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BOOK: 994 PAGE: 563 FEES: \$129.00 HLM AMENDED FIXTURE
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

AFTER RECORDING RETURN TO:

David J. McPherson, Esquire
Troutman Sanders LLP
P.O. Box 1122
Richmond, Virginia 23218-1122

When Recorded Return To:
First American Title Insurance Company
National Commercial Services
18500 Von Karman Avenue, Suite 600
Irvine, CA 92612
File No: NCS - 287162-30-SA1

(Space above for Recorder's use)

Freddie Mac Consolidated Loan Numbers:
First 10% Prepayment Amount (at par): 502998490
Second 40% Prepayment Amount (1%): 502998504
Third 50% Prepayment Amount (3-2-1%): 502998512
Freddie Mac Property-Level Loan Number: 502606932
Property Name: Elmcroft of Sugarland Ridge

**AMENDED AND RESTATED SECURITY, ASSIGNMENT AND SUBORDINATION
AGREEMENT
FOR OPERATING LEASE AND ASSIGNMENT OF LEASES
AND RENTS AND FIXTURE FILING – SENIORS HOUSING
(First Step Closing Loan)**

[FOR USE WITH THE SENIORS HOUSING MASTER LOAN AGREEMENT]

(Revised 8-1-2018)

THIS AMENDED AND RESTATED SECURITY, ASSIGNMENT AND SUBORDINATION AGREEMENT FOR OPERATING LEASE AND ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (“**Agreement**”) is made effective as of this 3rd day of December, 2018, by and among **BISHOP SUGARLAND RIDGE LESSEE LLC**, a Delaware limited liability company, whose address is c/o Apollo Global Management, 9 West 57th Street, 43rd Floor, New York, New York 10019, as grantor (“**Operator**”); **FEDERAL HOME LOAN MORTGAGE CORPORATION**, a corporate instrumentality of the United States, whose address is 8100 Jones Branch Drive, Mail Stop B4F, McLean, Virginia 22102, Attn: Director of Multifamily Loan Servicing, as lender (“**Lender**”); and **BISHOP SUGARLAND RIDGE OWNER LLC**, a Delaware limited liability company, whose address is c/o Apollo Global Management, 9 West 57th Street, 43rd Floor, New York, New York 10019 (“**Borrower**”).

RECITALS

- A. Borrower is the owner of a senior housing project known as Elmcroft of Sugarland Ridge located at 1551 Sugarland Drive, Sheridan, Wyoming 82801.

**Amended and Restated Security, Assignment, and Subordination Agreement for
Operating Lease and Assignment of Leases and Rents
and Fixture Filing – Seniors Housing**



- B. Borrower and certain affiliates of Borrower set forth on Schedule 1 (each, an “**Other First Step Closing Borrower**” and collectively, the “**Other First Step Closing Borrowers**”) are the makers of a Master Multifamily Note (“**First Step Closing Note**”) dated as of October 1, 2018, payable to the order of KeyBank National Association (in such capacity, “**Key**”), in the original principal amount of \$201,402,000.00, bearing interest and being payable in accordance with the terms and conditions set forth in the First Step Closing Note, which First Step Closing Note evidences a loan (“**First Step Closing Loan**”) made by Key to provide Borrower and Other First Step Closing Borrowers with financing for, among other senior housing projects, the Mortgaged Property (as defined below) pursuant to the terms of a Master Multifamily Loan and Security Agreement (the “**First Step Closing Loan Agreement**”) dated as of October 1, 2018, by and among Borrower, Other First Step Closing Borrowers and Key. The First Step Closing Loan is secured by (1) a mortgage, deed of trust, deed to secure debt or other similar security instrument made by Borrower for the benefit of Key dated as of October 1, 2018 (as it may be amended, the “**Security Instrument**”) that creates a first lien on and encumbers the Mortgaged Property, and (2) a separate mortgage, deed of trust, deed to secure debt or other similar security instrument made by each of the Other First Step Closing Borrowers for the benefit of Key dated as of October 1, 2018 (each, an “**Other First Step Closing Security Instrument**” and collectively, the “**Other First Step Closing Security Instruments**”), each of which creates a first lien on and encumbers the property described in such Other First Step Closing Security Instrument.
- C. Key endorsed the First Step Closing Note to the order of Freddie Mac, assigned the Security Instrument and the Other First Step Closing Security Instruments to Freddie Mac, and sold, assigned and transferred the First Step Closing Loan Agreement and other loan documents entered into in connection with the First Step Closing Loan to Freddie Mac, and Freddie Mac is now the holder of the First Step Closing Note and owner of the First Step Closing Loan.
- D. Certain affiliates of Borrower set forth on Schedule 2 (each, a “**Second Step Closing Borrower**” and collectively, the “**Second Step Closing Borrowers**”) are the makers of a Master Multifamily Note (“**Second Step Closing Note**”) dated as of November 1, 2018, payable to the order of Key, in the original principal amount of \$89,779,000.00, bearing interest and being payable in accordance with the terms and conditions set forth in the Second Step Closing Note, which Second Step Closing Note evidences a loan (“**Second Step Closing Loan**”) made by Key to provide Second Step Closing Borrowers with financing for senior housing projects pursuant to the terms of a Master Multifamily Loan and Security Agreement (the “**Second Step Closing Loan Agreement**”) dated as of November 1, 2018, by and among Second Step Closing Borrowers and Key. The Second Step Closing Loan is secured by a separate mortgage, deed of trust, deed to secure debt or other similar security instrument made by each Second Step Closing Borrower for the benefit of Key dated as of November 1, 2018 (each, a **Second Step Closing Security Instrument**” and collectively, the “**Second Step Closing Security Instruments**”), each of which creates a first lien on and encumbers the property described in such Second Step Closing Security Instrument.
- E. Key endorsed the Second Step Closing Note to the order of Freddie Mac, assigned the Second Step Closing Security Instruments to Freddie Mac, and sold, assigned and transferred the Second Step Closing Loan Agreement and other loan documents entered into in connection with the Second Step Closing Loan to Freddie Mac, and Freddie Mac is



now the holder of the Second Step Closing Note and owner of the Second Step Closing Loan.

- F. Borrower and each Other First Step Closing Borrowers (each, a “**First Step Closing Borrower**” and collectively, the “**First Step Closing Borrowers**”) and Second Step Closing Borrowers agreed that when Freddie Mac is the holder of the First Step Closing Note and of the Second Step Closing Note (“**Total Assignment**”), (1) First Step Closing Borrowers and Second Step Closing Borrowers shall enter into (a) a consolidation, amendment and restatement of the First Step Closing Note and the Second Step Closing Note with mutual assumption of all obligations of each First Step Closing Borrower and each Second Step Closing Borrower, resulting in joint and several liability of each First Step Closing Borrower and each Second Step Closing Borrower and a combined prepayment structure, and (b) a consolidation, amendment and restatement of the First Step Closing Loan Agreement and the Second Step Closing Loan Agreement with mutual assumption of all obligations of each First Step Closing Borrower and each Second Step Closing Borrower, resulting in joint and several liability of each First Step Closing Borrower and each Second Step Closing Borrower and (2) First Step Closing Borrowers and Second Step Closing Borrowers will comply, with the requirements set forth in Section 11.23 of the First Step Closing Loan Agreement and in Section 11.23 of the Second Step Closing Loan Agreement, respectively, in connection therewith (collectively, the “**Consolidation**”).
- G. The Total Assignment has occurred and First Step Closing Borrowers and Second Step Closing Borrowers have entered into or, contemporaneously with this Agreement, are entering into (a) a Consolidated, Amended and Restated Master Multifamily Note, dated the date of this Agreement (the “**Note**”), (b) a Consolidated, Amended and Restated Master Multifamily Loan and Security Agreement – Seniors Housing, dated the date of this Agreement (the “**Loan Agreement**”) and (c) such other documents required by Lender to effect the Consolidation, pursuant to their obligations under the First Step Closing Loan Agreement and the Second Step Closing Loan Agreement. The Note and the Loan Agreement evidence a consolidated loan in the amount of \$291,181,000.00 (the “**Loan**”).
- H. Borrower has leased the Mortgaged Property to Operator pursuant to a Master Lease Agreement, dated October 1, 2018 (“**Operating Lease**”). As a condition to making the First Step Closing Loan, Key required Operator to execute a Security, Assignment and Subordination Agreement for Operating Lease and Assignment of Leases and Rents and Fixture Filing, dated as of October 1, 2018 (“**Original SASA**”).
- I. Other First Step Closing Borrowers and Second Step Closing Borrowers are referred to collectively as “**Other Individual Borrowers.**” Other First Step Closing Security Instruments and Second Step Closing Security Instruments, as amended, modified or supplemented from time to time, are referred to collectively as “**Other Security Instruments.**”
- J. The Note, Loan Agreement, Security Instrument, Other Security Instruments, this Agreement, and other documents evidencing, securing or executed and delivered in connection with the Loan (as such documents may have been or may be amended in connection with the Consolidation or otherwise) are referred to as the “**Loan Documents.**”



