear on the following page]



[SIGNATURE PAGE TO OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
 SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)
 (SUGARLAND VILLAGE)]

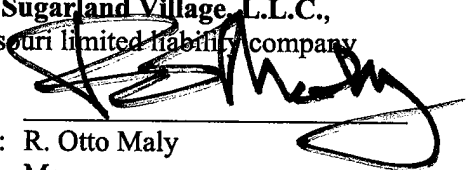
IN WITNESS WHEREOF, intending to be legally bound hereby, by and through its authorized representative as indicated below, Mortgagor has executed this instrument under seal as of the date first written on page 1 hereof.

MORTGAGOR:

The address and federal tax identification number of Mortgagor are:

TKG Sugarland Village, L.L.C.
 211 N. Stadium Blvd., Suite 201
 Columbia, Missouri 65203
 FAX # 573-874-1857
 TEL # 573-449-0091

TKG Sugarland Village, L.L.C.,
 a Missouri limited liability company

By: 
 Name: R. Otto Maly
 Title: Manager

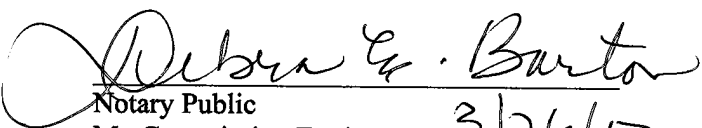
Federal Tax ID # 47-5186098

STATE OF Missouri }
 COUNTY OF Bonne } : ss

ON THIS, the 9th day of February, 2016, before me, the undersigned Notary Public of said State or Commonwealth, personally appeared R. Otto Maly, who acknowledged himself to be the Manager of TKG Sugarland Village, L.L.C., a Missouri limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of said limited liability company, by signing the name of the limited liability company by himself as Manager.

WITNESS my hand and Notarial Seal.

[SEAL]


 Notary Public
 My Commission Expires: 3/26/17

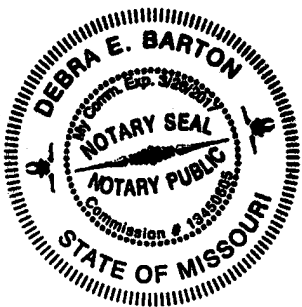


EXHIBIT A

LAND

Real property in the City of Sheridan, County of Sheridan, State of Wyoming, described as follows:

Lot 2, Sugarland Marketplace II Subdivision, a subdivision located in the City of Sheridan, Sheridan County, Wyoming as recorded in Drawer S, Plat #136 in the Office of the Sheridan County Clerk.

Lot 1, Sugarland Marketplace III Subdivision, a subdivision located in the City of Sheridan, Sheridan County, Wyoming as recorded in Drawer S, Plat #144 in the Office of the Sheridan County Clerk.

Lot 1 and 2, Sugarland Marketplace IV Subdivision, a subdivision located in the City of Sheridan, Sheridan County, Wyoming as recorded in Drawer S, Plat #145 in the Office of the Sheridan County Clerk.



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BOOK: 923 PAGE: 325 FEES: \$120.00 PK MORTGAGE
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

EXHIBIT B

PERMITTED ENCUMBRANCES

Any matters set forth in any policy of title insurance issued to Administrative Agent for the benefit of the Lenders and insuring Administrative Agent's interest in the Property which are acceptable to Administrative Agent as of the date hereof.