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Fee Amt: \$152.00 Page 1 of 30  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2013-00100803

BK 14778 PG 520-549

MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

**Recorder's Cover Sheet**

**Preparer Information:** Gordon L. Jensen  
8525 Edinbrook Crossing, Suite 201  
Brooklyn Park, MN 55443  
(763) 424-8811

**Taxpayer Information:** Boston Commons, LLC  
14039 Sherman Way, Suite 206  
Van Nuys, California 91405

**RETURN TO:**

**Return Address:** Commercial Partners Title  
200 South Sixth Street, Suite 1300  
Minneapolis, MN 55402

**Mortgagor:** Boston Commons, LLC

**Mortgagee:** Thrivent Federal Credit Union

**Legal Description:** See Exhibit I attached hereto

**Document or instrument number if applicable:** Not Applicable

36925 1 of 4 mo

**MORTGAGE AND SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**

**NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$1,825,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.**

THIS MORTGAGE IS ALSO INTENDED TO OPERATE AS A FINANCING STATEMENT TO PERFECT THE SECURITY INTEREST OF MORTGAGEE IN AND TO ALL FIXTURES INCLUDED IN THE MORTGAGED PROPERTY, PURSUANT TO THE TERMS OF IOWA CODE §§ 554.9334 AND 554.9502.

**THIS INDENTURE** (hereinafter referred to as the "Mortgage") is made effective May, 6, 2013, by and between Boston Commons, LLC, a Delaware limited liability company, as mortgagor and debtor ("Mortgagor"), whose Delaware identification number is 5237838 and whose mailing address is 14039 Sherman Way, Suite 206, Van Nuys, California 91405, and Thrivent Federal Credit Union, a federal credit union, as mortgagee and secured party ("Mortgagee"), whose mailing address is 625 4<sup>th</sup> Avenue South, Minneapolis, MN 55415.

**ARTICLE I - SECURED INDEBTEDNESS**

This Mortgage shall secure the payment to Mortgagee, its successors and assigns, of indebtedness in the original principal amount of \$1,825,000.00, which amount is the amount of debt secured by this Mortgage, under the Promissory Note identified in paragraph 1.1 below. This Mortgage is further intended to secure all of the other items and amounts described in this Article I. All debts and other items and amounts described in this Article I are collectively called the "Secured Indebtedness".

**1.1 Promissory Note.** This Mortgage secures the payment to Mortgagee, its successors and assigns, of that certain Promissory Note of even date herewith, in the principal amount of \$1,825,000.00, made by Mortgagor to the order of Mortgagee together with all amendments, extensions, renewals and replacements thereof (collectively called the "Note"), plus interest thereon at the rate stated therein, including any and all future advances made thereunder. The maturity date of the Note is May 6, 2018 ("Maturity Date").

**1.2 Additional Mortgage Indebtedness.** This Mortgage also secures the payment to Mortgagee, its successors and assigns, on demand and with interest thereon at the same rate specified in the Note, of all sums advanced in protecting the lien of this Mortgage; in payment of taxes on the Mortgaged Property (as hereinafter defined); in payment of insurance premiums required herein; in payment of principal and interest on prior liens; in payment of expenses and attorneys' fees herein provided for and all sums advanced for any other purpose provided herein or authorized by law; and in payment of all other sums advanced, or for the benefit of,

Mortgagor or the Mortgaged Property, and the performance of all obligations and covenants contained in this Mortgage.

### **1.3 Future Advances.**

The maximum principal amount of indebtedness secured by this Mortgage (excluding any advances made by the Mortgagee in protection of the Mortgaged Property or the lien of this Mortgage) shall be \$1,825,000.00.

## **ARTICLE II - GRANT AND DEFEASANCE**

**2.1 Grant.** For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of Mortgagee's advancing the Secured Indebtedness to Mortgagor, and to secure Mortgagor's full and timely payment and performance of the Secured Indebtedness, Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto Mortgagee, its successors and assigns, forever, and GRANTS A SECURITY INTEREST to Mortgagee, its successors and assigns, in the Mortgaged Property, as that term is defined in Article III hereof.

**2.2 Defeasance.** The conditions of this Mortgage are such that if the entire Secured Indebtedness is timely paid, then this Mortgage shall be void; otherwise this Mortgage shall continue in full force and effect.

## **ARTICLE III - THE MORTGAGED PROPERTY**

The following described property is hereby mortgaged, conveyed and subjected to the liens created by this Mortgage (collectively, the "Mortgaged Property"):

**3.1 Real Property.** The real property in Polk County, Iowa ("Real Property"), legally described in **Exhibit I** attached hereto and made a part hereof, together with all the estates and rights in and to the Real Property and in and to lands lying in any and all streets and roads adjacent to or used in connection with the Real Property, and together with access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments, appurtenances, now or hereafter belonging or pertaining to the Real Property.

**3.2 Improvements.** All buildings, structures, annexations, attachments, and all other improvements of any kind now or hereafter affixed to or erected, constructed or developed on the Real Property, and all additions, alterations, replacements, betterments and appurtenances thereto ("Improvements").