- K. As a condition precedent to Lender's agreement to complete the Consolidation, Lender requires that Operator execute this Agreement and other documents encumbering Operator's interests in the Collateral Property (as defined below) for the benefit of Lender.
- L. Operator will benefit materially from Lender's approval of the Operating Lease and from the Consolidation.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which each of the parties acknowledges, the parties agree that the Original SASA is amended and restated in its entirety as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms will have the meaning set forth in this Article. Any capitalized term used in this Agreement and not otherwise defined in this Agreement will have the meaning given to that term in the Loan Agreement (and if not defined in the Loan Agreement, then as defined in the Code (as defined in Section 2.2 below)). All Section references will be to Sections of this Agreement unless otherwise noted.

"Accounts" means all of Operator's inventory, accounts (including health care insurance receivables), accounts receivable, contract rights, general intangibles and all proceeds thereof in each case to the extent, but only to the extent, they are used in connection with or arise from the operation of the Collateral Property.

"Awards" means all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Collateral Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Collateral Property under the power of eminent domain or otherwise and including any conveyance in lieu of condemnation or taking.

"Collateral Property" means all property in which a security interest is granted under this Agreement as further defined below.

"Contracts" means all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Collateral Property entered into by Operator now or in the future, including cash or securities deposited to secure performance by parties of their obligations; and all other contracts and agreements pertaining to the ownership, leasing, operation or management of the Mortgaged Property, including management and similar agreements, utility contracts and agreements for the provision of goods or services (or payment therefor) at the Mortgaged Property (whether to Borrower, Operator or the residents of the Mortgaged Property), together with all modifications, extensions or renewals, including contracts with Governmental Authorities for the provision of services or goods, or pursuant to which Third Party Care Payments are to be made and contracts with private insurers pursuant to which Third Party Care Payments are to be made; provided, however Contracts will not include Leases or the Operating Lease.



“Controlled Property” means property of every kind and description in which Operator has or may acquire any interest arising with respect to or out of the operation of the Mortgaged Property, now or hereafter at any time in the possession or control of Lender for any reason and all dividends and distributions on or other rights in connection with such property.

“Event of Default” means the occurrence of: (i) any Event of Default (as defined in the Loan Agreement), or (ii) a default by Borrower or Operator of any representation, warranty, obligation or covenant under this Agreement, or (iii) a default under the Operating Lease.

“Facility” means the seniors housing facility located on the Land, and including the Land and Improvements.

“Fixtures” means all property which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

“Improvements” means the buildings, structures and improvements now constructed or at any time in the future constructed or placed upon the Land, including any future alterations, replacements and additions.

“Insurance Proceeds” means all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Collateral Property, whether or not Operator obtained the insurance pursuant to Lender’s requirement.

“Land” means the land described in Exhibit A.

“Leases” means all present and future leases, subleases, occupancy agreements pertaining to occupants of the Facility, including both residential and commercial agreements and patient admission or resident care agreements, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

“Licenses” means the Licenses (as defined in the Loan Agreement) used in connection with, or necessary or desirable to use, occupy or operate the Facility for its Intended Use (as set forth in Exhibit P to the Loan Agreement).

“Mortgaged Property” means all of Borrower’s present and future right, title and interest in and to all of the following:



- (i) The Land, or, if Borrower's interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate.
- (ii) The Improvements (including, without limitation, the Facility).
- (iii) The Fixtures.
- (iv) The Personalty.
- (v) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.
- (vi) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the Insurance pursuant to Lender's requirement.
- (vii) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from Condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.
- (viii) All contracts, options and other agreements for the sale of the Land, or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.
- (ix) All proceeds from the conversion, voluntary or involuntary, of any of the items described in items (i) through (viii) of this definition, into cash or liquidated claims, and the right to collect such proceeds.
- (x) All Rents and Leases.
- (xi) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan.
- (xii) All Imposition Reserve Deposits.
- (xiii) All refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Loan Agreement is dated).



- (xiv) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.
- (xv) All names under or by which any of the Mortgaged Property may be operated or known, and all trademarks, trade names and goodwill relating to any of the Mortgaged Property.
- (xvi) If required by the terms of Section 4.05, all rights under the Letter of Credit and the Proceeds, as such Proceeds may increase or decrease from time to time.
- (xvii) If the Note provides for interest to accrue at a floating or variable rate and there is a Cap Agreement, the Cap Collateral.
- (xviii) All payments received and all rights to receive payments from any source, which payments or rights of payment arise from operation of or at the Facility, including, without limitation, entrance fees, application fees, processing fees, community fees and any other amounts or fees deposited or to be deposited by any resident or tenant, payments received and the right to receive payments of second party charges added to base rental income, base and additional meal sales, payments received and rights to receive payments from commercial operations located at or on the Facility or provided as a service to the occupants of the Facility, rental from guest suites, seasonal lease charges, rental payments under furniture leases, income from laundry service, and income and fees from any and all other services provided to residents of the Facility.
- (xix) All rights to payments from Medicare, Medicaid or TRICARE programs or similar federal, state or local programs or agencies and rights to payment from private insurers, arising from the operation of the Facility.
- (xx) All Licenses.
- (xxi) All Contracts, including without limitation, operating contracts, franchises, licensing agreements, healthcare services contracts, food service contracts and other contracts for services related to the operation of the Facility.
- (xxii) All utility deposits.
- (xxiii) Without duplication of the foregoing or the inclusions in Mortgaged Property set forth elsewhere in the Loan Agreement, all of the real and personal property, both tangible and intangible, described on Exhibit N of the Loan Agreement.
- (xxiv) Reserved.
- (xxv) Reserved.

“Names” means all names under or by which the senior housing facility located at the Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to such senior housing facility, including N/A.

“Obligations” means the full and punctual payment, when due (whether at stated maturity, upon acceleration or otherwise), of any and all present and future indebtedness, liabilities and



obligations of every kind and nature of Borrower and Other Individual Borrowers to Lender, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, joint or several, both now and hereafter existing, or due or to become due, arising under, out of, as a result of, or in connection with the Note, and the due and punctual performance of all of the other terms and provisions of the Note, this Agreement, the Loan Agreement and other Loan Documents.

“Other Earnings” means all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Collateral Property and, if Operator is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents.

“Other Rights” means all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads related to the Mortgaged Property which may have been or may in the future be vacated.

“Payments” means all payments due, or received, from occupants of the Mortgaged Property, including rentals, entrance fees, second party charges added to base rental income, base and/or additional meal sales, fees and charges arising from commercial operations located on the Mortgaged Property or provided as a service to the occupants of the Mortgaged Property, rental from guest suites, seasonal lease charges, furniture leases, and laundry services/leases, if any, and any and all other goods and services provided to third parties in connection with the Mortgaged Property, and all judgments and settlements of litigation or threatened litigation and rights to payments thereunder, arising from the ownership, leasing, management or operation of the Mortgaged Property or the Collateral Property.

“Permitted Liens” means the Liens described in Exhibit B attached hereto and made a part hereof.

“Person” means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“Personalty” means all of the following:

- (i) Accounts (including deposit accounts) related to the Mortgaged Property.
- (ii) Equipment and inventory, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).
- (iii) Other tangible personal property which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave



ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).

- (iv) Any operating agreements relating to the Land or the Improvements.
- (v) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.
- (vi) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.
- (vii) Any rights in or under any Letter of Credit.

“Proceeds” means all proceeds from the conversion, voluntary or involuntary, of any of the other Collateral Property into cash or liquidated claims, and the right to collect such proceeds.

“Refunds” means all refunds or rebates of Impositions with respect to the Collateral Property by any municipal, state or federal authority or insurance premiums.

“Rent(s)” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due or to become due.

