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9 SYMETRA LIFE INSURANCE COMPANY

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 v.

17 GINA CHAMPION-CAIN AND ANI  
DEVELOPMENT, LLC

18 Defendants, and

19 AMERICAN NATIONAL  
20 INVESTMENT, INC.,

21 Relief Defendant.  
22

CASE NO: 3:19-cv-01628-LAB-AHG

**JOINT MOTION AND STIPULATED  
REQUEST FOR ORDER GRANTING  
SYMETRA LIFE INSURANCE  
COMPANY RELIEF FROM  
PRELIMINARY INJUNCTION TO  
FORECLOSE ON REAL PROPERTY**

23 **JOINT MOTION AND STIPULATED REQUEST**

24 1. For the reasons set forth in the body of this Joint Motion and Stipulated  
25 Request ("Motion"), the moving parties identified below respectfully ask this Court to  
26 grant relief to a non-party secured lienholder so that the lienholder may proceed with  
27 foreclosure of a defaulted loan that is secured by property of the receivership estate.  
28

2. Krista Freitag, the duly appointed receiver (“**Receiver**”) for ANI Development, LLC, American National Investments, Inc., and their subsidiaries and affiliates (collectively, “**Receivership Entities**”); plaintiff Securities and Exchange Commission (“**SEC**”); defendant Gina Champion-Cain (“**Champion-Cain**”); and non-party Symetra Life Insurance Company (“**Symetra**”) (together, the “**Stipulating Parties**”), by and through their respective counsel of record, hereby stipulate to limited relief from the Court’s September 3, 2019 Order Granting the Parties’ Joint Motion and Stipulated Request by Parties for a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting Destruction of Documents; and (4) Appointing Permanent Receiver (the “Appointment Order”). [Dkt. 6.]

### **The Lamont Property**

3. This Motion concerns the real property located at 4437 & 4445 Lamont St., San Diego, CA 92109 (the “Lamont Property”), which is in the Pacific Beach neighborhood of San Diego. The Lamont Property is owned by 4445 Lamont Street LLC (“Borrower”), which is one of the ANI-affiliated entities identified in Section IV of the Appointment Order. Section VI of the Appointment Order ordered an immediate freeze on title to the Lamont Property.

4. At the time of the Appointment Order, tenant The Patio on Lamont, LP (the “Tenant”), was operating a high-end dining establishment named *The Patio on Lamont* (“Restaurant”) on the Lamont Property. The Tenant is an ANI-affiliated Receivership Entity as well, and is also subject to the Appointment Order. *See* Appointment Order at § IV.

### **Symetra’s First Deed of Trust Against the Lamont Property**

5. Symetra is a real estate secured lender with a first deed of trust against the Lamont Property, recorded on July 16, 2015 (the “DOT”). *See* Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, recorded on July 16, 2015, San Diego County Recorder’s Office, Instrument No. 2015-0375187, a copy of which is attached as **Exhibit 1**. The DOT secures repayment of a loan made by Symetra

1 to Borrower on or about June 23, 2015, in the original principal amount of  
2 \$2,700,000.00 (the “Loan”). A copy of the note evidencing the Loan is attached as  
3 **Exhibit 2**. The original maturity date for the Loan was August 1, 2035. Up until entry  
4 of the Appointment Order, Borrower was current on its obligations under the Loan.

5 6. After entry of the Appointment Order, monthly payments on the Loan  
6 ceased and Borrower defaulted on its obligations under the Loan. However, Symetra  
7 was enjoined by the Appointment Order from foreclosing on the Lamont Property. By  
8 letter dated November 20, 2019, Symetra gave written notice to Borrower and Receiver  
9 of the defaults existing under the Loan terms. A copy of Symetra’s letter dated  
10 November 20, 2019 is attached as **Exhibit 3**.

11 7. The total amount owed on the Loan as of May 27, 2020 is \$3,271,842.95,  
12 which includes principal, interest, a prepayment fee, default interest, late fees, and legal  
13 fees (the “Payoff Demand”).

#### 14 **Lack of Equity in the Lamont Property**

15 8. Upon entry of the Appointment Order, the Receiver took possession of the  
16 Lamont Property and the Restaurant. With the guidance of a professional restaurant  
17 management group, the Receiver continued operations of the Restaurant from  
18 September 3, 2019 through March 16, 2020 (the “Operations Period”). On March 16,  
19 2020, City of San Diego Executive Order No. 2020-1 took effect, prohibiting the  
20 Restaurant from serving food and beverage for consumption on premises due to  
21 COVID-19. At that point, the Restaurant’s operations were discontinued.

22 9. The Receiver operated the Restaurant during the Operations Period  
23 because, based on input from the real estate brokerage community, the Receiver  
24 believed the Restaurant had value as a going-concern, above and beyond the Payoff  
25 Demand amount owed on the Loan. The Receiver believed that if she shuttered the  
26 Restaurant, however, then there would no equity for the receivership estate.

27 10. During the time the Receiver operated the Restaurant, the Receiver did not  
28 pay debt service on the Loan. Proceeds from the Restaurant operations were used to

1 pay for certain property expenses like insurance, and for the expenses of operating the  
2 Restaurant. Even without paying debt service on the Loan, however, as it turned out,  
3 the Restaurant operated at a slight loss during the Operations Period. Among other  
4 things, the Receiver's assessment is that the Restaurant experienced a loss in customer  
5 base due to the alleged fraud allegations and the publicity associated with the fraud  
6 allegations, and December was a particularly slow month due to several rainy and cold  
7 weekends.

8 11. In early 2020, the Receiver caused the Lamont Property (including the  
9 Restaurant) to be listed and marketed for sale, with a call for offers date of February 3,  
10 2020. After significant market exposure, the Receiver received a qualified highest and  
11 best offer of \$3 million. The next highest offer received was \$2.35 million. With the  
12 total payoff on the Loan as of February 14, 2020 calculated as \$2,980,786.39<sup>1</sup> and costs  
13 to close estimated to be \$170,000 (4.5% broker fees, property taxes, and other closing  
14 costs), it became clear that unless Symetra agreed to reduce its Payoff Demand, there  
15 would be no net value to the receivership estate, particularly if the Receiver also  
16 continued to incur the expenses of operating the Restaurant during escrow, plus the  
17 legal expenses of moving forward with a sale.

18 12. The Receiver conferred with Symetra on multiple occasions to see if she  
19 could negotiate a discounted payoff on the Loan so as to generate a net recovery to the  
20 receivership estate. In addition, Symetra engaged the prospective buyer on several  
21 occasions to try to see if the prospective buyer would agree to assume the Loan, since  
22 that would have resulted in a lower Payoff Demand without any prepayment fee  
23 included and thus would have increased the net recovery to the receivership estate  
24 substantially.

25  
26  
27 <sup>1</sup> It is important to note that the prepayment penalty on this note is a yield maintenance calculation and  
28 so fluctuates with interest rate changes. In the face of plummeting treasury rates, the prepayment  
penalty has increased materially over the course of the receivership – increasing over \$70,000 during  
the period from December 20, 2019 and February 14, 2020. Subsequent to February 14, 2020, treasury  
rates have further plummeted, further increasing the prepayment penalty.



1           13. In the end, after multiple communications, as of March 6, 2020, the  
2 prospective buyer had rejected the option of assuming the Loan. Symetra then  
3 confirmed to the Receiver that it would agree to accept a reduced payoff on the Loan  
4 such that there would be a net recovery of \$150,000 to the receivership estate if the sale  
5 closed within 45 days, and the Receiver moved forward with preparing appropriate  
6 purchase and sale documentation with the buyer that had made the qualified highest and  
7 best offer.

8           14. Shortly thereafter, as mentioned above, the Receiver had to cease operating  
9 the Restaurant for in-person dining due to COVID-19, and the prospective buyer did  
10 not sign the purchase and sale agreement due to the change in circumstances. As of the  
11 City of San Diego's March 16, 2020 executive order restricting in-person restaurant  
12 operations, the Receiver had not yet finalized the sale agreement with the buyer.

13           15. Given the expenses of continuing to operate the Restaurant compared  
14 against the likely income, the Receiver determined that there would be no net benefit to  
15 the estate to continue operating the Restaurant for take-out dining only, and accordingly,  
16 all Restaurant operations then ceased.

17           16. Since terminating operations at the Restaurant, the Receiver has also  
18 advised Symetra to obtain force-placed insurance coverage for the Lamont Property.  
19 Symetra is advised that the cost of force-placed insurance coverage for the Lamont  
20 Property will be \$4,783.84 per month. In addition, the Receiver did not pay the  
21 installment of property taxes for the Lamont Property that was due to be paid by  
22 April 10, 2020, and the county assessor may impose penalties for nonpayment of  
23 property taxes if not paid on or before June 30, 2020 if a COVID-19 penalty cancellation  
24 request is not approved.

25           17. With the recent updates to the various COVID-19 related orders, the  
26 Receiver recently re-engaged the prospective buyer to see if the purchase and sale  
27 agreement could be revived. As of May 22, 2020, the buyer advised that they are now  
28 //

1 only willing to pay \$2,050,000 for the Lamont Property – *i.e.*, \$950,000 less than the  
2 original offer, and over \$1 million less than the amount owed on the Loan.

3 18. No other offers for the Lamont Property have materialized and given the  
4 current COVID-19 environment and the past offers received, the Receiver believes  
5 that it is unlikely that an offer high enough to cover the Payoff Demand and  
6 transactional costs for consummating a sale will materialize in the near future. As  
7 further discussed below, if any such offer surfaces, the Receiver intends to confer with  
8 Symetra.

### 9 **Foreclosure Is Appropriate**

10 19. As the result of the foregoing, the Stipulating Parties hereto have agreed  
11 that it is reasonable and appropriate for Symetra and the foreclosure trustee under the  
12 DOT to be given leave to commence and hold a non-judicial foreclosure of the Lamont  
13 Property. During the time that a non-judicial foreclosure sale is being pursued, the  
14 Receiver intends to continue to market the Lamont Property for sale and reserves the  
15 right to seek a modification of the order to be entered under this Stipulation to the extent  
16 that market conditions change materially and it appears that equity to the receivership  
17 estate may be achieved.

18 20. The Stipulating Parties acknowledge and agree that Symetra's non-judicial  
19 foreclosure of the Lamont Property will foreclose on the real property and real property  
20 fixtures serving as security for the Loan. The Receiver will relinquish possession of the  
21 Lamont Property as of the date of the non-judicial trustee's sale of the Lamont Property.  
22 Any personal property remaining on the premises of the Lamont Property as of the date  
23 of the non-judicial trustee's sale of the Lamont Property will be deemed abandoned by  
24 the Receiver.

25 21. The Stipulating Parties acknowledge and agree that this Stipulation does  
26 not give Symetra any right to foreclose on the Tenant's personal property at the  
27 Restaurant or on the Tenant's liquor license. The Receiver contends that any security  
28 interest of Symetra in the Tenant's liquor license and/or the personal property of the

1 Restaurant was not perfected because Symetra did not file a UCC-1 financing statement  
 2 with the California Secretary of State prior to the injunction imposed by the  
 3 Appointment Order. The Receiver believes that the liquor license and personal property  
 4 of the Restaurant have value, and the Receiver intends to auction and/or sell those items  
 5 to recover money for the receivership estate.

6 22. Accordingly, this Motion is for leave of Symetra to proceed with non-  
 7 judicial foreclosure of the real property and real property fixtures that is the security for  
 8 the Loan, but not the personal property or liquor license of the Tenant. Nothing in this  
 9 Motion shall preclude the Receiver from moving forward with any sale of the personal  
 10 property of the Restaurant or the liquor license for the Tenant.

### 11 **STIPULATION**

12 THEREFORE, the Receiver, the SEC, Champion-Cain, and Symetra, by and  
 13 through their undersigned attorneys of record, hereby STIPULATE AND AGREE as  
 14 follows:

15 23. That an Order may and should be entered providing that the injunctions set  
 16 forth in the Appointment Order be modified in the following particulars only, and only  
 17 with respect to Symetra's lien which encumbers the Lamont Property.