**3.3 Fixtures.** All of Mortgagor's interest in machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to the Mortgaged Property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever now or hereafter located in, upon or under the Mortgaged Property or any part thereof and used or usable in connection with any present or future operation or maintenance of the Mortgaged Property, together with all building materials and equipment now or hereafter delivered to the Mortgaged Property and intended to be installed therein; all water, sanitary and storm systems which are now or hereafter located by, over, or under the Real

Property; and all accessions, accessories, attachments, fittings, increases, parts, repairs, returns, renewals and substitutions of all or any part thereof; all whether now existing or hereafter arising, whether now owned or hereafter acquired by Mortgagor ("Fixtures").

**3.4 Leases, Rents, Profits and Issues.** Any and all leases, tenancies, licenses, contracts and other occupancy agreements and arrangements, however evidenced or denominated, whether written or oral, upon or affecting all or any portion of the Mortgaged Property, whether such leases, tenancies, licenses, contracts, or other occupancy agreements or arrangements are now in existence, or shall come into existence during the term of this Mortgage, whether now owned or hereafter acquired by Mortgagor, together with all deposits made in connection therewith, and together with any amendments, extensions, renewals or replacements of any of the foregoing ("Leases"), together with all rents, profits, housing assistance payments, subsidy payments, other payments, issues, income, rentals, security and other types of deposits paid or to be paid under the Leases ("Rents").

**3.5 Judgments, Awards and Premiums.** Except as otherwise provided herein, any and all awards and payments, including interest thereon, and the right to receive the same, as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to, taking of, or decrease in the value of, the Real Property, and all right, title and interest of Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter provided pursuant to the terms of this Mortgage, and all proceeds or sums payable for the loss of or damage to: (a) the Real Property, Improvements, equipment or other personal property; or (b) Rents; all whether now existing or hereafter arising, whether now owned or hereafter acquired by Mortgagor.

**3.6 Miscellaneous Property Rights.** All of Mortgagor's interest in all utility security deposits, letters of credit and bonds of the Real Property or any part or parcel thereof; all rights of Mortgagor in and to all plans and specifications, designs, drawings and other information, materials and matters heretofore or hereafter prepared relating to the Improvements or any construction on the Real Property; all rights of the Mortgagor in, to and under all contracts with providers of goods and services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Property and all contracts, agreements and commitments with and of all utility companies, water companies, telephone companies, user associations and all other persons relating to the furnishing of electricity, gas, oil, steam, water, sewer, telephone, security, maintenance and other services and the provision of hook-ups, connections, lines, pipelines, taps and other facilities to the Real Property; all rights of Mortgagor in, to and under all permits, franchises, licenses, approvals and other authorizations respecting the use, occupation and operation of the Real Property, the Improvements, and other personal property and every part thereof; and all other property and rights of Mortgagor of every kind and character relating to the Real Property, the Improvements, or other personal property related thereto; all whether now existing or hereafter arising, whether now owned or hereafter acquired by Mortgagor.

**3.7 Products and Proceeds.** All products and proceeds of the foregoing property, including without limitation all proceeds of the sale, lease and other disposition thereof and all accounts, instruments, chattel paper, investment property, letter-of-credit rights, letters of credit, other rights to payment, documents, deposit accounts, money, insurance proceeds and general

intangibles related to the foregoing property, and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property (collectively called "Proceeds").

**3.8 After Acquired Property.** All right, title, and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, and replacements of, and all additions and appurtenants to the items or types of property described in Sections 3.1 through 3.7 above, which are hereafter acquired by or released to Mortgagor, or are hereafter constructed, assembled or placed on the Mortgaged Property, immediately upon such acquisition, release, construction, assembling, placement, or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances, or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

#### **ARTICLE IV - REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Mortgagor makes the following covenants, representations and warranties with Mortgagee, each of which covenants, warranties and representations shall be deemed to be continuing in nature made and remained on each day during the time this Mortgage remains unreleased.

**4.1 Existence and Authority.** Mortgagor represents to Mortgagee that Mortgagor is a Delaware limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business in the State of Iowa and has all requisite power and authority to own the Mortgaged Property and has all requisite power and authority to execute and deliver and to perform all of its obligations under this Mortgage and the Note.

**4.2 Authorization.** The execution, delivery and performance by Mortgagor of this Mortgage has been duly authorized by all requisite action and does and will not (a) require any consent or approval of any person or governmental authorities; (b) violate any law, rule, regulation, order, writ, injunction or decree, or any certificate or agreement of Mortgagor; (c) result in a breach of or constitute a default under any contract, agreement or other writing to which Mortgagor is a party or by which Mortgagor or any property of Mortgagor may be bound or affected.

**4.3 Information.** All warranties, representations, information, contracts, reports and other documents and data heretofore made, furnished, or to be furnished, to Mortgagee by or on behalf of Mortgagor, are, or when made or delivered will be, true, accurate, complete and correct in all material respects and do not, or when made and delivered will not, omit any fact which is necessary to prevent the facts contained therein from being materially misleading; all financial data has been, or when delivered will fairly present, the financial condition of the subjects thereof in accordance with generally acceptable accrual method of accounting as of the dates

thereof; and, with respect to the financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein since the dates thereof.