“Tenant Security Deposits” means all tenant or occupant security deposits (in whatever form they may be) that have not been forfeited by any tenant or occupant under any Lease with respect to the Mortgaged Property, together with any other escrows provided under or with respect to any Lease.

“Third Party Care Payments” means all payments and rights to payments from Medicare, Medicaid or TRICARE programs, or similar federal, state or local programs, boards, bureaus or agencies, if any, and rights to payment from residents or private insurers, if any, arising from the operation of the Mortgaged Property as a senior housing project.

“Third Party Miscellaneous Payments” means all utility deposits, unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Operator for the Collateral Property and all proceeds of any conversion of the Collateral Property or any part thereof including proceeds of hazard and title insurance and all awards and compensation for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral Property.

ARTICLE 2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

2.1 As security for the payment, performance and observance of the covenants and agreements of Operator contained in this Agreement and any other Loan Documents to



which Operator is a party and of Borrower and Other Individual Borrowers under the Loan Documents, including Borrower's and Other Individual Borrowers' repayment of the Loan in a timely manner and all interest and other charges under the Loan Documents and the other Obligations (collectively, "**Secured Obligations**"), Operator grants to Lender a security interest in all of Operator's now owned or hereafter acquired or arising right, title and interest in and to all of the following property (collectively, "**Collateral Property**") provided that the Collateral Property is strictly limited in all cases (whether or not so specified below) to the extent, and only to the extent, it is a part of the Mortgaged Property or attached to, used in connection with or arising from the ownership, leasing, management or operation of the Mortgaged Property, including the operation of the Mortgaged Property by Operator pursuant to the Operating Lease:

- (a) Accounts
- (b) Awards
- (c) Contracts
- (d) Fixtures
- (e) Imposition Reserve Deposits
- (f) Improvements
- (g) Insurance Proceeds
- (h) Land
- (i) Leases
- (j) Licenses
- (k) Names
- (l) Other Earnings
- (m) Other Rights
- (n) Payments
- (o) Personalty
- (p) Refunds
- (q) Rents
- (r) Tenant Security Deposits
- (s) Third Party Care Payments
- (t) Third Party Miscellaneous Payments



(u) Products and Proceeds of all the foregoing

- 2.2 This Agreement is also a security agreement under the Uniform Commercial Code (“Code”) for any of the Collateral Property which, under applicable law, may be subjected to a security interest under the Code, whether such Collateral Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and Operator grants to Lender a security interest in the UCC Collateral to secure the timely payment and performance of the Secured Obligations of Operator, Borrower and the Other Individual Borrowers, respectively. Operator authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Operator agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower will pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Operator will not create or permit to exist any other Lien in any of the UCC Collateral or any of the other Collateral Property (except only Liens in favor of Lender to secure the Secured Obligations and Permitted Liens).
- 2.3 Unless Operator gives Notice to Lender within 10 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Agreement (and any financing statement which may be filed in connection with this Agreement) as Lender may require, Operator will not: (a) change its name, identity, structure or jurisdiction of organization, (b) change the location of its place of business (or chief executive office if more than one place of business), or (c) add to or change any location at which any of the Collateral Property is stored, held or located.
- 2.4 If an Event of Default has occurred and is continuing, Lender will have the remedies of a secured party under the Code, in addition to all remedies provided by this Agreement or existing under applicable law or in equity. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies.

ARTICLE 3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION

- 3.1 As part of the consideration for the Loan and approval of the Operating Lease, Operator absolutely and unconditionally assigns, sells and transfers to Lender all of Operator’s right, title and interest in and to all Rents. It is the intention of Operator to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Operator. Promptly upon request by Lender, Operator agrees to execute and deliver such further assignments as Lender may from time to time require. Operator and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. Solely for purposes of giving effect to this absolute assignment of Rents, and for no other purpose whatsoever, Rents will not be deemed to be a part of the Collateral Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents will



be included as a part of the Collateral Property and it is the intention of Operator that in this circumstance this Agreement create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Agreement.

- 3.2 (a) After the occurrence of an Event of Default, Operator authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender, subject to the provisions of any cash management agreement, grants to Operator a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Reserve Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Reserve Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Operator free and clear of, and released from, Lender's rights with respect to Rents under this Agreement.
- (b) From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Operator's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Operator will pay to Lender upon demand all Rents to which Lender is entitled. Any Rents collected by Operator from and after the occurrence of an Event of Default will be held by Operator in trust for Lender's benefit hereunder. At any time on or after the date of Lender's demand for Rents, (a) Lender may give, and Operator irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, (b) no tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default, and (c) no tenant will be obligated to pay to Operator any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Operator will not interfere with, and will cooperate with, Lender's collection of such Rents.
- 3.3 Operator represents and warrants to Lender that Operator has not executed any prior assignment of Rents (other than an assignment of Rents securing any indebtedness that has been paid off and discharged or which will be paid off and discharged with the proceeds of the Loan), that Operator has not performed, and Operator covenants and agrees that it will not perform, any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Article, and that at the time of execution of this Agreement there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Operator will not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.



- 3.4 (a) If an Event of Default has occurred and is continuing, Lender may, but will not be obligated to, regardless of the adequacy of Lender's security or the solvency of Borrower or Operator and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property and the Collateral Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation, leasing and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3.1, protecting the Mortgaged Property or the security of this Agreement, or for such other purposes as Lender in its discretion may deem necessary or desirable.
- (b) Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's or Operator's solvency and without the necessity of giving prior notice (oral or written) to Operator, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Operator, by its execution of this Agreement, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Operator will surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and will deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all Tenant Security Deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Operator and its representatives from the Mortgaged Property. Operator acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.
- 3.5 If Lender enters the Mortgaged Property, Lender will be liable to account only to Operator and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable to Borrower, any Other Individual Borrower or Operator, or anyone claiming under or through Borrower, any Other Individual Borrower or Operator or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3.4, and Borrower and Operator each release and discharge Lender from any such liability to the fullest extent permitted by law.
- 3.6 If the Rents are not sufficient to meet the costs of taking control of and managing and operating the Mortgaged Property and collecting the Rents, any funds expended by



Lender for such purposes will become an additional part of the Indebtedness as provided in the Security Instrument.

- 3.7 Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Agreement will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Agreement or in the Security Instrument, the Loan Agreement or any other Loan Document, or at law or in equity.

ARTICLE 4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY

- 4.1 As part of the consideration for the Loan and approval of the Operating Lease, Operator absolutely and unconditionally assigns, sells and transfers to Lender all of Operator's right, title and interest in, to and under the Leases, including Operator's right, power and authority to modify the terms of any such Lease, or extend, amend or terminate any such Lease. It is the intention of Operator to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Operator's right, title and interest in, to and under the Leases. Operator and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. Solely for purposes of giving effect to this absolute assignment of the Leases, and for no other purpose whatsoever, the Leases will not be deemed to be a part of the Collateral Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases will be included as a part of the Collateral Property and it is the intention of Operator that in this circumstance this Agreement create and perfect a Lien on the Leases in favor of Lender, which Lien will be effective as of the date of this Agreement.
- 4.2 Until Lender gives Notice to Operator of Lender's exercise of its rights under this Section, Operator will have all rights, power and authority granted to Operator under any Lease (except as otherwise limited by this Article or any other provision of this Agreement), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Operator pursuant to the preceding sentence to exercise all rights, power and authority under Leases will automatically terminate. Operator will comply with and observe Operator's obligations under all Leases, including Operator's obligations pertaining to the maintenance and disposition of Tenant Security Deposits. In no event will Operator enter into, amend, extend or terminate a Lease which would constitute a breach of the Loan Agreement.
- 4.3 Operator acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4.1 will not at any time or in any event obligate Lender to take any action under this Agreement or to expend any money or to incur any expenses. Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will



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not (a) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease), (b) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property, or (c) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Agreement by Operator will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Operator, prior to such actual entry and taking of possession by Lender.