18 24. That the injunctions be modified to permit Symetra to enforce its security  
 19 interest created under the DOT by commencing and prosecuting non-judicial  
 20 foreclosure proceedings on the Lamont Property. Such non-judicial foreclosure  
 21 proceedings may be consummated without the necessity of any further order of the  
 22 Court. The successful bidder at any non-judicial foreclosure sale will acquire and take  
 23 possession of the Lamont Property free and clear of any interest of the receivership  
 24 estate.

25 25. That Symetra retain all other rights and remedies it currently has, including  
 26 without limitation the right to petition this Court for further relief. The Receiver and  
 27 Receivership Entities agree to execute and deliver such documents as Symetra may  
 28 reasonably request in order to complete the non-judicial foreclosure proceedings.

1           26. Nothing herein shall preclude the Receiver from soliciting or developing  
2 offers for the Lamont Property pending the foreclosure sale. In the event the Receiver  
3 receives an offer from a qualified buyer in an amount sufficient to pay off all sums owed  
4 in full under the Loan including all advances made by the lender (including, without  
5 limitation, all sums paid by Symetra for force-placed insurance), plus all expenses of  
6 the Receiver in pursuing such an offer, so as to secure a net recovery for the receivership  
7 estate, and the buyer has released all contingencies, the Receiver will confer with  
8 Symetra to seek a modification of the order entered pursuant to this Stipulation and seek  
9 Court approval of the sale.

10           27. Nothing herein shall preclude the Receiver from moving forward with any  
11 sale of the personal property of the Restaurant or of the Tenant's liquor license.

12           28. All other provisions of this Court's prior orders shall remain in full force  
13 and effect. This Court shall retain jurisdiction for the purpose of implementing and  
14 carrying out the terms of this joint motion and stipulation and to entertain any suitable  
15 application or motion for additional relief within the jurisdiction of this Court.

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**REQUEST FOR RELIEF**

For the reasons stated above, the SEC, the Receiver, Defendant Champion-Cain, and non-party Symetra Life Insurance Company, request that the Court issue an order granting the limited relief from the Appointment Order requested herein.

**IT IS SO STIPULATED.**

DATED: June 8, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & MATSIS LLP

By: /s/ Ted Fates

TED FATES

Attorneys for Receiver KRISTA FREITAG

DATED: June 8, 2020

SECURITIES AND EXCHANGE  
COMMISSION

By: /s/ Kathryn C. Wanner

KATHRYN C. WANNER

ALEC JOHNSON

Attorneys for plaintiff SECURITIES AND  
EXCHANGE COMMISSION

DATED: June 8, 2020

SCHEPER KIM & HARRIS LLP

By: /s/ Angela Machala

ANGELA MACHALA

Attorneys for Defendant

GINA CHAMPION-CAIN

DATED: June 8, 2020

PARKER IBRAHIM & BERG LLP

By: /s/ Heather E. Stern

JOHN M. SORICH

HEATHER E. STERN

Attorneys for Non-Party SYMETRA LIFE  
INSURANCE COMPANY

**SIGNATURE CERTIFICATION**

In accordance with Section 2(f)(4) of the Electronic Case Filing Administrative Policies And Procedures Manual, the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: June 8, 2020

PARKER IBRAHIM & BERG LLP

By: /s/ Heather E. Stern

JOHN M. SORICH

HEATHER E. STERN

Attorneys for Non-Party SYMETRA LIFE  
INSURANCE COMPANY



## **EXHIBIT 1**

RECORDED AT THE REQUEST OF  
CHICAGO TITLE CO.

00037582-450

Prepared by, Recorded at the Request of  
and After Recording Return To:

Alida Estudillo  
Symetra Life Insurance Company  
Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466

DOC# 2015-0375187



Jul 16, 2015 04:10 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$105.00

PCOR: N/A

PAGES: 20

### DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of June 23, 2015, by 4445 LAMONT STREET, LLC, a California limited liability company ("Borrower"), whose address is 4445 Lamont Street, San Diego, CA 92109, to CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation ("Trustee"), whose address is 701 B Street, Ste 760, San Diego, CA 92101, for the benefit of SYMETRA LIFE INSURANCE COMPANY, an Iowa corporation ("Lender"), whose mailing address is Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466.

1. **Granting Clause:** Borrower irrevocably grants, bargains, sells, warrants and transfers to Trustee or its successors and assigns in trust in fee simple, WITH POWER OF SALE, for the purpose of securing the obligations described herein, all now existing or hereafter acquired right, title and interest of Borrower in, to, under and derived from the following (all of the following property described in this Section is called the "Property"):

SEE ATTACHED EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY THIS  
REFERENCE FOR A FULL LEGAL DESCRIPTION OF THE PROPERTY (the "Land")

together with all now existing or hereafter acquired right, title and interest of Borrower in, to, under all buildings, structures, fixtures, additions, extensions and other improvements now or hereafter erected or placed thereon, and all water, water rights and stock, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging now or hereafter used or enjoyed with the Land, or any part thereof, and the reversion and reversions, remainder and remainders thereof, and all other estate, property and rights hereinafter described, including, without limitation, (a) all land lying within the bed and/or the right of way of any streets, ways, alleys, water courses and roads adjoining the Land, and all access rights and easements pertaining to the Land; (b) all the lands, privileges, water, water rights and stock, air rights, development rights, zoning rights and similar rights, oil and gas rights, royalties, minerals and mineral rights belonging or in any way pertaining to the Land; (c) all fixtures, materials, machinery, fittings and other property now or hereafter attached to or used in the operation of the Land, which shall be deemed part of the real property encumbered hereby and not severable wholly or in part without material injury to the property (including, but not limited to, heating and incinerating apparatus and equipment, boilers, generating equipment, piping and plumbing fixtures, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, carpeting, elevators, escalators, partitions, window shades, blinds, screens, furnishings of public spaces, halls and lobbies, and shrubbery and plants); (d) all existing and future leases, subleases, concessions, licenses, franchises, occupancy agreements or other agreements, written or oral, relating to any use or occupancy of the Property, together with any guaranties of such leases, any security deposits and letters of credit securing performance of such leases, and other security for such leases (all such rights and interests being referred to herein as the "Leases"); (e) all income, profits and revenue from any business conducted on the Property, and all income, proceeds, royalties, rents, issues, revenues and profits from the Leases, including all prepaid rent thereunder, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, all proceeds from any rights and claims of any kind which Borrower may have against any tenant under the Leases or any occupants of the property, and proceeds payable under any policy of insurance covering loss of rents (all of the above are hereafter collectively referred to as the "Rents"); the term "Rents" shall include minimum rents, additional rents, percentage rents, common area maintenance charges, lease termination payments, purchase option payments, all proceeds payable as a result of a tenant's exercise of an option to purchase the Property, payments in settlement of litigation or under any Lease or in settlement of any dispute regarding rent payments and all payments in lieu of



rents including without limitation liquidated damages or other compensation for a tenant's default; (f) any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property; (g) goods, appliances, equipment, inventory, furniture, furnishings, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the Property; (h) contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the design, construction, supply or installation of the existing or any future improvements or fixtures on the Property, any and all rights of Borrower in, to or under any architect's contracts, engineer's contracts or construction contracts relating to the design or construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith; (i) all trademarks, trade names, copyrights, computer software and other intellectual property used by Borrower in connection with the Property; (j) all proceeds derived from the sale, conveyance or transfer of the Property or any part thereof, including any deposit received by Borrower in the nature of an option payment or earnest money deposit with respect to any prospective transfer of the Property and all proceeds payable as a result of a tenant's exercise of an option to purchase the Real Property; (k) all compensation, awards, damages, causes of action and proceeds (including condemnation and insurance proceeds and any interest on the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding, fire, earthquake or other casualty, injury or decrease in the value of the Property, and any claims, causes of action and rights arising from damage to the Property, including, without limitation, claims for construction defects and any refund due on account of payment of real estate taxes, assessments or other charges; (l) all rights now or hereafter held by Borrower as a declarant under any condominium declaration or any declaration of covenants, conditions and restrictions affecting the Property; (m) all contracts and agreements pertaining to or affecting the Property, including management and operating agreements; and (n) all additions, accessions, replacements, products, substitutions, and proceeds of any of the foregoing.

2. **Security Agreement.** Borrower grants to Lender a security interest in that portion of the Property which is not real property to secure payment and performance of all of the Secured Obligations (defined below). This Security Instrument shall constitute a Security Agreement as that term is used in the California Uniform Commercial Code as it may be amended from time to time ("UCC") or other law applicable to the creation of liens or security interests in personal property with respect to any of the Property that is not real property but is described herein, or in any way connected with the use and enjoyment of the Property, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as specified in the UCC or at law. Borrower authorizes Lender to file one or more financing statements under the UCC with Borrower as Debtor and Lender as Secured Party (with their addresses as set forth in the preamble of this Security Instrument) to perfect or give public notice of the security interest granted herein, without providing any notice to, or obtaining consent from, Borrower. Borrower and Lender agree that the filing of a financing statement in the records normally having to do with personal property shall not be construed as in anywise derogating from or impairing the lien of this Security Instrument. Borrower will immediately notify Lender in writing of any change in (a) the Borrower's name, (b) the Borrower's business organization, (c) the jurisdiction under which the Borrower's business organization is formed or organized, or (d) the address of the Borrower's chief executive office or principal residence or of any additional places of Borrower's business.

3. **Obligations Secured.** This Security Instrument is given for the purpose of securing the following obligations (the "Secured Obligations"):

(a) the payment of the indebtedness (the "Loan") evidenced by a Real Estate Note of even date hereof in the principal amount of \$2,700,000.00 made by Borrower (the "Note"), payable to the order of Lender at the times, in the manner and with interest as therein set forth, and any extensions, renewals, modifications, restatements or substitutions of the Note.

(b) the performance of each agreement of Borrower herein or in the other Loan Documents (with the exception of any Environmental Agreement, as provided below, and any guaranty);

(c) the payment of all sums expended or advanced by Lender under or pursuant to the terms hereof, together with interest as herein provided including without limitation any and all sums advanced by the Lender in order to preserve the Property or preserve its security interest in the Property in accordance with the terms of the Loan Documents; and

(d) the payment of such additional loans or advances as hereafter may be made to Borrower, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Security Instrument.



Notwithstanding anything to the contrary in this instrument, this Security Instrument does not, and shall not be deemed to, secure the separate Environmental Agreement and Indemnity of even date herewith given by Borrower and the guarantor(s) of the Loan with respect to the Property (the "Environmental Agreement").

As used in this Security Instrument, the "Loan Documents" shall mean the Note, this Security Instrument, and the other documents and instruments evidencing or securing the Loan executed by Borrower, but shall specifically exclude any Environmental Agreement.

4. **Performance of Obligations.** Borrower shall timely pay all sums when due pursuant to the Note and the Loan Documents without deduction or credit for taxes, insurance and other charges paid by Borrower, and strictly comply with all the terms and conditions of the Loan Documents.

5. **Warranties**

5.1 **Warranty of Title.** Borrower represents and warrants to and covenants with Lender that (a) Borrower has good and marketable title to an indefeasible fee simple estate in the Land and the improvements thereon, and unencumbered title to the Rents and Leases, (b) the Property is free and clear of any liens, encumbrances, easements, assessments, security interests, claims or defects of any kind, nature or description except easements of record and recorded declarations, restrictions, reservations and covenants, if any, that are set forth in the schedule of exceptions to coverage approved by Lender in the title insurance policy insuring Lender's interest in the Property, and real property taxes for the current year, a lien not yet payable (the "Permitted Exceptions"), (c) neither the real property taxes nor any Permitted Exceptions are delinquent or in default, (d) Borrower has the right to convey the Property to Trustee for the benefit of Lender, and the right to grant a security interest in the personal property security. Borrower will warrant and defend title to the Property and will defend the validity and priority of the lien of this Security Instrument and the security interest granted herein against any claims or demands, except for the Permitted Exceptions.