**4.4 Title to Mortgaged Property and Lien of Mortgage.** Mortgagor warrants that to the best of Mortgagor's actual knowledge: (i) Mortgagor has good and marketable fee simple title to the Mortgaged Property, and is lawfully and indefeasibly seized and possessed of the legal and beneficial title to the Mortgaged Property; (ii) the Mortgaged Property is unencumbered and unrestricted except as may be herein expressly provided in Exhibit II attached hereto ("Permitted Encumbrances"); (iii) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property; and (iv) Mortgagor will forever warrant and defend the title to the Mortgaged Property to Mortgagee against the claim of all persons asserted by, through or under Mortgagor. For purposes of this warranty, record notice of any title defect shall not constitute notice to Mortgagee unless such encumbrance or restriction is set forth on said Exhibit II. If any claim, lien or security interest (including, without limitation, any mechanic's or materialmen's lien claim) which is not a Permitted Encumbrance, or has not been consented to by Mortgagee in writing, is asserted against the Mortgaged Property, Mortgagor shall promptly notify Mortgagee of the claim and pay any such claim in full or take such other action to cause such claim to be released, or cause the claim to be bonded to Mortgagee's satisfaction. At any time after the assertion of such a claim, lien or security interest, if the same has not been satisfied or bonded to Mortgagee's satisfaction, then Mortgagee may take any and all steps which it deems necessary in its sole discretion for the defense of its liens and security interests in the Mortgaged Property, including, but not limited to, the employment of counsel, the prosecution and defense of litigation and the payment, compromise or discharge of such claims, and, upon demand therefor, Mortgagor shall immediately reimburse Mortgagee for any and all costs incurred in connection with such action, together with interest thereon at the rate provided for in the Note. In making any payment to protect the Secured Indebtedness, Mortgagee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall promptly perform and observe, or cause to be performed or observed, all of the terms, covenants, and conditions of all Permitted Encumbrances, the noncompliance with which may affect the security of this Mortgage, or may impose duty or obligation upon Mortgagor or any Lessee or occupant of the Mortgaged Property or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve all easements, appurtenances, and other interests and rights in favor of or constituting any portion of the Mortgaged Property. Mortgagor shall maintain, obtain, preserve and renew all rights-of-way, easements, grants, privileges, licenses, governmental approvals reasonably necessary for the current use of the Mortgaged Property. Mortgagor shall, at all times, use the Mortgaged Property solely for its present purpose. Mortgagor shall not without receiving Mortgagee's prior written consent which consent not to be unreasonably withheld or delayed: (a) grant any easement over any portion of the Mortgaged Property except easements necessary or desirable for continued operation of the Mortgaged Property as presently constituted; (b) subdivide the Mortgaged Property or execute or record any plat covering the Mortgaged Property or any part thereof; (c) initiate, join in or consent to the imposition or amendment of any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property or any zoning reclassification of the Mortgaged Property (or any part thereof); or (d) seek any variance under (or deviation from) any existing zoning laws or ordinances applicable to the Mortgaged Property

(or any part thereof). Mortgagee may reasonably withhold its consent under this Section if, in Mortgagee's opinion, such act would lessen the value of the Mortgaged Property.

**4.5 No Encroachment.** All buildings, structures and other Improvements now or hereafter located on the Real Property are located entirely within the boundaries of the Real Property and are set back from said boundaries in accordance with all applicable zoning and "set-back" laws and ordinances.

**4.6 Disclaimer of Homestead.** No part of the Mortgaged Property constitutes any part of the residential homestead of the Mortgagor or any other person or entity, and Mortgagor hereby disclaims any right of homestead in the Mortgaged Property.

**4.7 Non-Agricultural Use.** The Mortgaged Property is not used for agricultural purpose as defined in Iowa Statutes Section 535.13, nor is the Mortgaged Property a one or two family dwelling occupied by a legal or equitable title holder.

**4.8 Governmental Requirements.** To Mortgagor's knowledge the Mortgaged Property complies in all respects with all governmental requirements. The use of the Mortgaged Property for its present and intended purposes does not and will not violate any private covenant or restriction affecting the Mortgaged Property. The Mortgaged Property is zoned to permit the use thereof for its present and intended purpose. Mortgagor warrants and represents that Mortgagor has complied, and shall hereafter comply, with all valid laws, rules, ordinances and regulations of the federal, state and local government, and all agencies and subdivisions thereof which laws, rules, ordinances and regulations apply or relate to the Mortgaged Property, including but not limited to all such laws, rules, ordinances, and regulations regarding land use, zoning, building, subdivision, environment, OSHA, pollution and sales practices.

**4.9 Streets, Easements, Utilities and Other Services.** All streets, easements, utilities and related services necessary for the permanent use and operation of the Mortgaged Property for its present and intended purposes (including potable water, storm and sanitary sewer, gas, electric and telephone facilities) have been completed, paid for in full and are presently available to the occupants thereof.

**4.10 Foreign Persons.** Neither Mortgagor (or any transferor to Mortgagor) nor any member, officer, or partner of Mortgagor (or any such transferor) is a "foreign" person, corporation, partnership, limited liability company, joint venture, trust or estate as those terms are defined in the Internal Revenue Code and Income Tax Regulations.