- 4.4 Upon delivery of Notice by Lender to Operator of Lender's exercise of Lender's rights under this Article at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately will have all rights, powers and authority granted to Operator under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
- 4.5 Operator will, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All residential Leases, including all resident care agreements and admission agreements, must be on forms approved by Lender and must not include options to purchase.
- 4.6 Operator agrees as follows:
- (a) Operator will not enter into a Lease for any portion of the Mortgaged Property for non-residential use without the prior written consent of Lender, which may be conditioned upon Lender receiving an assignment thereof in form acceptable to Lender.
 - (b) Operator will not modify the terms of, or extend, renew or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Agreement) without the prior written consent of Lender.
 - (c) Owner will, without request by Lender, deliver a fully executed copy of each non-residential Lease to Lender promptly after such Lease is signed.
 - (d) All non-residential Leases, including renewals or extensions of existing Leases, must specifically include the following provisions:
 - (i) The Lease is subordinate to the Lien of the Security Instrument, with such subordination to be self-executing.
 - (ii) The tenant will attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner.
 - (iii) The tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request.

- (iv) The tenant will, upon receipt of a written request from Lender following the occurrence of and during the continuance of an Event of Default, pay all Rents payable under the Lease to Lender.
 - (v) If Lender or a purchaser at a foreclosure sale so elects, the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property.
 - (vi) After a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease without payment of any fee or penalty.
- 4.7 Operator will not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.
- 4.8 Operator will send to Lender copies of all notices, financial reports, survey results and other matters concurrently with providing such copies to Borrower under or pursuant to the Operating Lease.
- 4.9 Notwithstanding any provision of the Operating Lease to the contrary, in no event will Operator transfer any License or any right thereunder (or part thereof) to any other Person or location.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF OPERATOR

5.1 Operator represents, warrants and agrees to the following:

- (a) Operator has good and marketable title to all of the Collateral Property (except fee simple title to the Mortgaged Property is in Borrower and subject to the Operating Lease) and none of the Collateral Property is subject to any Lien except for Permitted Liens and the security interest created pursuant to this Agreement, the Security Instrument, the Loan Agreement and any of the other Loan Documents.
- (b) During the term of this Agreement, Operator will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, without Lender's prior written consent, and as of the date hereof, Operator has not filed and is not subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws. The Operating Lease is in full force and effect, Operator is not in default thereunder and Operator is not aware of any ongoing default thereunder by Borrower.

ARTICLE 6. COVENANTS OF THE OPERATOR

6.1 (a) Operator will:

- (i) Not commit waste or permit impairment or deterioration of the Collateral Property.
- (ii) Not abandon the Collateral Property.



- (iii) Restore or repair or cause to be restored or repaired promptly, in a good and workmanlike manner, any damaged part of the Collateral Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not Insurance Proceeds or condemnation awards are available to cover any costs of such restoration or repair.
 - (iv) Keep or caused to be kept the Collateral Property in good repair, including the replacement of tangible Personalty and Fixtures with items of equal or better function and quality.
 - (v) Give Notice to Lender of and, unless otherwise directed in writing by Lender, will appear in and defend any action or proceeding purporting to affect the Collateral Property, Lender's security or Lender's rights under this Agreement.
 - (vi) Timely perform all of its obligations under each Material Contract to which Operator is a party.
- (b) Operator will not (and will not permit any tenant or other person to) remove, demolish or alter, other than in a commercially reasonable manner in the ordinary course of business, the Collateral Property or any part of the Collateral Property, except in connection with the replacement of tangible Personalty.
- 6.2** All expenses of protecting, storing, warehousing, insuring, handling and shipping of the Collateral Property, all costs of keeping the Collateral Property free of any Liens prohibited by this Agreement and of removing the same if they should arise, and any and all excise, property, sales and use taxes imposed by any state, federal or local authority on any of the Collateral Property or in respect of the sale thereof, will be borne and paid by Operator and if Operator fails to promptly pay any thereof when due, Lender may, at its option, but will not be required to, pay the same whereupon the same will constitute Obligations and will be secured by the security interests granted hereunder and by the Security Instrument, the Other Security Instruments and the Loan Agreement.
- 6.3** Unless Operator gives Notice to Lender within 10 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Agreement (and any financing statement which may be filed in connection with this Agreement) as Lender may require, Operator will not:
- (a) Change its name, identity, structure or jurisdiction of organization.
 - (b) Change the location of its place of business (or chief executive office if more than one place of business).
 - (c) Add to or change any location at which any of the Collateral Property is stored, held or located.
- 6.4** Operator will not use the Collateral Property, or knowingly permit the Collateral Property to be used, for any unlawful purpose or in violation of any federal, state or municipal law.



- 6.5 Operator will not without Lender's express written consent, amend, extend (other than pursuant to an express option set forth in the Operating Lease), assign its interest under, or terminate the Operating Lease.
- 6.6 Operator will not take any action, or omit to take any action, if doing so would constitute a default of any provision of the Security Instrument, the Loan Agreement or the other Loan Documents.
- 6.7 Immediately upon Operator becoming aware of the existence of any Event of Default under and as defined in the Operating Lease, this Agreement or any other Loan Document, Operator will give Notice to Lender that such Event of Default exists, stating the nature of the Event of Default to Operator's knowledge, the period of existence of the Event of Default, and what action Operator proposes to take with respect to the Event of Default.
- 6.8 Operator will execute and deliver to Lender, from time to time, such financing statements, assignments, and other documents covering the Collateral Property as Lender may request in order to create, evidence, perfect, maintain or continue its security interest in the Collateral Property (including any additional Collateral Property acquired by Operator after the date hereof) and will notify Lender promptly upon acquiring any additional Collateral Property.
- 6.9 Operator appoints Lender, or any other Person, whom Lender may from time to time designate, as Operator's attorney with power, after the occurrence and during the continuance of an Event of Default, to ask, demand, collect, receive, sue for, file claims for, waive, adjust or settle any and all Rents and/or other liabilities or obligations of parties to Leases or Material Contracts or otherwise arising under or with respect to the Collateral Property, including the power to endorse Operator's name on any checks, notes, acceptances, drafts, or other forms of payment or security that may come into Lender's possession, to sign Operator's name on any invoice or bill of lading relating to any Collateral Property, on drafts against customers, on schedules and confirmatory assignments of Collateral Property, on notices of assignment, financing statements under the Code and other public records, on verifications of Collateral Property and on notices to customers, residents and other tenants at the Mortgaged Property, to notify the post office authorities to change the address for delivery of Operator's mail to an address designated by Lender, to receive and open all mail addressed to Operator, to send requests for verification of Collateral Property to customers residents and other tenants at the Mortgaged Property and to do all things necessary to carry out this Agreement in each case to the extent, but only to the extent, such actions relate to the Collateral Property. Operator ratifies and approves all acts of the attorney taken within the scope of the authority granted. Neither Lender nor the attorney will be liable for any acts of commission or omission nor for any error in judgment or mistake of fact or law. This power, being coupled with an interest, is irrevocable so long as any Indebtedness remains unpaid. Operator waives presentment and protest of all instruments and notice thereof, notice of default and dishonor and all other notices to which Operator may otherwise be entitled.
- 6.10 Within 10 days after a request from Lender, Operator will deliver to Lender a written statement, signed and acknowledged by Operator, certifying to Lender or to any Person(s) designated by Lender, as of the date of such statement: (a) that the Operating Lease and this Agreement are unmodified and in full force and effect (or if there have



been any modifications thereof, that they are in full force and effect as modified, and setting forth such modifications), (b) that Operator is not in default under the Operating Lease or this Agreement (or if Operator is in default, setting forth the details thereof and the actions Operator is taking to cure such default), (c) that to its knowledge, Borrower is not in default under the Operating Lease or the Loan Documents, and (d) as to any additional factual matters Lender may reasonably request.

6.11 Until the Obligations under the Loan are paid in full, Operator will remain a “Single Purpose Entity,” which means, for the purposes of this Agreement, at all times since its formation and thereafter it will satisfy each of the following conditions:

- (i) It will not engage in any business or activity, other than the operation, leasing and maintenance of the Mortgaged Property and activities incidental thereto.
- (ii) It will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personalty as may be necessary for the operation of the Mortgaged Property and will conduct and operate its business as presently conducted and operated or as otherwise permitted under the Operating Lease.
- (iii) It will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities.
- (iv) It will not merge or consolidate with any other Person.
- (v) It will not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than Transfers permitted under the Loan Agreement; issue additional partnership, issue membership or other equity interests, as applicable, or seek to accomplish any of the foregoing.
- (vi) It will not, without the prior unanimous written consent of all of Operator’s members, partners, or shareholders, as applicable, and, if applicable, the prior unanimous written consent of 100% of the members of the board of directors or of the board of Managers of Operator, take any of the following actions:
 - (A) File any insolvency, or reorganization case or proceeding, to institute proceedings to have Operator be adjudicated bankrupt or insolvent.
 - (B) Institute proceedings under any applicable insolvency law.
 - (C) Seek any relief under any law relating to relief from debts or the protection of debtors.
 - (D) Consent to the filing or institution of bankruptcy or insolvency proceedings against Operator.