5.2 **Warranties Regarding Leases.** Borrower represents and warrants to and covenants with Lender that (a) Borrower has performed all of the material covenants of Borrower as landlord under the Leases; (b) all of the Leases identified by Borrower in any certified rent roll provided by Borrower to Lender identifying Leases in place as of the date hereof (the "Current Leases") are to the best of Borrower's knowledge valid and enforceable according to their terms in all material respects, are in full force and effect and are unmodified except as disclosed in writing to Lender; (c) Borrower has the right to assign its rights under the Rents and Leases to Lender as security for the Secured Obligations; (d) the tenants under the Current Leases are in possession of the premises leased under their respective leases and except as disclosed in writing by Borrower to Lender are paying rent as provided therein; (e) Borrower has made no prior assignment of the Rents or Leases except as security for indebtedness that has been fully repaid as of the date hereof, and (f) Borrower has not collected any of the Rents due and owing under the Leases more than one month in advance of their due date.

6. **Prohibited Liens.** Borrower shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real property taxes and assessments not yet due and liens expressly permitted by the Loan Documents. Borrower shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof, or its interest as lessor under the Leases except pursuant to this instrument. Borrower shall have the right to contest any mechanic's and materialmen's liens on the Property in good faith by appropriate proceedings so long as (a) no Event of Default (as defined hereinafter) has occurred and is continuing; (b) Borrower posts any bond or other security as and when required as a condition of pursuing such contest; (c) Borrower commences such contest prior to such lien becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such bond stays the foreclosure and enforcement of such lien; and (e) Borrower pays any lien within ten (10) days following the resolution of such contest. If Lender is named as a party in any suit to foreclose a lien described herein then Borrower shall pay all costs and fees incurred by Lender in defending such suit.

7. **Payment of Fees, Taxes and Other Liens and Assessments; Contest.** Borrower shall pay all filing, registration and recording fees, stamp and documentation taxes, and other fees, taxes, duties, imposts, and other charges incident to, arising from, or in connection with the making, disbursement and administration of the Loan and the preparation, execution, delivery or recording of any Loan Document. Borrower shall also pay or cause its tenants to pay the real property taxes and any assessments with respect to the Property prior to delinquency unless otherwise expressly agreed to in writing by



Lender. After timely notice to Lender, Borrower shall have the right to contest any real property tax or special assessment on the Property at Borrower's sole expense by appropriate proceedings diligently pursued so long as (a) no Event of Default has occurred; (b) Borrower makes any payment or deposit or posts any bond as and when required as a condition of pursuing such contest. If it has not provided evidence to Lender that it has deposited the entire amount of assessed with the applicable governmental authority, Borrower shall deposit the entire amount together with projected penalties and interest with Lender or provide Lender with other security satisfactory to Lender in its sole and absolute discretion; (c) Borrower commences such contest prior to such tax or assessment becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such contest or any bond furnished by Borrower stays the foreclosure and enforcement of any lien securing the payment of any such tax or assessment; and (e) Borrower pays any tax or assessment within ten (10) days following the resolution of such contest. All other encumbrances, charges, fees, and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Security Instrument, shall be paid when due and shall not be in default beyond any applicable notice and cure period. On request, Borrower shall furnish to Lender receipts or other evidence of payment of these items satisfactory to Lender.

8. **Maintenance; No Waste.** Borrower shall protect and preserve the Property and maintain it in good condition and repair, ordinary wear and tear from proper use alone excepted. Borrower shall not commit or permit any waste of the Property, or suffer or permit any condition to exist which will (i) increase the risk of fire or other hazard to the Property, or (ii) invalidate or allow cancellation of any insurance policy covering the Property. Borrower shall perform all of Borrower's material obligations under any declarations, covenants, bylaws, rules or other documents governing the use, ownership or occupancy of the Property.

9. **Alterations, Removal and Demolition.** Borrower shall not, nor permit tenants or others to, demolish any building on the Property, alter any foundations or structurally alter exterior walls of such buildings without Lender's prior written consent. Borrower shall not remove any fixture or other item or property which is part of the Property and the removal of which would materially adversely affect the value of the Property, without Lender's prior written consent unless the fixture or item of property is immediately replaced by an article of equal value and utility owned by Borrower free and clear of any lien or security interest unless such item is no longer reasonably necessary for the efficient use and operation of the Property as currently used.

10. **Completion, Repair and Restoration.** Borrower shall, at its sole cost, promptly complete or repair and restore in good workmanlike manner, lien-free and in compliance with all applicable laws and permits, any building or improvement on the Property which may be constructed or damaged or destroyed. Notwithstanding the foregoing, if the damage or destruction is the result of an insured casualty, if no Event of Default has occurred and is continuing, and if Lender has exercised any option it may have under Section 20 hereof to apply for a purpose other than rebuilding any portion of the insurance proceeds paid by reason of the casualty, then Borrower's obligation to repair or rebuild shall be limited to such repair and rebuilding as may reasonably be accomplished with such insurance proceeds as are made available to Borrower plus the deductible amounts on the applicable insurance policies.

11. **Compliance with Laws.** The Land is zoned for Borrower's proposed use, and is in present compliance with all zoning and subdivision laws, regulations, codes, rules, and ordinances applicable thereto. Borrower shall assure that at all times the Land constitutes one or more legal lots capable of being conveyed without violation of any subdivision laws, ordinances, regulations, codes, rules, or other applicable laws relating to the division or separation of real property. Borrower shall comply with all laws, ordinances, codes, rules, regulations, covenants, conditions, declarations, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, declarations, and restrictions. Without limiting the generality of the foregoing, Borrower represents and covenants that to Borrower's actual knowledge, the Property is in present compliance with, and at all times shall fully comply with, as applicable, the Americans With Disabilities Act of 1990 (42 USC 12101, et seq.), as amended from time to time, and the rules and regulations adopted pursuant thereto.

12. **Impairment of Property; No Condominium.** Borrower shall not, without Lender's prior written consent, change the general nature of the use of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the value of the Property or Lender's lien or security interest in the Property. In addition, Borrower will not subject the Property or any portion thereof to a condominium regime or structure without the written consent of Lender, which consent may be granted



or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including, but not limited to, Borrower providing Lender with such title insurance endorsements and other documents as Lender may require.

13. **Inspection of Property.** Lender or its authorized representative shall have the right to inspect the Property and its condition and use at all reasonable times after reasonable notice to Borrower, subject to the rights of tenants of the Property.

14. **Borrower's Defense of Property.** Borrower shall appear in and defend (with counsel reasonably satisfactory to Lender) any action or proceeding which may affect the Property or the rights or powers of Lender or Trustee.

15. **Lender's Right to Protect Property.** Lender may (but is not obligated to) commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Lender or Trustee if Borrower fails to undertake such actions after reasonable notice from Lender. Lender may pay, purchase, contest or compromise any encumbrance, charge or lien which in its judgment appears to be prior or superior to the lien of this Security Instrument and Borrower shall promptly reimburse Lender therefor. If Borrower fails to make any payment or do any act required under the Loan Documents, including without limitation, payment of taxes and assessments and maintenance of insurance on the Property, Lender, without any obligation to do so, but without releasing Borrower from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Lender may deem necessary to protect Lender's interest in the Property. Lender is authorized to enter upon the Property for such purposes. In exercising any of these powers Lender may incur such expenses, in its reasonable discretion, it deems necessary, all of which shall be payable by Borrower and be secured by this Security Instrument.

16. **Repayment of Lender's Expenditures.** Borrower shall pay within 10 days after written notice from Lender all sums expended by and all costs and expenses incurred by Lender in taking any actions or exercising any remedies pursuant to the Loan Documents or in responding to any subpoena or other discovery request relating in any way to Lender's status as holder of this instrument or to the process of closing or administering the Loan, including without limitation reasonable attorneys' fees, appraisal and inspection fees, and the costs of title reports. Expenditures and advances by Lender shall bear interest from the date of such advance or expenditure at the rate specified in the Note (which shall be the default rate thereunder if an Event of Default is then pending), shall constitute advances made under this Security Instrument and shall be secured by and have the same priority as the lien of this Security Instrument. If Borrower fails to pay any such expenditures, advances, costs and expenses and interest thereon, Lender may, at its option, without foreclosing the lien of this Security Instrument, commence an independent action against Borrower for the recovery of the expenditures, costs, and advances, and may disburse any undisbursed loan proceeds to pay such costs, advances and expenditures.

17. **Due on Sale or Transfer; Change of Control.**

17.1 **General Rule – Prohibition on Conveyance or Change of Control.** Borrower understands that Lender will have the opportunity to examine, and is entitled to rely upon, the creditworthiness, financial strength, reputation, experience and managerial ability of Borrower (and its owners and managers) with respect to owning, leasing and operating the Property, in approving the Loan to Borrower, and will continue to rely on Borrower (and its owners and managers) as a means of preserving the value of the Property as security for the Loan. If (i) the Property or any part thereof or interest therein is conveyed, transferred, leased (other than a space lease without option to purchase), assigned, or otherwise alienated (each a "Conveyance"), or (ii) there is a Change of Control (defined below) of Borrower without the prior written consent of Lender, then, except as otherwise expressly provided below, and regardless of whether or not an Event of Default shall otherwise have occurred and be continuing, such event shall constitute an Event of Default, and Lender may, at its option, declare the then outstanding principal balance evidenced by the Note plus accrued interest thereon, and any applicable late fee or prepayment fee, immediately due and payable. In the case of a Borrower that is a revocable trust, the revocation of such trust shall be deemed a Change of Control for purposes hereof. Any joint venture agreement, partnership agreement, declaration or revocation of trust, real estate installment sale contract, option agreement or other agreement (other than a space lease without option to purchase) whereby any other person or entity other than Borrower may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits of the Property, shall, in each case, be deemed to be a Conveyance or Change of Control for the purposes of this paragraph, and shall require prior written consent from Lender. Any request to Lender for approval of a Change of Control shall be accompanied by copies of any proposed transfer instruments and a processing fee to Lender in the amount specified below. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any



general partner from Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner for all obligations of Borrower hereunder or under the Note. If Borrower consists of more than one person or entity who hold title to the Property as tenants in common, no tenancy-in-common agreement or similar agreement governing the rights and obligations of the owners with respect to the Property that may be recorded against the Property as of the date hereof or hereafter, or of which Lender otherwise has knowledge, shall in any way limit or impair Lender's rights under this Deed of Trust, including without limitation Beneficiary's rights upon any transfer of any fee interest in any portion of the Property. Borrower hereby waives any right of partition with respect to the Property and covenants not to file any action for partition of the Property until all of the Secured Obligations are paid in full.

**17.2 "Change of Control" Defined.** Except as otherwise expressly provided herein, a "Change of Control" for purposes hereof means the transfer over the term of the Loan of more than 49% of the equity interests, directly or indirectly, in Borrower (but excluding any transfers described in Section 17.3 below), or any change in the identity of the general partner(s) of any general or limited partnership that is the Borrower. If Borrower consists of more than one entity, such 49% limitation shall apply to each such entity. If Borrower is a natural person and dies, the transfer of the Property because of such death shall not be deemed a Conveyance for purposes hereof provided that Lender is promptly notified of such death and within ninety (90) days after written request by Lender, one or more other persons or entities having credit standing and financial resources equal to or better than those of the decedent, as determined by Lender in its reasonable discretion, and management abilities satisfactory to Lender shall assume the Loan, by executing and delivering to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the decedent in the Property; provided further that (i) Lender shall be provided, at Borrower's expense, with a title endorsement as required below in connection with an assumption of the Loan, and (ii) Lender shall be paid an administrative fee in the amount of \$3,000. If Borrower is a trust, a change in the make-up of the trustees of the trust as the result of death or resignation shall not constitute a Conveyance or Change of Control requiring written consent of Lender. Lender will not unreasonably withhold its consent to the transfer of part or all of the interest of the trust in the Property to any third party pursuant to the dispositive provisions of the trust, or to an entity owned in whole or in part by the beneficiaries identified in such trust, provided that Lender is provided with the organizational documents for such entity, copies of any deed or other conveyance instrument; Lender is provided at Borrower's expense with an endorsement to its title policy insuring that the transfer of title does not affect the validity or priority of the lien of this Deed of Trust; the transferee of title to the Property executes and delivers to Lender an assumption agreement with respect to the Loan in form and content satisfactory to Lender, and Lender is paid an administrative fee of \$2,500.