**4.11 Environmental Matters.**

Mortgagor represents, warrants and covenants to Mortgagee that to Mortgagor's knowledge no toxic or hazardous substance, waste or constituent, ("Hazardous Substance") as defined in any local, state or federal law, regulation, code or ordinance now existing or hereinafter enacted or amended, governing liability for any such substance, waste or constituent ("Environmental Laws") has been located in, on or released from the Mortgaged Property in violation of any Environmental Laws. To Mortgagor's knowledge neither Mortgagor nor the Mortgaged Property are in violation of any Environmental Laws. To Mortgagor's knowledge no litigation, investigation or administrative action has been commenced or is pending or

threatened, nor has any settlement been reached with any public or private party or parties, or any order issued, relating in any way to any alleged or actual presence, disposal or release of any Hazardous Substance or any violation of any Environmental Laws with respect to the Mortgaged Property. Mortgagor has filed and will file all notices, permits and applications required to be filed with respect to the Mortgaged Property and operations under the Environmental Laws. To Mortgagor's knowledge and based upon reports identified in the Environmental and ADA Indemnification Agreement of even date there are no underground or above-ground storage tanks or wells on the Mortgaged Property.

Mortgagor shall not use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person to do so in violation of any Environmental Laws, and Mortgagor shall keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Laws.

Mortgagor shall give prompt written notice to Mortgagee of: (i) Any proceeding or inquiry by any governmental authorities with respect to the presence of any Hazardous Substance on the Mortgaged Property or the migration thereof from or to other property; (ii) All claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance; and (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Laws.

Mortgagee shall have the right to join and participate in, as a party, if it so elects, any legal proceedings or actions initiated in connection with any Environmental Laws and have its reasonable attorneys' fees in connection therewith paid by Mortgagor.

Mortgagor shall protect, indemnify and hold Mortgagee, its directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, leaching or presence of a Hazardous Substance on, under or about the Mortgaged Property, including, without limitation, (i) all foreseeable consequential damages, and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the reconveyance of the lien of this Mortgage, or the extinguishment of the lien by foreclosure or action in lieu thereof, and this covenant shall survive such reconveyance or extinguishment for a period of three years.

In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable local, state or federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in



or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Mortgaged Property (or any portion thereof), Mortgagor shall in accordance with applicable environmental laws and regulations commence to perform, or cause to be commenced, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor, including, without limitation, the charges of such contractor(s) and/or the consulting engineer and Mortgagee's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Secured Indebtedness.

**4.12 Leases.** Mortgagor has performed and complied with (and will continue to do so during the term of this Mortgage) all of the terms, covenants, agreements, conditions and other provisions of each Lease required to be performed or complied with by Mortgagor under such Leases on or prior to the date hereof. To Mortgagor's knowledge there exists no offset or defense against the payment of any rent due or to become due, and there has been and shall be no prepayment of rent or payment of advance rent due, under any Lease. To Mortgagor's knowledge no Lease has been canceled, terminated, amended or modified, and there are no rental credits or concessions allowed to any lessee under any Lease. Each Lease is in full force and effect on the date hereof and constitutes the legal, valid and binding obligation of the parties thereto, enforceable against each such party in accordance with its terms and no default or right of termination on the part of any party thereto exists under any Lease, nor has any event occurred nor does any condition exist which, after notice or lapse of time, or both, would constitute a default or give any party a right of termination thereunder. Mortgagor shall, at its own cost and expense, perform, comply with and discharge all of the obligations of Mortgagor under all Leases of the Mortgaged Property and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under such Leases and shall appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Mortgagor's interest in any Leases of the Mortgaged Property. Mortgagor shall permit no surrender nor assignment of any tenant's interest under said Leases unless the right to assign or surrender is expressly reserved under any Lease, nor receive any installment of Rent for more than one month in advance of its due date, nor execute any mortgage or create or permit a lien which may be or become superior to any such Leases, nor permit a subordination of any Lease to such mortgage or lien. Mortgagor shall not modify or amend the terms of any such Leases, nor borrow against or pledge the Rents from such Leases, nor waive any default of the tenant thereunder without the prior consent of Mortgagee not to be unreasonably withheld or delayed. Mortgagor agrees to obtain Mortgagee's prior written approval before entering into any Lease or extension of an existing Lease with a term of 7 years or more. Should Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any Lease or should Mortgagee become aware of or be notified by any tenant under any Lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said Lease, the Mortgagee may, but shall not be obligated to, and without further demand upon or notice to Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and Mortgagor agrees to repay upon demand all sums incurred

by Mortgagee in remedying any such failure together with interest at the rate as specified in the Note. All such sums, together with interest as aforesaid, shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve Mortgagor from any default hereunder.

Except as otherwise consented to in writing by Mortgagee, each Lease hereafter entered into by Mortgagor shall be made expressly subject and subordinate to this Mortgage and shall contain provision, satisfactory in form and substance to Mortgagee:

(a) by which the lessee agrees that no action taken to enforce this Mortgage, by foreclosure or by deed in lieu of foreclosure or by exercise of or by resorting to any other remedies available shall terminate such Lease or invalidate any of the terms thereof, unless Mortgagee so elects; and

(b) obligating the lessee thereunder, at the option of Mortgagee, to attorn to Mortgagee in the event Mortgagee succeeds to the interest of Mortgagor under such Lease, to the purchaser at a foreclosure sale or to a grantee in a voluntary conveyance or upon exercise of the power of sale and to recognize such person as lessor for the balance of the term of such Lease.