- (E) File a petition seeking, or consent to, reorganization or relief with respect to Operator under any applicable federal or state law relating to bankruptcy or insolvency.
- (F) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for Operator or a substantial part of its property.
- (G) Make any assignment for the benefit of creditors of Operator.
- (H) Admit in writing Operator's inability to pay its debts generally as they become due.
- (I) Take action in furtherance of any of the foregoing.
- (vii) It will not amend or restate its organizational documents if such change would cause the provisions set forth in those organizational documents not to comply with the requirements set forth in this Section 6.11.
- (viii) It will not own any subsidiary or make any investment in, any other Person.
- (ix) It will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name.
- (x) It will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than customary unsecured trade payables incurred in the ordinary course of operating the Mortgaged Property provided the same are not evidenced by a promissory note, do not exceed, in the aggregate, at any time a maximum amount of 2% of the original principal amount of the Indebtedness and are paid within 60 days of the date incurred.
- (xi) It will maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that Operator's assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation will be made on such consolidated financial statements to indicate the separateness of Operator from such Affiliate and to indicate that Operator's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) such assets will also be listed on Operator's own separate balance sheet.
- (xii) Except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, it will only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Operator, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties.



- (xiii) It will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.
- (xiv) Other than as directed or authorized by this Agreement, it will not assume or guaranty the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person.
- (xv) It will not make or permit to remain outstanding any loans or advances to any other Person except for ordinary business purposes related to operations.
- (xvi) It will file its own tax returns separate from those of any other Person, except to the extent that Operator is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and will pay any taxes required to be paid under applicable law.
- (xvii) It will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, will correct any known misunderstanding regarding its separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person.
- (xviii) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and will pay its debts and liabilities from its own assets as the same become due.
- (xix) It will allocate fairly and reasonably shared expenses with Affiliates (including shared office space) and use separate stationery, invoices and checks bearing its own name.
- (xx) It will pay its own liabilities (including salaries of its own employees, if any) from its own funds.
- (xxi) It will not acquire obligations or securities of its partners, members, shareholders, or Affiliates, as applicable.
- (xxii) Except as contemplated or permitted by the Operating Lease, it will not permit any Affiliate or constituent party independent access to its bank accounts.
- (xxiii) It will maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds.
- (xxiv) If such entity is a single member limited liability company, such entity will satisfy each of the following conditions:
 - (A) Be formed and organized under Delaware law.



- (B) Have either one springing member that is a corporation or two springing members who are natural persons. If there is more than one springing member, only one springing member will be the sole member of Operator at any one time, and the second springing member will become the sole member only upon the first springing member ceasing to be a member.
- (C) Otherwise comply with all Rating Agencies' criteria for single member limited liability companies (including the delivery of Delaware single member limited liability company opinions acceptable in all respects to Lender).
- (D) At all times Operator will have one and only one member.
- (xxv) If such entity is a single member limited liability company that is board-managed, such entity will have a board of Managers separate from that of any other Person and will cause its board of Managers to keep minutes of board meetings and actions and observe all other Delaware limited liability company required formalities.

ARTICLE 7. COLLECTIONS

- 7.1 Except as otherwise provided in this Agreement, Operator will continue to collect at its own expense, all amounts due or to become due to Operator with respect to the Collateral Property. In connection with such collections, Operator may take (and, at Lender's direction, will take) such action as Operator or Lender may deem necessary or advisable to enforce collection of any Awards, Proceeds, Rents, Other Earnings, Refunds, Payments, Third Party Care Payments, Third Party Miscellaneous Payments or Accounts; provided, however, that Lender will have the right, at any time upon the occurrence of an Event of Default to notify the debtors and/or payors of any Awards, Proceeds, Rents, Other Earnings, Refunds, Payments, Third Party Care Payments, Third Party Miscellaneous Payments or Accounts of the assignment of such amounts to Lender and to direct such debtors and/or payors to make payment of all amounts due or to become due to Operator thereunder directly to Lender. Upon such notification and at the expense of Operator, Lender will have the right to enforce collection of such Awards, Proceeds, Rents, Other Earnings, Refunds, Payments, Third Party Care Payments, Third Party Miscellaneous Payments or Accounts and to adjust, settle, or compromise the amount or payment thereof in the same manner and to the same extent as Operator might have done.
- 7.2
- (a) If no cash management agreement is in effect, then upon an Event of Default and during the continuation thereof, Operator will deposit into a collection account ("**Collection Account**") maintained with Lender or Loan Servicer immediately upon receipt all payments and receipts of Collateral Property as described in Section 7.1 in the original form such payments are received, except for endorsement where necessary. Lender is authorized and directed to apply all such collected funds to the payment of the Indebtedness in the manner and in the priority determined by Lender in the exercise of its sole discretion.
 - (b) If a cash management agreement is in effect, then Operator will deposit into a collection account ("**Collection Account**") maintained with Lender or Loan Servicer immediately upon receipt all payments and receipts of Collateral Property as described in Section 7.1 in the original form such payments are



received, except for endorsement where necessary. Lender is authorized and directed to apply all such collected funds to the payment of the Indebtedness in the manner and in the priority determined by Lender in the exercise of its sole discretion.

- 7.3 Upon an Event of Default and during the continuation thereof, Operator will pay to Lender all Rent and other charges, fees and reserves due and payable under the Operating Lease without abatement, set off, counterclaim or reduction. Operator will not be obligated to pay Borrower any such amounts paid to Lender.
- 7.4 All amounts received by Lender pursuant to this Article 7 will be applied, at Lender's election, to the operation, preservation, improvement and maintenance of the Mortgaged Property and the Collateral Property and/or to the repayment of the Indebtedness and/or any amounts due from Operator to Lender hereunder or under any other Loan Document, all in such manner and order as Lender may determine.

ARTICLE 8. ASSIGNMENT

- 8.1 If Lender gives Notice to Operator that Lender is exercising its rights under this Agreement and/or that an Event of Default has occurred, Operator will continue, at Lender's direction (but on behalf of and as agent for Borrower), to perform all of Operator's obligations under the Operating Lease in accordance with the Operating Lease (but subject to the other provisions of this Agreement, including Section 7.3). Any rent payments or fees due to Borrower or Operator which become due and payable after the date Lender gives Operator Notice under this Section will continue to be paid in accordance with the terms of the Operating Lease, subject to the terms of Section 7.3, notwithstanding any contrary direction from Borrower. However, Lender neither assumes nor has any obligation to Operator to exercise its rights under this Agreement or to declare a default under the Loan Documents. Lender will have no obligation to pay for services performed by Operator as required by this Section.
- 8.2 Upon Notice to do so from Lender or its successors or assigns or designee holding title to the Mortgaged Property (as applicable, "New Owner") (which Notice may be given at New Owner's sole discretion), Operator will recognize the New Owner as the owner of the Mortgaged Property for purposes of the Operating Lease and the Operating Lease will continue in full force and effect as a direct Operating Lease between Operator and Lender or New Owner, subject to the following terms and conditions:
- (a) Neither Lender nor New Owner will be:
 - (i) Liable for any act or omission or misrepresentation, breach of warranty or any other default or negligence of Borrower or any previous owner of the Mortgaged Property.
 - (ii) Subject to any offset claim, counterclaim, recoupment, credit or setoff, estoppel or defense of any nature which Operator might be entitled to assert against Borrower or any previous owner of the Mortgaged Property.



- (iii) Bound by any payment made by Operator to Borrower or any previous owner of the Mortgaged Property for more than one (1) month in advance of the date such payment or payments are due.
- (iv) Bound by any modification or amendment of the Operating Lease made without the prior written consent of Lender or New Owner.
- (v) Bound by any of Borrower's liabilities or obligations under the Operating Lease which were to be paid or performed (or which arose or accrued) before New Owner became the owner of the Mortgaged Property.
- (vi) Bound by any obligation of Borrower or any previous owner of the Mortgaged Property to construct, maintain, repair or rebuild the Mortgaged Property under the Operating Lease, or to reimburse Operator or otherwise pay for any such work.
- (vii) Bound by any obligation to indemnify Operator under the Operating Lease.
- (viii) Bound by any obligation of Borrower to apply or return any security deposit under the Operating Lease, or any reserve held thereunder, except and to the extent such security deposit and/or reserves were received by Lender (and Lender was not obligated in a bankruptcy proceeding or otherwise to return them to Borrower).
- (ix) Bound by any abatements or reductions of rent or of other amounts payable under the Operating Lease, except to the extent expressly set forth in the Operating Lease.
- (x) Liable to Operator hereunder or under the Operating Lease beyond its interest in the Mortgaged Property.