**17.3 Transfer of Interest for Estate Planning Purposes.** Natural persons may, for estate planning purposes, transfer their direct or indirect interest in Borrower (other than general partnership interests), notwithstanding that such transfer may be of a Change of Control, if such transfer is to immediate family members or lineal descendants, or to entities controlled by or trusts for the benefit of, immediate family members or lineal descendants of the transferor, provided each of the following conditions have been satisfied: 1) There have been no Events of Default, 2) Lender receives written notice of the transfer along with all appropriate documentation of the transfer satisfactory to Lender within 30 days after the transfer, 3) the liability of Borrower under the Note and of any guarantors under their guaranty of Borrower's obligations shall remain in full force and effect, 4) managerial control over the Property and the Borrower shall remain acceptable to Lender; and 5) Borrower shall pay all of Lender's reasonable out of pocket costs associated with the transfer plus a \$500 administrative fee.

**17.4. Death of Guarantor or General Partner.** The death of (i) a natural person who is a guarantor of the Loan whether or not such person owns any interest in Borrower, or (ii) a general partner of a partnership that is the Borrower, shall constitute an Event of Default under the Loan, unless in the case of (i), the obligations of such decedent are assumed in writing by a replacement guarantor satisfactory to Lender no later than the earlier of (a) the date on which the first distribution of the decedent's assets has been made from such person's estate or trust to any devisee, heir or beneficiary, or (b) ninety (90) days after such guarantor's death, or in the case of (ii), Lender must be satisfied with any replacement general partner, in terms of such general partner's management experience and creditworthiness, or Lender must otherwise be provided with a new guaranty from a satisfactory guarantor in substitution for the obligations of the deceased general partner. Lender will not unreasonably withhold its consent to a replacement guarantor or replacement general partner whose creditworthiness, liquidity and financial strength satisfy Lender's then-applicable underwriting standards. In addition, Lender will not unreasonably withhold its consent to an additional extension of 90 days to the 90 day period referenced above for the delivery of a satisfactory replacement guaranty upon the death of a guarantor. Any change in the day-to-day management of the Property or of Borrower resulting from a death as described herein shall be subject to Lender's approval, which approval may be given or withheld in the



sole and absolute discretion of Lender. Borrower shall pay all of Lender's reasonable out of pocket costs associated with the foregoing transaction plus an administrative fee of \$1,000.

**17.5. Other Transfers of Interest on Death.** The transfer, on the death of a natural person, of an interest in Borrower, whether or not such transfer would otherwise be a Change of Control, where such person is not the Borrower or a Guarantor or a general partner of Borrower, shall not constitute a Change of Control or require the notification to or consent of Lender, or payment of any fee.

**17.6 No Discharge of Obligated Parties.** No Conveyance or Change of Control or other transfer of any interest in the Property shall operate to discharge or diminish in any way the liability of Borrower or any guarantor with respect to the Loan Documents except as otherwise expressly provided herein.

**17.7. Assumption of Loan.** Notwithstanding the foregoing provisions found in sections 17.1 through 17.6 above, and provided no Event of Default has occurred, Borrower shall have a one-time only right upon prior written notice to Lender and payment of all Lender's expenses plus an assumption fee equal to one percent (1%) of the original principal amount of the Note to convey the entire interest in the Property held by all persons comprising Borrower to a transferee whose creditworthiness, financial strength, reputation, experience and property management ability with respect to the ownership, operation and leasing of properties similar to the Property (together with that of any new proposed guarantors of the Loan) satisfy Lender's then-applicable underwriting standards, which approval shall not be unreasonably withheld or delayed. If Lender withholds its approval because of the proposed transferee's or proposed new guarantors' lack of creditworthiness, reputation, experience, property management ability or financial strength or other reasonable basis which leads Lender to reasonably believe the Loan or the security would be impaired, Lender shall not be deemed to have unreasonably withheld its approval. Any transferee must fully assume Borrower's obligations under the Note, the Loan Documents and the Environmental Agreement, and Borrower and any guarantors of the Loan shall remain fully bound after the transfer; provided that upon Lender's approval of a conveyance of the Property to a transferee unaffiliated with Borrower, Lender's acceptance of any required replacement guaranty(ies) and the assumption of the Loan as provided herein, Borrower and any guarantors shall be released from liability for repayment of the Loan. Borrower shall pay for all endorsements to Lender's title policy requested by Lender in its sole and absolute discretion insuring that this Security Instrument remains a first and prior lien on the Property and shall pay all expenses and fees, including outside counsel legal fees, incurred in connection with the transfer and assumption. Any approval given by Lender shall not constitute approval of any other or future Conveyance or Change of Control. If ownership of the Property or any part thereof or interest therein becomes vested in a person or an entity other than Borrower, whether or not Lender has given written approval, Lender may deal with such successor or successors in interest with reference to this Security Instrument and the Loan, in the same manner as with Borrower, without in any way diminishing or discharging Borrower's obligations. In addition to the loan assumption fee payable upon an approved conveyance of the Property and assumption of the Loan, Borrower shall pay to Lender a processing fee in the amount of \$3,500.00 in consideration of, and as a precondition to, the review by Lender of the proposed conveyance and assumption. Such sum is payable regardless of whether Lender ultimately approves the proposed transfer and is in addition to any loan assumption fee payable upon the closing of an assumption transaction. As a condition of approval of any request for a loan assumption, Borrower shall provide evidence satisfactory to Lender that any tenant with a right of first refusal to acquire the Property has waived such right with respect to the proposed transfer.

**18. No Other Encumbrances; Due on Encumbrance.** At no time while the Loan remains unpaid shall Borrower create, assume, or suffer to exist on the Property, or any part thereof, any mortgage, trust deed or other security instrument in favor of any person other than Lender (an "Encumbrance") without first obtaining the prior written consent of Lender. Borrower agrees that should the Property or any part thereof at any time be or become subject to the lien of any other mortgage or Security Instrument or subject to any other voluntary encumbrance, pledge, or security interest (except with the prior written consent of Lender), the whole of the principal and interest secured hereby and any applicable delinquency charge or prepayment fee shall, at the option of Lender, become immediately due and payable. Whether or not the consent of Lender has been obtained, Borrower, for itself and for all future owners of the Property, agrees that this Security Instrument and the other Loan Documents may be modified, varied, extended, renewed, or reinstated at any time by agreement between the holder of this Security Instrument and Borrower, or the then owner of the Property, without notice to, or the consent of, any subordinate mortgagee or lienor, and any such modification, variance, extension, renewal, or reinstatement shall be binding upon such subordinate mortgagee, Lender or lienor with the same force and effect as if such subordinate mortgagee, Lender or lienor had consented thereto.



19. **Insurance.** Without limiting the generality of any other provision contained in this Security Instrument, Borrower shall procure and continuously maintain while the Loan remains unpaid and this Security Instrument remains in effect "all risk" property insurance covering all improvements on the Property providing 100% replacement cost coverage on an agreed amount basis to remove any co-insurance provision, insuring against loss by fire, smoke, explosion, riot, lightning, hail, wind, windstorm, vandalism and other risks covered by the broadest form of extended coverage available from time to time, loss of rents (or business income, if owner occupied) coverage in amounts sufficient to compensate Borrower for all rents or income from the Property during a period of not less than one year, and earthquake coverage to the extent required by Lender in the exercise of its business judgment in light of commercial real estate practices by institutional lenders lending against real property in the general vicinity where the Property is located at the time the insurance is issued, and coverage for such other perils and risks as may be reasonably required by Lender from time to time. If the Property are ever designated as having special flood hazards or any other designation which would make the Property subject to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, modified, supplemented, or replaced from time to time, or any similar law, Borrower agrees to do everything reasonably necessary to comply with the requirements of said law and related regulations in order that flood insurance will be available to Borrower, and to obtain and maintain for the benefit of Lender such an insurance policy with limits and deductibles satisfactory to Lender. Borrower shall also procure and maintain Occurrence Form commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about, or resulting from, the Property or Borrower's use and occupancy of the Property with limits in such amounts as are acceptable to Lender, but in no event less than \$1,000,000 combined single limit per occurrence for loans up to \$5,000,000, or \$2,000,000 for loans of \$5,000,000 or more, provided that for hotels and senior living facilities, the combined single limit per occurrence shall be not less than \$5,000,000 regardless of loan size; and \$2,000,000 general aggregate (or \$5,000,000 for hotels or senior living facilities), naming Lender as an additional insured on a primary/non-contributory basis (with endorsement CG2018 or equivalent). All insurance shall be with companies licensed to do business and admitted in California satisfactory to Lender having an A.M. Best rating of A- or better with limits acceptable to Lender, and a Lender's Loss Payable endorsement (form CP1218 or equivalent) in favor of and in form satisfactory to Lender and deductibles not to exceed \$25,000 for loans up to \$5,000,000 or \$100,000 for loans in excess of \$5,000,000. Each policy must provide no less than thirty (30) days prior written notice to Lender of any cancellation, non-renewal or material change (or ten (10) days in the case of a cancellation for nonpayment of premiums). No approval by Lender of the amount, type or form of any insurance shall be construed as a representation or warranty by Lender of its sufficiency for Borrower's purposes. Borrower shall pay all premiums for the insurance coverage required hereunder in a timely manner. At least thirty (30) days prior to the expiration of the term of any insurance policy, Borrower shall furnish Lender with written evidence of renewal or issuance of a satisfactory replacement policy. If requested, Borrower shall deliver copies of all policies to Lender. In the event of foreclosure of this Security Instrument all interest of Borrower in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Lender. No approval by Lender of the amount, type or form of any insurance shall be construed to be a representation by Lender of its sufficiency for Borrower's purposes. If Borrower fails to maintain insurance in accordance with this Security Instrument, Lender may, but need not, obtain insurance to protect Lender's interest in the Property ("**Force Placed Insurance**"). For instance, and without limiting Lender's rights hereunder and under the other Loan Documents, Lender may obtain Force Placed Insurance if: (a) Borrower fails to deliver to Lender, prior to the expiration of any such required insurance coverage, evidence satisfactory to Lender that Borrower has renewed or replaced such coverage; (b) the amount of insurance is reduced below Lender's requirements; (c) the deductible is increased above Lender's requirements; or (d) the insurer providing the insurance does not meet Lender's insurance company rating requirements.