**4.13 Proceedings Against Mortgagor.** There is no action or proceeding threatened or pending against Mortgagor which might adversely affect: (a) the rights of the Mortgagee under the Note or this Mortgage, or any other agreement or instrument delivered to Mortgagee by Mortgagor; (b) the ability of Mortgagor to perform the obligations of Mortgagor under this Mortgage or under any other agreement or instrument delivered to Mortgagee by Mortgagor; or (c) the Mortgaged Property or any portion or component thereof.

**4.14 Performance of the Note and Mortgage.** Mortgagor shall: (a) duly and punctually pay each and every installment of principal and interest and all other sums to become due under and in accordance with the Note, at the time and place and in the manner specified by the Note; (b) pay all other Secured Indebtedness, as and when the same shall become due; and (c) duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note, and in any other instrument given as security for the payment of the Note. No payment or collection of any of the Secured Indebtedness shall reduce the amount secured by this Mortgage.

**4.15 Payment Obligations Other Than Principal and Interest.**

(a) Duty to Pay. Mortgagor shall pay or cause to be paid, when due and payable: (i) all taxes, assessments, general or special, water and sewer charges and other charges levied on, or assessed, placed or made against the Mortgaged Property, this Mortgage, the Secured Indebtedness or any interest of Mortgagee in the Mortgaged Property; (ii) premiums on policies of insurance covering the Mortgaged Property, as required herein; and (iii) other sums related to the Mortgaged Property or the Secured Indebtedness payable by Mortgagor, including without limitation, all utility charges and operating expenses incurred in the maintenance and operation of the Mortgaged Property. Mortgagor shall promptly deliver to Mortgagee receipts showing payment in full of all of the above items which are not paid from any escrow account which may be established.

(b) Recording Fees and Taxes. Mortgagor shall pay all recording and filing fees and taxes, including documentary stamp taxes and intangible taxes, associated with the execution and recordation of this Mortgage and the execution and delivery of the Note or obligations secured by this Mortgage, and all amendments and extensions hereto. Mortgagor shall pay the costs of releasing or satisfying this Mortgage of record. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the amounts herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in the Mortgaged Property, so as to impose such imposition on Mortgagee or on the interest of Mortgagee in the Mortgaged Property, then, in any such event, Mortgagor shall bear and pay the full amount of such imposition, provided that if for any reason payment by Mortgagor of any such imposition would be unlawful, or if the payment thereof would constitute usury or render the Secured Indebtedness wholly or partially usurious, Mortgagee, at its option, may declare the Secured Indebtedness, with interest thereon, to be immediately due and payable, without prepayment premium, or Mortgagee, at its option, may pay that amount or portion of such impositions as renders the Secured Indebtedness unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said imposition.

(c) Mechanics and Laborers. Mortgagor shall pay from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, and in general will do or cause to be done everything necessary so that the lien created by this Mortgage shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee.

(d) Right to Contest. Nothing in this Section shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same and so long as no Event of Default hereunder shall remain uncured. During such contest Mortgagor shall provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest. If at any time payment of any obligation imposed upon Mortgagor by subsection (a) of this Section shall become necessary to prevent the forfeiture of title to the Mortgaged Property or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent such forfeiture.

**4.16 Waste, Maintenance, Alteration, Compliance.** Mortgagor (a) shall abstain from and shall not permit the commission of waste in, on or about the Mortgaged Property; (b) shall keep and maintain or cause to be kept and maintained by its tenant(s) the Mortgaged Property in good order, condition and in a rentable and tenantable state of repair; (c) shall make or cause to be made, as and when necessary, all repairs and replacements to the Mortgaged Property, structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, whether or not the same may be necessary by reason of fire or other casualty and whether or not insurance proceeds are available therefor; (d) shall not remove or demolish the

Fixtures or Improvements now or hereafter located upon the Real Property, nor alter the design or structural character of the Improvements now or hereafter located on the Real Property so as to diminish the value thereof except as permitted by lease agreements approved by Mortgagee; (e) except as may be permitted or required under lease agreements approved by Mortgagee, shall not expand the existing Improvements on the Real Property, erect any new Improvements or make any material alterations to the Improvements which will alter the basic structure, affect the market value or change the existing architectural character of the Mortgaged Property; (f) shall complete or cause to be completed by its tenant within a reasonable time any buildings at any time in the process of erection on the Mortgaged Property; (g) shall comply with or require compliance by tenant(s) of the Mortgaged Property with all federal, state, county, township, municipal or other governmental or quasi-governmental law, ordinance and regulation, requirement, restriction, condition, order, license, permit, approval or covenant affecting the Mortgaged Property and/or its use, including, without limitation, the Americans' with Disabilities Act; (h) shall not acquiesce in any rezoning classification, modification or restriction affecting the Mortgaged Property; and (i) shall not abandon the Mortgaged Property. Provided the Mortgagor is current on its monthly payments and there exists no uncured Event of Default vacancy of the Mortgaged Property for a period not exceeding one hundred eighty (180) days shall not be deemed an abandonment.