8.3 Operator agrees as follows:

- (a) After the date of this Agreement, no extension (other than pursuant to an express option set forth in the Operating Lease), amendment or termination of the Operating Lease will be valid as against Lender unless Lender has approved such extension, amendment or termination in writing.
- (b) Operator will not terminate the Operating Lease or cease to perform its obligations under the Operating Lease for any reason, including but not limited to Borrower's failure to make any payments to Operator, without giving Lender thirty (30) days' prior Notice of such intention, in order that Lender may, at its election, cure Borrower's default and/or exercise its rights under this Agreement.
- (c) Upon the occurrence of an Event of Default hereunder, under the other Loan Documents or under the Operating Lease, Operator may be removed and the Operating Lease terminated by Lender or New Owner, without payment of any cancellation or termination fee, penalty or other liability, at any time upon Notice to Operator by Lender or New Owner of such Event of Default and termination.



- (d) Upon the termination of the Operating Lease for any reason or upon the occurrence of an Event of Default, at Lender's request, Operator will cooperate with Borrower and Lender in all respects to facilitate and effect a transition and licensing of the operation of the Mortgaged Property to a new operator. Such cooperation will include: (i) furnishing to any prospective operator designated by Lender complete and accurate books, records, files, documents and information in Operator's possession, control or custody with respect to the operation, leasing, maintenance and construction of the Mortgaged Property (including, but subject to Privacy Laws, (x) copies of all resident care agreements, resident admission agreements and all other Leases, and (y) copies of all other records pertaining to the residents at the Mortgaged Property), (ii) entering into an operations transfer agreement (in customary form and acceptable to Lender) with the new operator to permit continued operation of the Mortgaged Property without interruption while Licenses and agreements with Governmental Authorities (including provider agreements) are obtained by the new operator, (iii) assigning such Material Contracts and other agreements to such new operator as it may request (and which may be assigned by Operator), including all residential Leases, and (iv) cooperating with such new operator as to the filing of required notices or applications for Licenses with applicable Governmental Authorities (to the extent Operator's signature may be required or information in Operator's possession, control or custody may be required).

8.4 Subordination of Operating Lease.

- (a) Operator subordinates all contractual and statutory Liens (whether choate or inchoate) which Operator may be (or may become) entitled to assert against the Mortgaged Property or any other property of Borrower which is subject to a Lien in favor of Lender to all of the assignments and Liens securing the Loan contemplated by the Loan Documents (including any future amendments), and Operator fully and completely waives any and all rights that Operator may have, now or in the future (and to the extent permitted by law, the rights that Operator's suppliers, and laborers may have now or in the future), to claim, directly or indirectly, a priority of Lien, in whole or in part, against or in the Mortgaged Property or any other property of Borrower which is subject to a Lien in favor of Lender over any assignments or Liens that Lender may claim against the Mortgaged Property or any other such property of Borrower under the Loan Documents (including any future amendments). This subordination will be self-operative and no further instrument of subordination will be required. However, in further confirmation of such subordination, Operator and Borrower will, promptly upon the request of Lender execute, acknowledge and deliver to Lender such instruments as Lender reasonably requires.
- (b) Operator agrees that (i) any amounts payable to Operator by Borrower pursuant to the Operating Lease are and will be subordinated in right of payment to the prior payment in full of the Indebtedness, and (ii) the Operating Lease is and will be subject and subordinate in all respects to the Liens, terms, covenants and conditions of the Security Instrument, the Other Security Instruments and the other Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Note, the Loan Agreement, the Security Instrument, any Other Security Instrument (including all sums advanced for the purposes of (x) protecting or further securing the Lien of the Security Instrument,



any Other Security Instrument or the Loan Agreement, curing defaults by Borrower or any Other Individual Borrower under the Security Instrument, any Other Security Instrument or the Loan Agreement, as applicable, or for any other purposes expressly permitted by the Security Instrument, any Other Security Instrument or the Loan Agreement, or (y) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property or the "Mortgaged Property" as defined in any Other Security Instrument) or the other Loan Documents.

- (c) Without limiting the subordination or other provisions of this Agreement in any way, in the event of any conflict between the Operating Lease and the Loan Documents as to the rights to and/or disposition of any Awards or Insurance Proceeds, the provisions of the Loan Documents will be controlling.
- (d) This Agreement satisfies any requirement in the Operating Lease that Borrower provide Operator with a subordination, non-disturbance and attornment agreement (or similar agreement); and Operator waives any such requirement, condition or covenant provided in the Operating Lease.
- (e) Notwithstanding any of the prior provisions of this Section to the contrary, Lender may elect to subordinate the Security Instrument and/or any Other Security Instrument to the Operating Lease; provided such election is in writing in a Notice to Operator; and provided further that in such event the rights and Liens of Lender in and to Awards and Insurance Proceeds will continue to be superior to Operator's rights or Liens under the Operating Lease or otherwise.

ARTICLE 9. RIGHTS AND REMEDIES ON DEFAULT

9.1 Upon the occurrence of an Event of Default, and at any time thereafter, and in addition to the rights granted to Lender under this Agreement or under any other Loan Document, including any collateral agreement or other instrument evidencing, securing or otherwise relating to any of the Indebtedness, Lender may exercise any one or more of the following rights and remedies:

- (a) Declare any and all Indebtedness to be immediately due and payable, and the same will thereupon become immediately due and payable without further notice or demand.
- (b) In the name of Operator or otherwise, demand, collect, receive and receipt for, compound, compromise, settle and give acquittance for and prosecute and discontinue any suits or proceedings in respect of any or all of the Collateral Property.
- (c) Take any action that Lender may deem necessary or desirable in order to realize on the Collateral Property, including the power to perform any contract, to endorse in the name of Operator any checks, drafts, notes, or other instruments or documents received in payment of or on account of the Collateral Property.
- (d) Enter upon and into and take possession of all or such part or parts of the Collateral Property as may be necessary or appropriate in the judgment of Lender, to permit or enable Lender to store, lease, sell or otherwise dispose of or collect



all or any part of the Collateral Property, and use and operate said property for such purposes and for such length of time as Lender may deem necessary or appropriate for said purposes without the payment of any compensation to Operator therefor. Operator will provide Lender with all information and assistance requested by Lender to facilitate the storage, leasing, sale or other disposition or collection of the Collateral Property after an Event of Default.

- (e) Exercise any and all other rights and remedies available to Lender by law, in equity or by agreement, including rights and remedies under the law of the Property Jurisdiction or any other applicable law as they relate to the Collateral Property and including all remedies available to Lender under Article 9 of the Code of the Property Jurisdiction, and, in connection therewith, Lender may require Operator to assemble the Collateral Property and make it available to Lender at a place to be designated by Lender, and any Notice of intended disposition of any of the Collateral Property required by law will be deemed reasonable if such Notice is mailed or delivered to Operator pursuant to this Agreement at least 10 days before the date of such disposition. Lender may sell or otherwise dispose of any or all of the Collateral Property in a single unit or in multiple units and Lender may be the purchaser at such sale or other disposition.
- (f) Terminate the Operating Lease or exercise any other rights of Borrower under the Operating Lease as though a default of Operator had occurred under (and as defined in) the Operating Lease entitling Borrower to terminate the Operating Lease pursuant to the term thereof and applicable law.
- (g) All proceeds of sale or disposition of the Collateral Property will be applied toward the Indebtedness in such manner and order as Lender may elect.

ARTICLE 10. MISCELLANEOUS

10.1 Security Agreement. This Agreement is also a security agreement under the Uniform Commercial Code for the Operating Lease. Operator and Borrower hereby authorize Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest.