20. **Insurance Proceeds.** All insurance proceeds (including, but not limited to, proceeds of policies of insurance that Lender does not require Borrower to carry) with respect to the Property are hereby assigned to Lender (all such assigned items shall constitute part of the "Property" for purposes hereof) as additional security for the Loan. Borrower shall give immediate notice to Lender of any loss or damage to the Property due to casualty in excess of \$25,000 (a "**Material Loss**"). Provided no Event of Default has occurred and is continuing, Borrower shall have the right to settle and receive the proceeds payable with respect to a loss or damage except for a Material Loss, and shall with reasonable promptness apply any funds so received to the repair and reconstruction of the damage. All proceeds payable with respect to a Material Loss shall be paid to Lender and applied to repair or restore the Property, provided no Event of Default has occurred and is continuing; such repair or restoration is economically feasible; the security of this Security Instrument is not impaired; and at least one year remains on the unexpired term of the Note. If the foregoing conditions are not satisfied, Lender shall, at its option, after deducting its expenses including reasonable attorneys' fees, (a) apply all or part of the proceeds against the sums owed under the Loan Documents including the Note whether or not (i) the sums are actually then due or (ii) Lender's security is impaired, and without affecting the due dates or amount of payments thereafter due under the Note, or (b) release all or any part of the proceeds to Borrower, or (c) permit all or



any part of the proceeds to be used for repair and restoration of the Property on such conditions as Lender may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds (and of any additional funds Lender requires Borrower to deposit with Lender for disbursement to pay the costs of the repair and restoration) during the course of repair and restoration. Lender's security will be deemed to be impaired if Borrower fails to comply with such conditions in any material respect. Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection with the collection and administration of any insurance proceeds as provided herein. Except when an Event of Default is then pending, any application of the insurance proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of insurance proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of installments due under the Note, absent express agreement of Lender to the contrary. No application of insurance proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

21. **Condemnation Proceeds.** All awards, payments, damages (whether direct, consequential or otherwise), claims and proceeds thereof in connection with any condemnation or eminent domain proceeding affecting the Property, or for conveyance in lieu of condemnation (collectively, a "**Condemnation Proceeding**"), are hereby assigned to Lender (all such assigned items shall constitute part of the "Property" for purposes hereof) as additional security for the Loan. Borrower shall give immediate notice to Lender of any Condemnation Proceeding, and Borrower will appear in and prosecute any such proceeding unless otherwise directed by Lender in writing. If an Event of Default has occurred and is continuing at the time of commencement of the Condemnation Proceeding, then Borrower hereby irrevocably empowers Lender, in the name of Borrower, as Borrower's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all claims with respect to such Proceeding; provided, however, Lender shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. In addition, whether or not an Event of Default has occurred and is continuing, Lender may, at its option, appear in and participate in any Condemnation Proceeding in Lender's own name, through counsel of its choice. Borrower shall deliver to Lender at Borrower's expense such documentation and information regarding the Condemnation Proceeding, its impact on the Property and Borrower's position with respect thereto as Lender may reasonably request from time to time, including without limitation survey maps showing the portions of the Property affected by the Condemnation Proceeding, in order to enable Lender to exercise its rights hereunder in connection with such Condemnation Proceeding.

All awards payable pursuant to the Condemnation Proceeding shall be paid to Lender for application as provided herein. If Borrower receives any such awards directly from a condemning authority, Borrower shall deliver the same to Lender forthwith and, until such delivery, shall hold the same in trust for Lender pending disposition as provided herein. Lender shall, after deducting its expenses including reasonable attorneys' fees incurred in such proceedings and otherwise in the collection of the proceeds, make such net proceeds (the "**Net Claims Proceeds**") available to Borrower (subject to the terms of the following paragraph) to repair and reconstruct the Property, provided all of the following conditions (the "**Proceeds Release Conditions**") are satisfied: (i) no Event of Default has occurred and is continuing; (ii) Borrower establishes to Lender's satisfaction that the Property can be restored to a value, usefulness and physical condition in all material respects comparable to its condition immediately prior to the taking; (iii) Lender shall have determined that the Net Claims Proceeds are sufficient to pay the total cost of repair or reconstruction (the "**Repair Costs**"), or Borrower shall have deposited with Lender sufficient additional funds from separate resources to meet any shortfall between the Net Claims Proceeds and the reasonably estimated Repair Costs (the "**Borrower Deposit**"); (iv) Lender shall have approved the plans and specifications, permits, construction contract, construction budget and schedule, and the selection of the architect, engineer and contractor for the repair and reconstruction work, with such approval not to be unreasonably withheld; and (v) Lender shall otherwise be fully satisfied that the security of this Security Instrument and Borrower's ability to perform its obligations hereunder and under the other Loan Documents is not impaired by reason of the taking. Borrower shall perform any required repairs in compliance with Section 10 of this instrument. If any of the Proceeds Release Conditions are not satisfied within a reasonable time (as reasonably determined by Lender), then Lender may apply the Net Claims Proceeds to the Secured Obligations in such order as Lender may determine, whether then due and payable or not. Except when an Event of Default is then pending, any such application of the Proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of Net Claims Proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of installments due under the Note, absent express agreement of Lender to the contrary. No application of Net Claims Proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

If the Proceeds Release Conditions are satisfied but the total amount of the Net Claims Proceeds exceeds \$25,000, then Lender may, at its option, hold or cause an independent third party escrow holder to hold such proceeds (together with any required Borrower Deposit) in an account for disbursement to Borrower to pay the Repair Costs (with any third party escrow fees



being borne by Borrower) according to such reasonable disbursement procedures as Lender may impose to assure that all repair and reconstruction work will be completed lien free, with reasonable diligence, in accordance with all applicable laws and permits and in conformity with any plans, specifications and contracts approved by Lender. If the actual Repair Costs are less than the Net Claims Proceeds, then upon completion of all required repair and reconstruction of the Property, and provided that no Event of Default has occurred and is continuing and that the value of the Property has not been materially impaired by reason of the taking, then any such surplus proceeds shall be released to Borrower. Otherwise, such surplus proceeds may be applied by Lender for application against the outstanding balance of the Secured Obligations.

In addition, if the Proceeds Release conditions are satisfied but Lender reasonably determines that work to be carried on in rights of way or other properties adjacent to the Property as part of the public project that is the basis of the Condemnation Proceeding may reasonably be expected to temporarily disrupt the business operations on the Property and accordingly impair the ability of the Property to generate the income necessary to pay the interest and principal as it comes due under the Note, and to pay all required expenses of operating and maintaining the Property as required hereunder and under the other Loan Documents, Lender may hold or cause an independent third party escrow holder to hold the Net Claims Proceeds or such portion thereof as Lender reasonably determines to be necessary as additional security for the Secured Obligations, and/or as a fund for the payment of debt service on the Loan, with provisions for the release of such funds at a reasonable time when the Property's ability to generate the income is no longer impaired.

Borrower agrees to pay all Lender's costs and reasonable attorneys' fees incurred in connection with any actions taken by Lender pursuant to this Section.

## **22. Leases.**

**22.1 Performance, Preservation and Enforcement of Leases.** Borrower shall fully comply with all of the terms, conditions and covenants of the Leases so that no breach shall occur on the part of Borrower, and shall do all that is necessary to preserve all the Leases in force. Borrower shall give prompt written notice to Lender of the receipt by Borrower of any written notice from any tenant or subtenant under a Lease claiming any default by Borrower under a Lease. Borrower shall enforce in a commercially reasonable manner the performance in all material respects of each and every obligation to be performed by any tenant under its Lease, and shall notify Lender of the occurrence of any default under a Lease which, if not cured, could permit the tenant to terminate the Lease or abate the payment of Rent. Borrower shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof or its interest as lessor of the Leases except the lien of this instrument. Borrower shall notify Lender in writing prior to becoming the beneficiary under any letter of credit supporting any of the Leases, and shall take all actions, and execute all documents, necessary or appropriate to give Lender control (as defined in the UCC) of such letter of credit and all letter of credit rights thereunder and, if required by Lender, to make Lender the transferee beneficiary of such letter of credit. Borrower shall maintain all security deposits collected from tenants with respect to their Leases in accordance with all applicable legal requirements. Except for the lien of real property taxes and assessments, Borrower shall not permit any lien to be created against the Property which may be or may become prior to any Lease.

**22.2 Proceeds of Lease Default.** To the maximum extent permitted by law, if an Event of Default has occurred and is continuing, then any proceeds or damages resulting from a tenant's default under any Lease, and any lease termination fees payable by a tenant to Borrower under any Lease (collectively, "**Lease Proceeds**") shall be payable to Lender for application against the principal balance of the Secured Obligations, notwithstanding that such sums may not then be due and payable. In the absence of an Event of Default, and to the maximum extent permitted by law, any Lease Proceeds that are derived from a Material Lease (defined below) shall be held by Lender as a reserve to be released to pay Borrower's expenses in repairing any damage to the subject leased premises, and re-tenanting the premises, including without limitation leasing commissions and tenant improvement expenses. The specific terms of such reserve will be as provided in a detailed reserve agreement to be executed by Borrower and Lender. If any Lease Proceeds are derived from a Lease that is not a Material Lease, then provided no Event of Default has occurred and is continuing such proceeds or fees may be released to Borrower.

**22.3 Prior Approval for Borrower Actions under Leases.** Without the prior written consent of the Lender, Borrower will not:

- (a) receive or collect any Rents from any present or future tenant of the Property for a period of more than one (1) month in advance of the date on which such payment is due, or pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents to anyone other than Lender;
- (b) enter into a new lease that covers fifty percent (50%) or more of the net rentable area of the Property;



(c) with respect to any Material Lease (defined below), waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any such Lease or a guarantor under a lease guaranty, of and from any obligations, covenants, conditions and agreements by tenant to be kept, observed and performed, including the obligation to pay the Rents in the manner and at the place and time specified therein;

(d) with respect to any Material Lease, consent to any surrender of any such Lease or the exercise of any right of recapture provided in any such Lease,

(e) except in accordance with the terms of the Lease providing for termination or other remedies in the event of default by a tenant, cancel or terminate any Material Lease, or commence an action of ejectment or any summary proceedings for dispossession of the tenant under any Material Lease, or permit any of the aforementioned; or

(f) with respect to any Material Lease, amend the Lease for a shorter term or lesser Rents, reschedule the payment of Rents, change any renewal option, change the allowable uses of the leased premises, change the assignment and subletting provisions, or release any tenant from any obligation to insure, maintain or repair the Property or from any other financial obligation of the tenant under such Lease.

For purposes hereof, a "Material Lease" is a lease with a total term including renewal options (or in the case of leases in place as of the date hereof, a total remaining term of five years or more including renewal options) or that covers twenty percent (20%) or more of the net rentable area of the Property.

**22.4 Copies of Leases.** Until all of the Secured Obligations shall have been paid in full, Borrower shall deliver to Lender, upon request, executed copies of (i) any renewals or amendments of existing Leases and (ii) all future Leases upon all or any part of the Property, and (iii) any transfers and assignments of such Leases or subleases of space under any Lease.

**22.5 Indemnification.** Borrower shall indemnify, defend and hold Lender harmless from any and all liability, loss, injury, damage or expense which Lender may incur under or by reason or in defense of any and all losses, damages, claims, expenses, causes of action and demands whatsoever which may be asserted against Lender arising out of the Leases (a "Lease Claim"), including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Borrower, but not delivered to Lender and any Lease Claim arising from any other actions by Borrower that require the consent of Lender under Section 22.3 hereof where such action was undertaken without such consent.

**23. Assignment of Leases and Rents; Borrower's Revocable License to Collect.** Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's interest in the Rents and Leases. So long as no Event of Default has occurred, Borrower shall have a revocable license granted by Lender to collect (but not prior to accrual) the Rents as they become due. Borrower shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents before using the Rents for any other purposes. Borrower covenants that it will make no subsequent assignment of the Rents (or any portion thereof) without the prior written consent of Lender. Borrower's license to collect the Rents shall not constitute Lender's consent to the use of cash collateral in any bankruptcy proceeding.