#### **4.17 Insurance.**

(a) General Requirements. Mortgagor shall, at its sole cost and expense, and at all times during the term of this Mortgage, maintain and, as applicable cause to be maintained by its tenant insurance against all such risks with respect to the Mortgaged Property and the operation thereof as are set forth in this Section, together with such additional insurance coverage as Mortgagee may from time to time reasonably require. The form, content and amount of each insurance policy must be acceptable to Mortgagee. All insurance policies must be maintained with insurers approved by Mortgagee and shall, among other things: (i) provide that Mortgagee may, but shall not be obligated to, make payments thereunder to prevent any cancellation, endorsement or alteration of such policy; (ii) name Mortgagee as an additional insured thereunder and contain a mortgagee endorsement in favor of Mortgagee which is satisfactory to Mortgagee; (iii) include an effective waiver by the issuer of all rights of subrogation against Mortgagee; (iv) provide that insurance proceeds shall be payable jointly to Mortgagor and Mortgagee as their interests appear; (v) provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Mortgagor or Mortgagee or any other person; (vi) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Mortgagor and Mortgagee of written notice thereof; and (vii) be satisfactory to Mortgagee in all other respects. Mortgagee shall be furnished with a certified copy (or evidence of insurance) of each required insurance policy at or prior to the time of the execution of this Mortgage, and Mortgagee shall be furnished with a certified copy (or evidence of insurance) of a renewal policy for each such insurance policy, together with receipts or other evidence that the premiums thereon have been paid, not less than thirty (30) days prior to the expiration of each such insurance policy or renewal policy therefor. From time to time upon request by Mortgagee, Mortgagor shall furnish to Mortgagee a statement certified by Mortgagor setting forth in detail the types and amounts of insurance being maintained in compliance herewith, the risks covered by such insurance and the insurance company or companies which carry such insurance.

(b) Required Minimum Coverage. Mortgagor shall cause to be maintained at least the following insurance coverage:

- (i) Commercial general public liability insurance applicable to the Mortgaged Property in an aggregate amount of at least \$2,000,000.00 and a single occurrence limit of at least \$1,00,000.00, or such other limits as Mortgagee shall from time to time require.
- (ii) Appropriate worker's compensation or other insurance against liability arising from claims of workmen or other persons performing any work or services in or upon the Mortgaged Property.
- (iii) Insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke and other risks from time to time included under "extended coverage" policies, and against loss or damage by malicious mischief and, if appropriate, sprinkler leakage, in an amount equal to at least 100% of the full replacement value of all Improvements, Fixtures and personal property included in the Mortgaged Property, which policies must be written on a replacement cost basis.
- (iv) Flood insurance covering the Improvements and all personal property used or to be used in connection therewith, in the maximum obtainable amount, if the Mortgaged Property is located in an area determined by the Director of the Federal Emergency Management Agency to have special flood hazards.
- (v) During the course of any construction or repair of Improvements, builder's completed-value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed \$10,000, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement.
- (vi) Such other insurance with respect to the Mortgaged Property in such amounts and against such insurable hazards as may be required by Mortgagee throughout the term of this Mortgage.

(c) Notice of Damage. Mortgagor shall give Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property and hereby authorizes Mortgagee to make proof of loss if not made promptly by Mortgagor. In case of loss covered by policies of insurance (whether before or after foreclosure sale), Mortgagee is hereby authorized at its option

and without the consent of Mortgagor to settle, adjust and compromise any claim arising out of such policies, and to collect and receive the proceeds payable therefrom. Any expense incurred by Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied to reduction of the Secured Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of such application to be solely at the discretion of Mortgagee.

(d) Collateral Assignment, Right to Adjust and Receive Proceeds. Subject to the requirements under any tenant's lease, all insurance policies relating to the Mortgaged Property and the proceeds thereof are hereby collaterally assigned to Mortgagee and, in case of loss, Mortgagee shall be entitled to receive and retain all insurance proceeds and, at its option, to apply same to the payment of the Secured Indebtedness in such manner as it may elect or to the restoration of the Mortgaged Property, with any excess to be returned to Mortgagor. If any loss shall occur at any time when Mortgagor shall be in default in the performance of this covenant, Mortgagee shall be entitled to the benefit of all insurance held by or for any Mortgagor, to the same extent as if it had been made payable to Mortgagee, and upon foreclosure hereunder Mortgagee shall become the owner thereof. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust or compromise in the name of Mortgagor any loss covered by any insurance policy on the Mortgaged Property and to collect and receive the proceeds from any such policy and use such proceeds as set forth in this Mortgage.

(e) Right to Use Insurance Proceeds. Notwithstanding the foregoing provisions regarding the disposition of insurance proceeds, but only if Mortgagor meets the following conditions, Mortgagee will not elect to apply all of such proceeds to the Secured Indebtedness, but shall hold such proceeds in an account of Mortgagee, from which account the proceeds may be withdrawn only by Mortgagee and shall be readvanced to Mortgagor for the purpose of reconstructing or restoring the Mortgaged Property under the following terms and conditions. Mortgagee shall make insurance proceeds available to Mortgagor ONLY IF: (A)(i) at the time of the occurrence of the event for which proceeds are being received and at the time of the receipt of such proceeds, there is no existing uncured Event of Default; (ii) the total proceeds to be received do not exceed 10% of the amount of the then outstanding balance of the Secured Indebtedness; and (iii) such proceeds, together with such other sums as Mortgagor may deposit with Mortgagee, shall be sufficient, in Mortgagee's opinion, to restore the Mortgaged Property to its original condition or (B) Mortgagor is obligated to reconstruct or restore the Mortgaged Property pursuant to the terms of any Tenant's Lease. If Mortgagor qualifies for the right to use such proceeds for the reconstruction and restoration of the Mortgaged Property, then Mortgagee shall advance such proceeds to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, without limitation, Mortgagee's right to require such items as plans and specifications, architect supervision of restoration and repair, a sworn construction statement, recordable lien waivers and appropriate title insurance endorsements, all in form and substance acceptable to Mortgagee. All restoration and repair of the Mortgaged Property shall be done in accordance with all applicable laws, regulations and ordinances. Any excess proceeds not required to complete such restoration shall, at Mortgagee's option, be applied first to payment of the Secured Indebtedness in such manner as Mortgagee shall determine with any excess to be paid to Mortgagor.