10.2 Attorney-in-Fact. Operator irrevocably constitutes and appoints Lender as Operator's attorney-in-fact to demand, receive and enforce Operator's rights with respect to the Operating Lease and to do any and all acts in Operator's name or in the name of Lender with the same force and effect as Operator could do if this Agreement had not been made. This appointment will be deemed to be coupled with an interest and irrevocable.

10.3 Termination. Following payment of the Loan in full and the release or assignment of the Security Instrument, or a Release of the Mortgaged Property in accordance with the terms and conditions set forth in Section 7.10 of the Loan Agreement, this Agreement and all of Lender's right, title and interest under this Agreement will terminate.

10.4 Notice.

- (a) All notices under or concerning this Agreement ("**Notice**") will be in writing. Each Notice will be deemed given on the earliest to occur of: (i) the date when



the Notice is received by the addressee, (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery, or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. Addresses for Notice are as follows:

If to Lender: KeyBank National Association
c/o KeyBank Real Estate Capital - Servicing Department
11501 Outlook Street, Suite 300
Overland Park, Kansas 66211
Mailcode: KS-01-11-0501
Attention: Servicing Manager

If to Operator: Bishop Venice Lessee LLC
c/o Apollo Global Management
9 West 57th Street, 43rd Floor
New York, New York 10019
Attention: Tracey Gamble

- (b) Any party to this Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 9. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 9, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it will be deemed for purposes of this Section 9 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

10.5 Governing Law; Consent to Jurisdiction and Venue.

- (a) This Agreement will be construed in accordance with and governed by the laws of the Property Jurisdiction.
- (b) Operator and Borrower agree that any controversy arising under or in relation to this Agreement may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to this Agreement. Operator and Borrower irrevocably consent to service, jurisdiction and venue of such courts for any such litigation and waive any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 10 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Agreement in any court of any other jurisdiction.

10.6 Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and will be disregarded in construing this Agreement. Any reference in this Agreement to an "Exhibit" or a "Section", unless otherwise explicitly provided, will be construed as referring, respectively, to an Exhibit



attached to this Agreement or to a section of this Agreement. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement.

- 10.7 Number and Gender.** Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.
- 10.8 No Partnership.** This Agreement is not intended to, and will not, create a partnership or joint venture among the parties, and no party to this Agreement will have the power or authority to bind any other party except as explicitly provided in this Agreement.
- 10.9 Severability.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity of any other provision, and all other provisions will remain in full force and effect.
- 10.10 Entire Agreement.** This Agreement contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Agreement.
- 10.11 Waiver; No Remedy Exclusive.** Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity will not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy will be cumulative and will be in addition to other remedies given under this Agreement or existing at law or in equity.
- 10.12 Third Party Beneficiaries.** Neither any creditor of any party to this Agreement, nor any other Person, is intended to be a third party beneficiary of this Agreement.
- 10.13 Further Assurances and Corrective Instruments.** To the extent permitted by law, the parties will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.
- 10.14 Counterparts.** This Agreement may be executed in multiple counterparts, each of which will constitute an original document and all of which together will constitute one agreement.
- 10.15 Indemnity.** By executing this Agreement, Operator agrees to indemnify and hold harmless Lender and its successors and assigns from and against any and all losses, claims, damages, liabilities and expenses including Attorneys' Fees and Costs, which may be imposed or incurred in connection with this Agreement.
- 10.16 Costs and Expenses.** Wherever pursuant to this Agreement it is provided that Operator will pay any costs and expenses, such costs and expenses will include Lender's Attorneys' Fees and Costs.
- 10.17 Determinations by Lender.** In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such



consent or approval and the rendering of such determination, judgment or decision will be made or exercised by Lender (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion and will be final and conclusive, except as may be otherwise expressly and specifically provided in this Agreement.

- 10.18 Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of Operator, Lender and Borrower and their respective successors and assigns forever.
- 10.19 Secondary Market.** Lender may sell, transfer and deliver the Note and assign the Loan Agreement, the Security Instrument, the Other Security Instruments, this Agreement and the other Loan Documents to one or more investors in the secondary mortgage market ("Investors"). In connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Loan Agreement, the Security Instrument, the Other Security Instruments, this Agreement and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including any subservicer or master servicer, on behalf of the Investors. All references to Lender in this Agreement will refer to and include any such servicer to the extent applicable.
- 10.20 No Liability on Collateral.** Neither this Agreement nor any action or inaction on the part of Lender will constitute an assumption on the part of Lender of any obligations under the Operating Lease and Operator will continue to be liable for all obligations under the Operating Lease.
- 10.21 Rejection of Operating Lease.** If any bankruptcy proceedings hereafter commence with respect to Borrower, and if the Operating Lease is rejected by the trustee pursuant to Section 365 of the United States Bankruptcy Code, Operator agrees with Lender (a) not to treat such lease as terminated, and (b) to remain in possession of the Mortgaged Property pursuant to the terms of the Operating Lease and this Agreement.
- 10.22 Waiver of Statute of Limitations.** Borrower and Operator each waive the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Agreement or to any action brought to enforce this Agreement or any other Loan Document.
- 10.23 Waiver of Marshalling.** Notwithstanding the existence of any other security interest in the Mortgaged Property and Collateral Property held by Lender, Lender will have the right to determine the order in which any or all of the Mortgaged Property and Collateral Property will be subjected to the remedies provided in this Agreement or in the Security Instrument, the Loan Agreement, the Note, any other Loan Document or applicable law. Lender will have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of such remedies. Borrower, Operator and any party who now or in the future acquires a security interest in the Mortgaged Property or the Collateral Property and who has actual or constructive notice of this Agreement waive any and all right to require the marshalling of assets or to require that any of the Mortgaged Property or the Collateral Property be sold in the inverse order of alienation or that any of the Mortgaged Property or the Collateral Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Agreement.
- 10.24 Waiver of Certain Damages.** To the fullest extent permitted by applicable law, Borrower and Operator each agree not to assert, and each waives, any claim against Lender and its successors and assigns (together with their respective agents, employees,



directors and officers), on any theory of liability, for special, indirect, consequential or punitive damages arising out of, incurred in connection with or resulting from this Agreement or any other Loan Documents or any actions or omissions of Lender pursuant to this Agreement or any other Loan Document.

10.25 State Specific Provisions. N/A.

10.26 Attached Exhibits. The following Exhibits, if marked with an "X" in the space provided, are attached to this Agreement:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land
<input checked="" type="checkbox"/>	Exhibit B	Permitted Liens
<input checked="" type="checkbox"/>	Exhibit C	Modifications to Agreement
<input checked="" type="checkbox"/>	Schedule 1	Other First Step Closing Borrowers
<input checked="" type="checkbox"/>	Schedule 2	Second Step Closing Borrowers


IN WITNESS WHEREOF, Operator, Borrower and Lender have caused the execution of this Agreement by their respective duly authorized representatives as of the date and year first above written.

[SIGNATURES ON FOLLOWING PAGE]



OPERATOR:

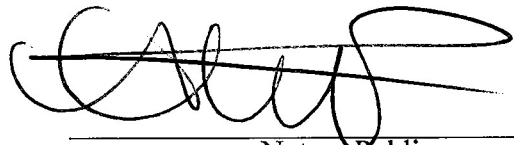
BISHOP SUGARLAND RIDGE LESSEE LLC,
a Delaware limited liability company

By: 
Tracey Gamble
Vice President

STATE OF New York)
COUNTY OF New York)ss

The foregoing Instrument was acknowledged before me by Tracey Gamble, who is the Vice President of Bishop Sugarland Ridge Lessee LLC, a Delaware limited liability company on this 30th day of November, 2018.

Witness my hand and official seal.


Notary Public

My commission expires: 4/17/2021

AMANDA MARIE RITCHIE
Notary Public, State of New York
No. 01RI6357382
Qualified in Richmond County
Commission Expires April 17, 2021



LENDER:

**FEDERAL HOME LOAN MORTGAGE
CORPORATION**

By: Mary Ellen Slavinskas
Mary Ellen Slavinskas
Director, Multifamily Operations

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX) ss.

The foregoing Instrument was acknowledged before me by Mary Ellen Slavinskas, who is the Director, Multifamily Operations of Federal Home Loan Mortgage Corporation on this 27th day of November, 2018.

Witness my hand and official seal.