**24. Lender's Right to Collect Rents.** If an Event of Default occurs, Lender shall have all the rights set forth in California Civil Code Section 2938, and Lender or its agents, or a court appointed receiver, may collect the Rents without further notice to Borrower. In doing so, Lender may (a) evict tenants for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any tenant for past due rent. In addition, upon an Event of Default, Lender may require Borrower to transfer all security deposits under the Leases to Lender. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Lender, a receiver or an agent, operating expenses for the Property (including the funding of reasonable reserves for capital replacements) and any sums due or payments required under the Loan Documents, in such amounts as Lender may determine. Any excess shall be paid to Borrower, however, Lender may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Lender's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Lender of its rights to collect the Rents. The collection or application of the Rents shall not cure or waive any Event of Default. Lender or a receiver shall have no obligation to perform any of Borrower's obligations under the Leases, nor to assume any responsibility for any security or other deposits delivered to Borrower by any tenant and not delivered to Lender. In exercising its rights under this section Lender shall be liable only for the proper application of and accounting for the Rents actually collected by Lender or its agents. Any Rents paid to Lender or a receiver shall be credited against the amount due from the tenant under the Lease. In the event any tenant under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any



other federal, state or local statute which provides for the possible termination or rejection of the leases assigned hereby, Borrower covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Lender; any check in payment of damages for rejection or termination of any such Lease will be made payable to both the Borrower and Lender; and Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the Loan in such manner as Lender may elect. The application of such proceeds against the balance owed under the Loan Documents shall be without imposition of any prepayment fee provided no Event of Default is pending at the time of such application. The collection of Rents by Lender as set forth above shall in no way waive the right of Lender to foreclose this Mortgage if an Event of Default occurs.

**25. Borrower Existence.** If Borrower is a trust, corporation, partnership, limited liability company or other entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, or type of legal entity without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. Borrower shall do all things reasonably necessary to preserve its existence in force and to preserve all franchises, rights and privileges granted by the laws under which it is organized.

**26. Fixture Filing.** To the extent permitted by applicable law, this Security Instrument shall also serve as a financing statement filed for record in the real estate records as a fixture financing statement pursuant to the UCC covering any Property which is now or may hereafter become fixtures with respect to the Property. For the purpose of this fixture filing, Borrower shall be the "Debtor" and Lender shall be the "Secured Party" and the addresses of Borrower and Lender are as set forth in the preamble of this Security Instrument, and the collateral shall be any fixtures on the Property. Borrower is the record owner of the Land.

**27. Default.** TIME IS OF THE ESSENCE HEREOF. Any of the following events shall constitute an "Event of Default:"

- (a) Borrower fails to pay all of the indebtedness evidenced by the Note on the maturity date thereof as specified in the Note, or fails to pay any monthly installment of principal or interest on the Note within ten (10) days after the date the same is due and payable, or
- (b) Borrower fails to pay when due any taxes or assessments on the Property, or
- (c) any representation or warranty made by Borrower or any guarantor of the Note was materially false or misleading at the time it was made, or Borrower or any guarantor fails to disclose any material fact known to Borrower or such guarantor relating to Borrower, such guarantor or the Loan, or
- (d) Borrower fails to provide or continuously maintain the insurance required by this Security Instrument, or
- (e) Borrower fails to perform or observe any other obligation of Borrower to Lender within the applicable notice and cure period set forth herein or in another Loan Document, or
- (f) (i) Borrower files or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (ii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against Borrower and any of the above described in this clause (f)(ii) is not dismissed within sixty (60) days,
- (g) (i) any guarantor of the Loan revokes, or attempts to revoke, its guaranty, or (ii) such a guarantor files or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (iii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against such Guarantor and any of the above described in this clause (g)(iii) is not dismissed within sixty (60) days or
- (h) a Conveyance or Encumbrance has occurred without the prior written consent of Lender, or
- (i) a Change of Control has occurred with respect to Borrower or any guarantor without the prior written consent of Lender, or
- (j) the death of a general partner of Borrower or a guarantor except as otherwise provided in Section 17 hereof; or
- (k) Borrower fails to perform or observe any other covenant or agreement of Borrower contained in this Security Instrument or in the other Loan Documents and not specifically described in this section, and such failure continues for more than thirty (30) days after receipt of written notice from Lender specifying such default; provided, if such default is curable but not reasonably curable within thirty days, then Borrower shall have such additional time, not to exceed ninety (90) days in the aggregate from the date of Lender's notice, in which to effect such cure, provided Borrower commences the cure within the initial thirty-day period and diligently prosecutes such cure to completion.

**28. Remedies.** Upon an Event of Default, the entire unpaid principal balance of the Loan with interest thereon, at the option of Lender or the holder of the Note, shall become immediately due and payable and Lender may exercise its rights and remedies under the Loan Documents and applicable law. Lender may, at its option and without notice to or demand upon Borrower, take any one or more of the following actions:

- (a) Bring a court action to enforce the provisions of this Security Instrument or any of the Secured Obligations.
- (b) Bring a court action to foreclose this Security Instrument.
- (c) Cause any or all of the Property to be sold under the power of sale granted by this Security Instrument in any manner permitted by applicable law.
- (d) Exercise any or all of the rights and remedies provided for under this Security Instrument and the other Loan Documents.
- (e) Enter upon the Property, exclude Borrower and its employees therefrom, and having and holding same, may use, operate, manage and control the Property and conduct the business thereof. Upon entry, Lender may maintain and restore the Property, and make repairs and improvements as Lender may deem necessary.
- (f) Exercise any other right or remedy available under law or in equity.

**29. Appointment of Receiver.** Following an Event of Default, Lender shall be entitled, without notice, without bond, and without regard to the adequacy of the security, to the appointment of a receiver for the Property to take possession of and operate the Property and collect the rents, profits, issues and revenues thereof. Borrower irrevocably consents to the appointment of a receiver and waives notice of application therefor. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Lender by the Loan Documents

**30. Exercise of Power of Sale.** For any sale under the power of sale granted by this Security Instrument, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by Trustee is personal property, Trustee shall be acting as the agent of Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Loan the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Lender is authorized to deduct under this Security Instrument. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law. The recitals in the Trustee's deed of any matters or facts shall be proof of the truthfulness thereof. Borrower agrees to surrender possession of the Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Borrower.

**31. Application of Sale Proceeds.** The proceeds of any sale under this Security Instrument will be applied in the following manner:

**FIRST:** Payment of the costs and expenses of retaking the Property and exercising the power of sale, and of the sale, including, without limitation, Trustee's fees, legal fees, costs, expenses and disbursements, transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the default interest rate under the Note from time to time or at the maximum rate permitted to be charged by Trustee under the applicable law if that is less.

**SECOND:** Payment of the costs and expenses of any evidence of title procured in connection with such sale.

**THIRD:** Payment of all sums expended under the terms hereof, not then repaid, with accrued interest thereon at the default rate of interest per annum as specified in the Note from the date of the expenditure or at the maximum rate permitted under the applicable law if that is less.

**FOURTH:** Payment of all other indebtedness secured by this Security Instrument in any order that Lender chooses.

**FIFTH:** The remainder, if any, to the person or persons legally entitled thereto, or to the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.



32. **Waiver of Order of Sale and Marshalling.** Lender shall have the right to determine the order in which any and all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any person who consents to this Security Instrument and any person who now or hereafter acquires a security interest in the Property hereby waives, to the extent permitted by law, any and all right to require marshalling of assets in connection with the exercise of any of the remedies provided herein or to direct the order in which any of the Property will be sold in the event of any sale under this Security Instrument.

33. **Expenses During Redemption Period.** If this Security Instrument is foreclosed through court action and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

34. **Foreclosure of Tenant's Rights; Subordination.** Following an Event of Default, Lender shall have the right, at its option, to foreclose this Security Instrument, subject to the rights of any tenants on the Property. Lender's failure to foreclose against any tenant shall not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender at any time may subordinate this Security Instrument to any or all of the Leases except that Lender may retain its priority claim to any condemnation or insurance proceeds.

35. **Evasion of Prepayment Terms.** If an Event of Default hereunder has occurred and is continuing, a tender of payment of the Secured Obligations at any time after acceleration of such indebtedness and prior to or at a judicial or nonjudicial foreclosure sale of the Property by Borrower or anyone on behalf of Borrower shall constitute an evasion of the prepayment terms of the Note and shall constitute voluntary prepayment thereunder and subject to payment of any applicable prepayment fee.

36. **Cumulative Remedies.** All of Lender's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law, in equity or provided by statute. In order to obtain performance of Borrower's obligations under the Loan Documents, without waiving its rights in the Property, Lender may proceed against Borrower or may proceed against any other security for or guaranty of the Note, in such order and manner as Lender may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and/or the commencement of proceedings to enforce a different remedy. If Lender has initiated any action or proceeding to enforce any right or remedy under this Security Instrument by foreclosure, entry or otherwise, and such action or proceedings has been discontinued or abandoned for any reason, or has been determined adversely to Lender, then, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue in full force and effect as if no such action or proceeding had been undertaken.

37. **Non-Waiver of Defaults.** Lender's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. In addition, Lender's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. In that regard, the entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default hereunder, except as otherwise provided by law.

38. **Reconveyance After Payment.** Upon written request of Lender stating that all of the Secured Obligations have been paid, Trustee shall reconvey, without warranty, the Property then subject to the lien of this Security Instrument. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in the reconveyance may be described as "the person or person legally entitled thereto." Borrower shall pay any fees or recording charges incurred by Lender in connection with the reconveyance.

39. **Release of Parties or Property.** Without affecting the obligations of any party under the Loan Documents (including any guarantor, surety or endorser of Borrower's obligations) or any subsequent purchaser of the Property, and without affecting the lien of this Security Instrument and Lender's security interest in the Property, Lender may, without notice (but subject to the rights of Borrower and Guarantor under the Loan Document in the case of any loan document modification or enforcement action): (a) release Borrower and any other party now or hereafter liable for the payment or performance of any obligations under the Loan Documents, including guarantors of the Loan, (b) release all or any part of the Property, (c)

subordinate the lien of this Security Instrument or Lender's security interest in the Property, (d) take or release any other security or guaranty, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of any easement on the Property. Any subordinate lienholder shall be subject to all such releases, extensions, advances or modifications without notice to or consent from the subordinate lienholder. Borrower shall pay any reasonable Trustee's or attorneys' fees, title insurance premiums or recording fees in connection with any of the foregoing.

40. **Nonwaiver of Terms and Conditions.** TIME IS OF THE ESSENCE with respect to Borrower's performance of its obligations due under the Loan Documents. Lender's failure to require prompt enforcement of any required obligations shall not constitute a waiver of the obligations due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Borrower and Lender. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

41. **Business Use.** Borrower represents that the proceeds of this Loan shall be used exclusively for commercial, business or investment purposes of Borrower. In addition, Borrower represents and warrants to Lender that the Property does not include agricultural property.

42. **Joint and Several Liability.** If there is more than one Borrower of this Security Instrument, their obligations shall be joint and several.

43. **Operating and Financial Statements.** Borrower will deliver to Lender upon Lender's request, operating statements and occupancy reports (including a rent roll) for the Property in a form and for periods satisfactory to Lender certified as correct by Borrower. Borrower shall permit Lender to examine all books and records in the possession, custody or control of Borrower pertaining to the Property and deliver to Lender upon request all financial statements, credit reports and other documents in the possession, custody or control of Borrower relating to the financial condition of any tenant of the Property, Borrower, any general partner of Borrower, and any guarantor of the Loan, including rental, income and expense statements pertaining to the Property and tax returns. Notwithstanding the foregoing, as long as no Event of Default has occurred, Lender shall not request copies of or access to such statements, books and records more often than once for each of Borrower's fiscal years.

44. **Maximum Interest Rate.** No person shall be obligated to pay the amount of any interest to the extent it is in excess of the maximum amount of interest permitted by applicable law. The Loan Documents are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance or detention of the money loaned under the Note or otherwise, or for the performance or payment of any of the Secured Obligations, exceed the maximum amount permitted under applicable law. Borrower and Lender intend to comply strictly with the applicable usury laws of the State of California. If Lender or any other holder of this Security Instrument shall ever receive as interest on the Loan an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the Loan so as to fully and strictly comply with such law. Without limiting the foregoing, all calculations of interest shall be made, to the extent permitted by law, by amortizing, prorating, allocating and spreading all interest in equal parts over the full stated term of the Note. The provisions of this paragraph shall control over any inconsistent provisions found in the note, this Deed of Trust or other Loan Documents.