(f) De Minimis Loss. In the event of insured loss the claim for which does not exceed \$50,000.00, provided there exists no uncured Event of Default, the Mortgagor shall be entitled to adjust or compromise the claim and shall be entitled to direct payment of the insurance proceeds.

**4.18 Condemnation.** Mortgagor shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain. Mortgagor hereby irrevocably assigns, transfers, and sets over to Mortgagee, to the extent of the remaining unpaid Secured Indebtedness, the entire proceeds of any award, payment or claim for damages for all or any part of the Mortgaged Property taken or damaged, whether temporary or permanent, under the power of eminent domain or condemnation, and authorizes Mortgagee to intervene in any such action in the name of Mortgagor and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. Subject to Mortgagor's obligations under any Tenant's Lease. The proceeds or any part thereof in excess of \$50,000.00 shall be applied upon or in reduction of the Secured Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

**4.19 Inspection.** Mortgagee and any persons authorized by Mortgagee shall have the right, from time to time at the discretion of Mortgagee, to enter and inspect the Mortgaged Property; provided, however, Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

**4.20 Financial and Operating Statements.** Mortgagor shall keep and maintain, at all times, full, true, and accurate books of accounts, in sufficient detail to show the names of the tenants, if any, occupying the Mortgaged Property, the rent paid by each such tenant and security deposits, if any, copies of all Leases, if any, and such other books and records showing in detail the earnings and expenses of the Mortgaged Property, all of which should adequately reflect the results of the operation of the Mortgaged Property. All such records relating thereto shall be open to inspection and copying by Mortgagee or its representatives at any time and from time to time upon written request by Mortgagee, at the office of the Mortgagor or the Mortgagor's property manager.

**4.21 Further Assurances.** Mortgagor shall execute and deliver to Mortgagee from time to time, on demand, such further instruments and assurances and do such further acts as Mortgagee may reasonably require to carry out more effectively the purposes of this Mortgage and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or so intended to be. Mortgagor shall pay any recording fees, filing fees, mortgage registry taxes, stamp taxes and other charges arising out of or incident to the filing or recording of this Mortgage.

**4.22 Notice of Certain Events.** Mortgagor shall promptly notify Mortgagee in writing if Mortgagor has actual knowledge of the occurrence of (i) any event which constitutes or with the passage of time will constitute an Event of Default hereunder, together with a detailed statement by a responsible officer of Mortgagor of the steps being taken to cure the effect of such

Event of Default; (ii) any legal, judicial or regulatory proceedings affecting the Mortgagor, the Guarantor, the Mortgaged Property or the principal tenant of the Mortgaged Property; (iii) any dispute between the Mortgagor or principal tenant of the Mortgaged Property and any governmental authorities or any other person which, if adversely determined, would or might have a material adverse effect on Mortgagor or the Mortgaged Property.

**4.23 No Offset.** All sums payable by Mortgagor under the Note and hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, without abatement, suspension, deferment, diminution, or reduction, and the obligation and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction of the Mortgaged Property or any part thereof by title, paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee or by any court in any such proceeding; (e) any claim which Mortgagor has or might have against Mortgagee; (f) any default or failure on the part of Mortgagee to conform or comply with any of the terms hereof or any other document or agreement entered into with Mortgagor; or (g) any other occurrences whatsoever, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Mortgagor waives all rights now and hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

**4.24 Conveyance of Title; Transfer of Control.** Mortgagor represents and agrees that the Secured Indebtedness is made and extended by Mortgagee in reliance, in part, on the financial background and abilities of Mortgagor and any comakers, guarantors or endorsers to, jointly and severally, pay any and all amounts payable by virtue of the Note and this Mortgage. The Secured Indebtedness is understood and agreed to be made and extended to Mortgagor only. It is neither presumed, expressed or implied that the obligations created hereunder may be assumed or performed by any party other than Mortgagor, whether or not upon the sale or conveyance of the Mortgaged Property or any part thereof including any legal, equitable or beneficial interest therein. If all or any part of the Mortgaged Property or any legal, equitable or beneficial interest in it is sold or transferred without the prior written consent of Mortgagee, (which consent may be withheld arbitrarily or granted on terms selected by Mortgagee including an increase in the interest rate at its sole discretion and without a showing by Mortgagee of an impairment of its security) then, at the option of Mortgagee and without notice to Mortgagor or to any other party, the Secured Indebtedness shall immediately and concurrently and upon such conveyance become due and payable and in default whether or not the same are otherwise due and payable or in default by the specific terms hereof. The foregoing option shall be exercised by Mortgagee at its sole and complete discretion. The aforesaid consent of Mortgagee may be either granted or withheld without any requirement of Mortgagee disclosing any reason therefore. Mortgagee's consent to any one transaction shall not be deemed to be a waiver of the requirement to receive Mortgagee's consent to future or successive transactions. The Mortgagor is a limited liability company. The legal, beneficial or equitable ownership of the Mortgagor shall not be changed by sale, conveyance, transfer, assignment or encumbrance without the