Catherine M. Seng
Notary Public

My commission expires: _____

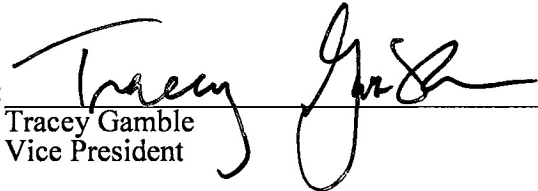
CATHERINE M. SENG
NOTARY PUBLIC
REG. #7099356
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAR. 31, 2019



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BOOK: 994 PAGE: 596 FEES: \$129.00 HLM AMENDED FIXTURE
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

BORROWER:

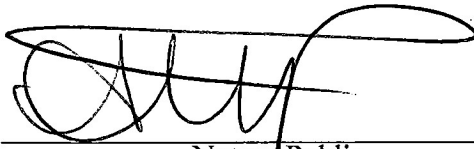
BISHOP SUGARLAND RIDGE OWNER LLC,
a Delaware limited liability company

By: 
Tracey Gamble
Vice President

STATE OF New York)
COUNTY OF New York)ss

The foregoing Instrument was acknowledged before me by Tracey Gamble, who is the Vice President of Bishop Sugarland Ridge Owner LLC, a Delaware limited liability company on this 30th day of November, 2018.

Witness my hand and official seal.


Notary Public

My commission expires: 4/17/2021

AMANDA MARIE RITCHIE
Notary Public, State of New York
No. 01RI6357382
Qualified in Richmond County
Commission Expires April 17, 2021



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BOOK: 994 PAGE: 597 FEES: \$129.00 HLM AMENDED FIXTURE
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

EXHIBIT A

LEGAL DESCRIPTION OF LAND

LOTS 4, 5, AND 6, BLOCK 2 OF THE REPLAT OF SUGARLAND SOUTH, A
SUBDIVISION IN SHERIDAN COUNTY, WYOMING, AS RECORDED IN BOOK 1 OF
PLATS, PAGE 321.



2018-747222 12/21/2018 4:18 PM PAGE: 36 OF 40
BOOK: 994 PAGE: 598 FEES: \$129.00 HLM AMENDED FIXTURE
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

EXHIBIT B

PERMITTED LIENS

NONE

EXHIBIT C

MODIFICATIONS TO AGREEMENT

The following modifications are made to the text of the Agreement that precedes this Exhibit:

1. Article 1 is modified as follows:

“Event of Default” means the occurrence of: (i) any Event of Default (as defined in the Loan Agreement), or (ii) a default by Borrower or Operator of any representation, warranty, obligation or covenant under this Agreement, or (iii) a default under the Operating Lease, other than a default with respect to any use, operation, or repair covenant under the Operating Lease that (A) is not an occurrence that is an Event of Default under the Loan Agreement, (B) could not reasonably be expected to result in a Material Adverse Effect, and (C) is not a matter that either Borrower or Operator have made or intend to make the subject of any enforcement action under the Operating Lease.

2. Section 4.6(a) is replaced with the following:

(a) Operator will not enter into a Lease for any portion of the Mortgaged Property for non-residential use without the prior written consent of Lender, which may be conditioned upon Lender receiving an assignment thereof in form acceptable to Lender. **Notwithstanding the foregoing, Lender’s consent will not be required for Operator to enter into a New Non-Residential Lease or Modified Non-Residential Lease, provided that the Modified Non-Residential Lease or New Non-Residential Lease satisfies each of the following requirements:**

(i) The tenant under the New Non-Residential Lease or Modified Non-Residential Lease is not an Affiliate of any Individual Borrower, Operator or any Guarantor.

(ii) The terms of the New Non-Residential Lease or Modified Non-Residential Lease are at least as favorable to Borrower or Operator as those customary in the applicable market at the time Operator enters into the New Non-Residential Lease or Modified Non-Residential Lease.

(iii) The Rents paid to Borrower or Operator pursuant to the New Non-Residential Lease or Modified Non-Residential Lease are not less than 90% of the rents paid to Borrower or Operator pursuant to the Non-Residential Lease, if any, for that portion of the Mortgaged Property that was in effect prior to the New Non-Residential Lease or Modified Non-Residential Lease.

(iv) The term of the New Non-Residential Lease or Modified Non-Residential Lease, including any option to extend, is 10 years or less.



- (v) Any New Non-Residential Lease must provide that the space may not be used or operated, in whole or in part, for any of the following:
- (A) The operation of a so-called "head shop" or other business devoted to the sale of articles or merchandise normally used or associated with illegal or unlawful activities such as, but not limited to, the sale of paraphernalia used in connection with marijuana or controlled drugs or substances.
 - (B) A gun shop, shooting gallery or firearms range.
 - (C) A so-called massage parlor or any business which sells, rents or permits the viewing of so-called "adult" or pornographic materials such as, but not limited to, adult magazines, books, movies, photographs, sexual aids, sexual articles and sex paraphernalia.
 - (D) Any use involving the sale or distribution of any flammable liquids, gases or other Hazardous Materials.
 - (E) An off-track betting parlor or arcade.
 - (F) A liquor store or other establishment whose primary business is the sale of alcoholic beverages for off-site consumption.
 - (G) A burlesque or strip club.
 - (H) Any illegal activity.
- (vi) The aggregate of the income derived from the space leased pursuant to the New Non-Residential Lease accounts for less than 20% of the gross income of the Mortgaged Property on the date that Operator enters into the New Non-Residential Lease.
- (vii) Such New Non-Residential Lease is not an oil or gas lease, pipeline agreement or other instrument related to the production or sale of oil or natural gas.

3. Section 4.6(b) is replaced with the following:

- (b) Operator will not modify the terms of, or extend, renew or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Agreement) without the prior written consent of Lender. Notwithstanding the foregoing, Lender's consent will not be required for Operator to modify, extend, or renew any Lease for non-residential use in existence on the date of this Agreement, so long as such Lease, as so modified, extended or renewed, satisfies the requirements of the above Section 4.6(a).



SCHEDULE 1

OTHER FIRST STEP CLOSING BORROWERS

Other First Step Closing Borrowers	Other First Step Closing Properties
Bishop Venice Owner LLC, a Delaware limited liability company	Elmcroft of Bella Vita Venice (Sarasota County), Florida
Bishop Brentmoor Minot Owner LLC, a Delaware limited liability company	Elmcroft of Minot Minot (Ward County), North Dakota
Bishop Chesterley Owner LLC, a Delaware limited liability company	Elmcroft of Chesterley Yakima (Yakima County), Washington
Bishop Downtown Sarasota Owner LLC, a Delaware limited liability company	Elmcroft of Sarasota Sarasota (Sarasota County), Florida
Bishop Graham Owner LLC, a Delaware limited liability company	Elmcroft of Graham Graham (Young County), Texas
Bishop Lake Wellington Owner LLC, a Delaware limited liability company	Elmcroft of Lake Wellington Wichita Falls (Wichita County), Texas
Bishop Maplewood Owner LLC, a Delaware limited liability company	Elmcroft of Maplewood Bridgeport (Harrison County), West Virginia
Bishop Marietta Owner LLC, a Delaware limited liability company	Elmcroft of Marietta Marietta (Washington County), Ohio
Bishop Niles Owner LLC, a Delaware limited liability company	Embark at Niles Niles (Cook County), Illinois
Bishop Orchard Glen Owner LLC, a Delaware limited liability company	Embark at Orchard Glen Orchard Park (Erie County), New York
Bishop Oxford Owner LLC, a Delaware limited liability company	Elmcroft of Oxford Oxford (Lafayette County), Mississippi
Bishop Statesman Club Owner LLC, a Delaware limited liability company	Embark at Statesman Club Oklahoma City (Oklahoma County), Oklahoma
Bishop Stayton Owner LLC, a Delaware limited liability company	Elmcroft of Stayton Stayton (Marion County), Oregon
Bishop Sugarland Ridge Owner LLC, a Delaware limited liability company	Elmcroft of Sugarland Ridge Sheridan (Sheridan County), Wyoming
Bishop Willowbrook Park Owner LLC, a Delaware limited liability company	Embark at Willowbrook Park Houston (Harris County), Texas



SCHEDULE 2

SECOND STEP CLOSING BORROWERS

Second Step Closing Borrowers	Second Step Closing Properties
Bishop Pinecrest Owner LLC, a Delaware limited liability company	Elmcroft of Pinecrest Largo (Pinellas County), Florida
Bishop Lake Worth Owner LLC, a Delaware limited liability company	Embark at Lake Worth Lake Worth (Palm Beach County), Florida