45. **Acceptance By Trustee.** Trustee accepts this Trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other Security Instrument or of any action or proceeding in which Borrower, Lender, or Trustee shall be a party, unless brought by the Trustee.

46. **Substitution of Trustee.** Lender may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers, duties, authority and title of the original Trustee. Appointment of a successor Trustee shall become effective upon filing for record in the office of the County Recorder of each county in which said Property is situated a



Substitution of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

**47. Reserves.** Upon (i) occurrence of an Event of Default, and (ii) written notice to Borrower from Lender, Borrower shall thereafter pay to Lender, together with and in addition to the monthly payments of principal and interest payable on the Note, on the date set forth in the Note for the making of monthly payments, until the Note is fully paid, a sum, as estimated by Lender, equal to the taxes and special assessments next due on the Property, plus the premiums that will next become due and payable on insurance policies required by this Security Instrument, divided by the number of months to elapse before the premiums, taxes and special assessments are due, such sums to be held by Lender to pay said premiums, taxes and special assessments. Such payments ("**Reserves**") are to be held without allowance of interest to Borrower (except as required by applicable law) and need not be kept separate and apart from other funds of Lender. Such Reserves shall be applied by Lender to real estate taxes, special assessments and insurance premiums on the Property as the same become due and payable. Collection of the reserves are solely for the added protection of Lender and entails no responsibility on the part of Lender beyond allowance of due credit for sums actually received by Lender and the payment by Lender of such taxes, special assessments and insurance premiums to the extent of the Reserves when statements therefor are actually presented to Lender by Borrower. If the total of the Reserves shall exceed the amount of payments actually applied by Lender, such excess may be credited by Lender on subsequent payments to be made by Borrower, or at the option of Lender, refunded to Borrower.

**48. Property Management.** Borrower agrees that Lender shall have, and reserves the right to install, professional management of the Property at any time following the occurrence of an Event of Default. Such professional management shall be at the sole discretion of Lender and nothing herein shall obligate Lender to exercise its right to install professional management. The cost of such management shall be borne by Borrower, shall be secured by this Security Instrument and shall be treated as an additional advance under the Loan Documents.

**49. USA Patriot Act Notification and Covenant:** Lender hereby notifies Borrower that, pursuant to the requirements of Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 (the "**Act**"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act. Neither Borrower nor any other party liable for the obligations under the Loan as a guarantor or general partner will, directly or indirectly, use the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to fund any activities or business of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), or in any other manner that would result in a violation of OFAC sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.

**50. Borrower Not a Foreign Person.** Borrower is not a "foreign person" as that term is defined by Section 1445(f) (3) of the U.S. Internal Revenue Code of 1986, as amended.

**51. Representations of Borrower.** Borrower represents and warrants to Lender that Borrower (a) is (1) an individual of legal age and capacity, or (2) a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, duly organized, validly existing and in good standing under the laws of its creation, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Security Instrument and the other Loan Documents.

**52. Indebtedness May Exceed Note's Face Amount.** Borrower and Borrower's successor and assigns are put on notice that the Note contains provisions for late charges, default interest, prepayment and other provisions which may result in the balance of the note exceeding its face amount.

**53. Attorneys' Fees.** In the event the Loan Documents are referred to an attorney for enforcement or defense of Lender's rights or remedies, whether or not suit is filed or any proceedings are commenced, Borrower shall pay all Lender's costs and expenses including Trustee's and reasonable attorneys' fees (including attorneys' fees for (i) any appeal, (ii) relief from stay motions, cash collateral disputes, assumption/rejection motions and disputes regarding proposed disclosure statements and

plans in any bankruptcy proceeding or (iii) for any other judicial or nonjudicial proceeding or arbitration), appraisal and inspection fees and cost of a title report.

**54. Waiver of Right of Offset.** No portion of the Secured Obligations secured by this Security Instrument shall be offset or compensated by any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have against Lender.

**55. Notices.** Except for any notice required by law to be given in another manner, any notice to Borrower or Lender hereunder shall be in writing and shall be given (1) by a nationally-recognized overnight courier service (such as FedEx) or (2) by certified mail, return receipt requested, addressed to Borrower or Lender at such addressee's stated herein or at such other address as such party may designate in writing by notice to the other as provided herein. Any such notice shall be effective (1) on receipt, when delivered by courier service, or (2) on the third business day after deposit in the United States mail, postage prepaid with return receipt requested, when delivered by United States mail as provided herein. Any party may change its address for notice purposes by giving a notice as provided herein. Rejection or other refusal to accept, or inability to deliver because of changed address of which no notice has been given will constitute receipt of the notice for purposes hereof.

**56. Reasonableness of Fees and Costs.** Wherever reference is made in this instrument to the payment or reimbursement by Borrower of any fees or costs incurred by Lender in the administration of the Loan or the enforcement of the obligations of Borrower hereunder or under the other Loan Documents, such reference shall be deemed to refer to actual and reasonable out of pocket fees or costs.

**57. Successors and Assigns.** This Security Instrument applies to, inures to the benefit of, and binds the parties and their respective heirs, representatives, successors and assigns.

**58. Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Security Instrument and the terms and conditions of any other of the Loan Documents, the terms and conditions of this Security Instrument shall prevail.

**59. Invalidity of Terms and Conditions.** If any term or condition of this Security Instrument is found to be invalid, the invalidity shall not affect any other term or condition of this Security Instrument and this Security Instrument shall be construed as if not containing the invalid term or condition.

**60. Rules of Construction.** This Security Instrument shall be construed so that whenever applicable, the use of the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited liability companies, trusts, limited partnerships and other entities.

**61. Section Headings.** The heading to the various sections have been inserted for convenience of reference only and shall not be used to construe this Security Instrument.

**62. Applicable Law.** This Security Instrument shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of California without giving effect to the conflict of laws principles thereof, including the laws governing the creation, perfection, enforceability and priority of the liens and security interests created by this Security Instrument and the procedures for foreclosure and for enforcement of the rights and remedies of Lender under this Security Instrument. In the event that any provision of this Security Instrument shall be inconsistent with any provision of the laws of California the laws of California shall govern over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with California law.

**63. Indemnification.** Borrower shall indemnify, defend and hold harmless Lender from all losses, damages and expenses, including reasonable attorney's fees, incurred in connection with any suit or proceeding in or to which Lender may be made a party for the purpose of protecting the lien of this Deed of Trust.

**64. Request For Notice.** Borrower requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinabove set forth.



65. WAIVER OF JURY TRIAL. EACH OF BORROWER AND LENDER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

BORROWER:

4445 LAMONT STREET, LLC, a California limited liability company

By: \_\_\_\_\_

Gina Champion-Cain, Manager

*(signatures must be acknowledged)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California

COUNTY OF San Diego

On June 23, 2015, before me, Beverly J. Ryan, Notary Public, personally appeared GINA CHAMPION-CAIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Beverly J. Ryan  
SIGNATURE OF NOTARY

(2015 Form-California)



EXHIBIT A

(Legal Description of Property)

LAND AND IMPROVEMENTS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1 AND 2 IN BLOCK 239 OF PACIFIC BEACH, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NOS. 697 AND 854, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 8, 1892 AND SEPTEMBER 28, 1898 RESPECTIVELY.

APN: 424-042-01-00

PROPERTY ADDRESS: 4437 & 4445 Lamont Street, San Diego, CA 92109



**SEP 20 2019**

This is a true certified copy of the record  
if it bears the seal, imprinted in purple ink

ERNEST J. DRONENBURG, JR.  
Assessor/Recorder/Clerk  
San Diego County, California

Deputy

**C. Teran**

## **EXHIBIT 2**

## REAL ESTATE NOTE

Dated: June 23, 2015

\$2,700,000.00

FOR VALUE RECEIVED, the undersigned (hereinafter called "**Maker**") promises to pay to the order of SYMETRA LIFE INSURANCE COMPANY, an Iowa corporation, its successors and assigns (hereinafter called "**Holder**") at Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466, or at such other place as Holder may designate in writing, the principal sum of TWO MILLION SEVEN HUNDRED THOUSAND AND NO/100 U.S. DOLLARS (\$2,700,000.00) together with interest on the unpaid principal balance from the date funds are first disbursed by Holder at the rate of 4.390% per annum. Principal and interest shall be due and payable in two hundred thirty nine (239) consecutive monthly payments of \$16,921.63 each, commencing on September 1, 2015 and continuing on the same day of each month thereafter; plus a final payment in the amount of all unpaid principal and interest which shall be due and payable in full on August 1, 2035 (the "**Maturity Date**"). The monthly payments have been calculated using a twenty (20) year amortization period. Interest accrued from the date of first disbursement until August 1, 2015 shall be due at closing. All payments made on this Note shall be paid by a pre-authorized debit from Maker's bank deposit account using electronic funds transfer through the Automated Clearing House. All payments made on this Note shall be applied at the sole option of Holder to any prepayment fee or late charges due on this Note, then to interest accrued to the date of the payment, and then to reduction of unpaid principal. Interest accruing hereon will be calculated on the basis of a 360-day year consisting of 12 months of 30 days each.

If any payment provided for herein is not paid on its due date or within five (5) days thereafter, Maker hereby agrees to pay to Holder a late charge equal to ten percent (10%) of the payment to defray the expenses incident to handling such delinquent payment. Payment of a late charge shall not relieve Maker of its obligation to pay all sums promptly when due, or cure any default, or in any way affect the exercise of Holder's remedies.

This Note may be prepaid in full (but not in part) on any scheduled payment date, upon giving Holder thirty (30) days prior written notice, by paying, in addition to the outstanding principal balance at the date of prepayment (plus all accrued interest and other sums due under the terms of the Security Instrument, as defined herein), a "**Prepayment Fee**." The Prepayment Fee is equal to the greater of:

- (i) 1% of the principal prepaid (principal outstanding after application of payment due on date of prepayment) at the date of prepayment, or
- (ii) the present value computed on a monthly basis as of the date of prepayment of all future principal and interest payments due under this Note to the Maturity Date (starting with the first monthly payment due after the prepayment date and including any balloon payments) using the Discount Rate (as defined below) less the principal prepaid.

The Discount Rate ("**DR**") is the rate which when compounded monthly, is equivalent to the Reinvestment Rate (as defined below) when compounded semi-annually. The DR shall be rounded to the nearest one hundredth of one percent. The Reinvestment Rate ("**RR**") is the yield in percent per annum of the Treasury Constant Maturity ("**TCM**") that equals the remaining Weighted Average Life (as defined below) of the Note as published 5 business days prior to the date of prepayment in the Federal Reserve Statistical Release H.15 Selected Interest Rates. The Weighted Average Life ("**WAL**") of the Note is the average number of years that each dollar of unpaid principal due on the Note remains outstanding. WAL is computed as the weighted-average time to the receipt of all future cash flows, using as the weights the dollar amounts of the principal pay downs. The WAL shall be rounded to the second decimal place. If the remaining WAL of this Note does not equal any of the published TCM's then the RR will be determined by interpolating linearly between two TCM's, one having a maturity as close as possible to, but greater than the remaining WAL of this Note and one having a maturity as close as possible to, but less than the remaining WAL of this Note. The RR shall be rounded to the nearest one hundredth of one percent. If the Federal Reserve Statistical Release H.15 Selected Interest Rates is discontinued or no longer published, the Holder shall, in its sole discretion, designate some other daily financial or governmental publication of national circulation to determine the RR which most nearly corresponds to the yield of the TCM. Holder shall notify Maker of the amount and the basis of determination of the Prepayment Fee, which absent manifest error, shall be conclusive and binding upon Holder and Maker. Maker expressly understands, acknowledges and agrees that (i) the Prepayment Fee is fair and reasonable and represents a reasonable estimate of the fair compensation for the loss that Holder shall sustain due to the early pre-payment of the outstanding principal under this Note, (ii) its agreement to pay the Prepayment Fee is a material inducement to Holder to make the loan evidenced hereby, without which inducement Holder would not make such loan, and (iii) the Prepayment Fee shall be paid without prejudice to the right of Holder to collect and retain any and all other amounts or charges provided to be paid hereunder or under the Security Instrument. No Prepayment Fee shall be due if this Note is prepaid (a) during the 90 days immediately prior to the Maturity Date or (b) solely from insurance proceeds or any condemnation award with respect to any real property securing the indebtedness hereby evidenced (the "**Premises**"). **MAKER WAIVES ANY RIGHT OF PREPAYMENT NOT EXPRESSLY PROVIDED HEREIN.** If Maker is in default hereunder or under the Security Instrument, then to the extent permitted under



applicable law, any tender of payment sufficient to satisfy all sums due made at any time prior to a foreclosure sale shall constitute an evasion of the prepayment terms contained herein, and shall be deemed a voluntary prepayment and subject to payment of the Prepayment Fee. Maker further waives the provisions of California Civil Code Section 2954.10 and agrees to the Prepayment Fee set forth in this Note, including any payment of the Prepayment Fee upon acceleration of the Maturity Date of this Note as a result of default, and Maker expressly acknowledges that Holder's agreement to make the loan evidenced by this Note was conditioned upon this waiver and given individual weight in the negotiation of the loan evidenced by this Note.

PLEASE INITIAL.

Time is of the essence in the performance by Maker of all obligations under this Note and under the deed(s) of trust or mortgage(s) securing this Note (the "Security Instrument"). If Maker fails to make any payment within ten (10) days after its due date, or defaults in the performance or observance of any of the terms, agreements, covenants or conditions contained in the Security Instrument and fails to cure such default within the applicable cure period, if any, specified in the Security Instrument (such an event being an "Event of Default"), then, or at any time thereafter, the entire principal balance of this Note, together with accrued interest thereon, and any applicable Prepayment Fee, shall, at the election of the Holder, without notice, become immediately due and payable. In addition, following an Event of Default, the principal balance of this Note shall thereafter bear interest at a default rate equal to six percent (6%) per annum above the interest rate otherwise applicable hereunder.

Maker waives diligence, demand, presentment, protest and notice of dishonor. All endorsers and guarantors consent to any renewals, extensions or modifications of this Note, including the terms or times for payment; and further agree that any such renewal, extension or modification of this Note or the Security Instrument or the release or substitution of any security for this Note or any other indulgences may be made without notice to any of said parties and shall not otherwise affect the liability of any party.

In no event whatsoever shall the amount of interest received, charged or contracted for by Holder for the use, forbearance or detention of money exceed the highest lawful rate permissible under applicable law, it being the intent of Holder and Maker in the execution of this Note to contract in strict accordance with applicable usury laws. If Holder or any other holder of this Note shall ever receive as interest on the indebtedness an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the indebtedness so as to fully and strictly comply with such law. Without limiting the foregoing, all calculations of interest shall be made, to the extent permitted by law, by amortizing, prorating, allocating and spreading all interest in equal parts over the full stated term of this Note. Any provision of this Note, or of any other agreement between Holder and Maker, that operates to bind, obligate, or compel the Maker to pay interest in excess of such maximum rate shall be construed to require the payment of the maximum rate only. The provisions of this paragraph shall be given precedence over any other provision contained herein or in any other agreement between Holder and Maker that is in conflict with the provisions of this paragraph.

No exercise by Holder, or delay or omission in the exercise by Holder, of any right or remedy hereunder or under the Security Instrument, or otherwise afforded by applicable law, shall preclude, waive or limit the exercise of any right or remedy. Neither the acceptance by Holder of any partial payment, nor the acceptance of any payment under this Note after the due date of such payment, shall be a waiver of Holder's right to require prompt payment in full when due of all other sums payable hereunder or its right to declare a default for failure to make prompt payment in full.

This Note shall be governed by the laws of the State of California and shall be the joint and several obligation of all makers, binding upon them and their successors and assigns.

If an attorney is retained for collection or enforcement of this Note or the Security Instrument, or defense of Holder's interest in the Premises and the rents and income therefrom, Maker agrees to pay, in addition to the sums stated herein, all costs of collection and of suit and foreclosure, including reasonable attorney's fees incurred by Holder in instituting, prosecuting or defending any such action (including attorneys' fees for (i) any appeal, (ii) relief from stay motions, cash collateral disputes, assumption/rejection motions and disputes regarding proposed disclosure statements and plans in any bankruptcy proceeding and (iii) any other judicial or nonjudicial proceeding or arbitration).

**MAKER ACKNOWLEDGES THE RECEIPT OF A COPY OF THIS DOCUMENT AT THE TIME IT WAS SIGNED.**

**MAKER:**

4445 LAMONT STREET, LLC, a California limited liability company

By: \_\_\_\_\_

Gina Champion-Cain, Manager



### **EXHIBIT 3**



Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466

November 20, 2019

VIA FEDEX AND CERTIFIED MAIL  
POSTAGE PREPAID, RETURN RECEIPT REQUESTED  
VIA EMAIL

Gina Champion-Cain  
4445 Lamont Street, LLC  
4445 Lamont Street,  
San Diego, CA 92109

and

Gina Champion-Cain  
4445 Lamont Street, LLC  
3515 Hancock Street, Suite 200  
San Diego, CA 92110

RE: NOTICE OF DEFAULT with respect to a loan (Symetra Loan #4937) in the original principal amount of \$2,700,000.00 ("Loan") by Symetra Life Insurance Company, an Iowa corporation ("Lender") to 4445 Lamont Street, LLC, a California limited liability company ("Borrower"), secured by real property located at 4445 Lamont Street, San Diego, CA 92109 ("Property")

Dear Ms. Champion-Cain:

You are hereby notified that Borrower is in default under the documents evidencing and securing the Loan described above ("Loan Documents") by reason of Borrower's failure to make the monthly payments, each in the amount of \$16,921.63, that were due on October 1, 2019 and November 1, 2019 within ten days after those due dates, which non-payment constitutes an "Event of Default" as such term is defined in the Loan Documents. In addition, Lender has become aware that the Securities and Exchange Commission has filed suit against guarantor Gina Champion-Cain ("Guarantor") and certain other parties in an action entitled SEC v. Gina Champion-Cain and ANI Development, et al., Case No. 3:19-cv-01628-LAB-AHG (S.D. Cal. 2019) ("Action"), which alleges violations of various securities laws. On August 28, 2019, Borrower and Guarantor acquiesced to a receivership by virtue of the filing of the Joint Motion and Stipulated Request by all Parties for a Preliminary Injunction Order and Orders (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver ("Stipulation"). On September 3, 2019, the Court entered an Order pursuant to the Stipulation, appointing Krysta L. Freitag as permanent receiver ("Receiver") of Borrower effective immediately. Such receivership



Gina Champion-Cain  
 4445 Lamont Street, LLC  
 November 20, 2019

("SEC Receivership") was not dismissed within 60 days. Borrower and Guarantor's acquiescence to a receivership constitutes an Event of Default. In addition, the filing of the SEC receivership against Borrower and Guarantor constitutes an Event of Default under the Loan Documents where, as here, the receivership has not been dismissed within sixty (60) days. None of these Events of Default requires notice or demand by Lender under the Loan Documents in order for Lender to exercise all of its rights and remedies under the Loan Documents and under applicable law.

Although Lender is not required to give notice or make demand under the terms of the Loan Documents upon the occurrence of the above described Events of Default, notice is hereby given and demand is hereby made for: (1) payment of all past due amounts together with default interest (at 6% above the rate of interest set forth in the note) which began accruing from the date of the first occurring Event of Default (i.e., the non-payment of the October 1, 2019 loan payment within 10 days of date due) and shall continue to accrue until all sums due under the Loan are paid in full and all Events of Default are cured, and (2) the termination of the SEC receivership. Due to Borrower's default on the Loan, Lender has hired outside legal counsel to protect its interests and has incurred \$6,146.62 of charges from such legal counsel as of October 31, 2019. This constitutes notice of Lender's expenditures pursuant to Section 16 of the deed of trust which is a part of the Loan Documents, which section provides that: "Borrower shall pay within 10 days after written notice from Lender all sums expended by and all costs and expenses incurred by Lender in taking any actions or exercising any remedies pursuant to the Loan Documents . . . including without limitation reasonable attorneys' fees . . . ." Legal fees continue to accrue. The current total amount due and owing may be obtained by contacting the Lender's representative, Whitney Holody at (425)256-8278. In addition, late fees may be assessed with respect to all monthly installments under the Loan that are not timely paid. Lender hereby demands Borrower's immediate remittance of all of the above sums and the termination of the SEC Receivership. Please also contact Whitney Holody for directions regarding the exact amounts due and method of payment.

In addition to the immediate cure of the above Events of Default, and in accordance with Lender's rights under the Loan Documents, Lender hereby demands immediate receipt of all operating financials for any period in 2018 and 2019 for the Borrower, any guarantor of the Loan, The Patio on Lamont, LP ("Tenant") or any other entity currently operating and/or producing revenue at the Property. Operating financials includes but may not be exclusive to items such as balance sheets, profit and loss statements, aged receivables and aged payables.

If the outstanding Events of Default are not cured as required herein, Lender may exercise its default remedies under the Loan Documents, at law or in equity, which may include, without limitation, in addition to acceleration of the maturity date requiring immediate payment of the entire remaining principal balance, all accrued interest and any other amounts payable under the Loan, a foreclosure sale of the Property, and/or a lawsuit against Borrower and/or any guarantor to collect all amounts owed in connection with the Loan.

If the Property is sold at a foreclosure sale for an amount insufficient to satisfy the amounts due under the Loan Documents, Borrower and/or any guarantor may be liable for the deficiency, subject to applicable limitations on liability (constitutional, statutory, or contractual as may be provided in the Loan Documents).

If any party who receives this notice is a debtor in a bankruptcy proceeding subject to the provisions of the United States Bankruptcy Code (Title 11 of the United States Code) ("Code"), (a) this notice is merely intended to be written notice that formal demand will be made in compliance with the Loan Documents and applicable law, and (b) this notice is not an act to collect, assess or recover a claim against

Gina Champion-Cain  
4445 Lamont Street, LLC  
November 20, 2019

that party, nor is this notice intended to violate any provision of the Code. Any and all claims that Lender asserts against that party will be properly asserted in compliance with the Code in the bankruptcy proceeding.

In no event and under no circumstance shall this notice, any future discussions with Lender (or its representatives) and/or Lender's forbearance from exercising any of its rights or remedies: (a) cause a modification of any of the Loan Documents ; (b) establish a custom or course of dealing with respect to any of the Loan Documents; (c) operate as a waiver of any existing or future default or Event of Default under the Loan Documents; (d) entitle you to any other or further notice or demand whatsoever; (e) in any way modify, change, impair, affect, diminish or release any of your obligations or liability under or pursuant to the Loan Documents or any other liability you may have to Lender; or (f) waive, limit or condition Lender's rights and remedies under the Loan Documents, all of which rights and remedies are expressly reserved.

**PLEASE TAKE FURTHER NOTICE THAT:** The purpose of this notice is to inform the Borrower of amounts that are immediately due and Events of Default under the Loan. Lender acknowledges the terms of the above referenced Order appointing the Receiver and will seek leave of Court before taking any further action.

This letter is not a waiver of any other current defaults under the Loan Documents that are not specifically referenced herein.

Very truly yours,

SYMETRA LIFE INSURANCE COMPANY

A handwritten signature in black ink, appearing to read "Laura Pilkington". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Pilkington".

Laura Pilkington  
Senior Counsel

cc: Whitney Holody  
Krista Freitag  
David Charles Scheper, Esq.  
David R. Zaro, Esq.