consent of the Mortgagee which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, if the ownership of the Mortgaged Property, or any part thereof, becomes vested in a person other than Mortgagor, Mortgagee may deal with such successor or successors in interest with reference to this Mortgage, and the Secured Indebtedness, regardless of any change in the terms of the obligations created hereunder, without in any manner violating or discharging Mortgagor's liability hereunder. Mortgagor shall at all times continue to be liable for the Secured Indebtedness until this Mortgage is fully satisfied or Mortgagor is formally released by an instrument in writing duly executed by Mortgagee. The transfer of not more than 49% aggregate membership interest in Mortgagor or transfer of not more than 49% aggregate interest in the Property to any one of the following shall not be deemed a prohibited transfer, provided (i) there exists no uncured Event of Default, and (ii) the proposed transferee and transfer complies with all membership requirements of the Mortgagee:

(a) Progeny of the principal of Mortgagor, and/or another entity which is wholly owned by such progeny; or

(b) Trusts, Family Trusts, Intentionally Defective Grantor Trusts, or other estate planning vehicles for the benefit of the progeny of the principal of the Mortgagor or;

(c) Another ownership entity which has the same ownership structure as the previous ownership structure immediately prior to the transfer or as modified above.

**4.25 Secondary Financing; Further Encumbrances.** Mortgagor shall not permit any other liens, mortgages or encumbrances against the Mortgaged Property, except as disclosed in Exhibit II. If any such liens, mortgages or encumbrances are incurred, whether paramount or subordinate to this Mortgage, Mortgagor shall cause such liens, mortgages or encumbrances to be discharged immediately. Without limiting the foregoing, should there be a lien superior in priority to the lien of this Mortgage with Mortgagee's consent, it is covenanted and agreed that should the terms of a lien superior to that of this Mortgage be modified, altered or varied without the written consent of Mortgagee, or should any lien superior to that of this Mortgage be or become in default, then and in such event Mortgagee may at its option accelerate the Secured Indebtedness and declare the same to be all due and payable without notice to Mortgagor or any other person.

## **ARTICLE V - SECURITY AGREEMENT**

**5.1 Security Interest.** This Mortgage shall constitute a security agreement as defined in the Uniform Commercial Code and SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING which is to be filed in the real estate records of the County where the Mortgaged Property are situated. To this end, Mortgagor does hereby GRANT, CONVEY, and ASSIGN, unto Mortgagee, a security interest in and to all of the Improvements, Fixtures and other personal property covered by this Mortgage, governed by the Uniform Commercial Code under the laws of the State of Iowa and other similar statutes concerning the granting of security interests therein, subject only to the Permitted Encumbrances, if any, which security interest secures the full and timely payment and performance of the Secured Indebtedness. The name of the record owner of said real estate is the Mortgagor set

forth on page one of this Mortgage. Information concerning the security interest created by this Mortgage may be obtained from Mortgagee, as secured party, at its address as set forth on page one of this Mortgage. The name and address and any organizational identification number of Mortgagor, as debtor, and the name and address of Mortgagee, as secured party, are as set forth on page one of this Mortgage. This Mortgage covers fixtures within the Mortgaged Property. The Mortgaged Property is owned in fee by Boston Commons, LLC, a Delaware limited liability company.

**5.2 Financing Statements.** Mortgagee may execute and file "Financing Statements," and "Continuation Statements" as from time to time the Mortgagee reasonably considers necessary to create, perfect and preserve the security interest created hereby, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law, to so create, perfect and preserve such security interest.

**5.3 Notice of Changes.** Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name or address.

**5.4 Uniform Commercial Code Remedies.** Mortgagee shall have the right to require Mortgagor to assemble all or any part of the Mortgaged Property and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to all parties, and Mortgagee shall have all the rights, remedies and recourse with respect to the Mortgaged Property covered by the security interest granted hereby which are afforded to it by the applicable provisions of the Uniform Commercial Code in the State of Iowa, in addition to, and not in limitation of, the other rights, remedies and recourse afforded by this Mortgage, and Mortgagee may dispose of the Mortgaged Property in accordance with the foreclosure procedures hereof regarding the foreclosure of the lien of this Mortgage on real property in lieu of proceeding under the applicable Uniform Commercial Code. If Mortgagee should sell or otherwise dispose of any of the Mortgaged Property pursuant to the Uniform Commercial Code in the State of Iowa, 10 days' written notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice, unless the personal property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, in which event no notice shall be required.

**5.5 Proceeds of Sale.** The proceeds of the sale of any personal property shall be applied as follows:

(a) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Mortgaged Property (including, without limitation, costs of litigation and reasonable attorneys' fees) and the discharge of all impositions, liens and encumbrances, and claims thereof, if any, on the Mortgaged Property prior to the security interest granted herein;

(b) To the payment of the Secured Indebtedness in such order as Mortgagee shall determine; and

(c) The surplus, if any, shall be paid to Mortgagor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Mortgagee shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to stop or prevent Mortgagee from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Mortgaged Property pursuant to the terms hereof shall not operate to release Mortgagor until full payment of any deficiency has been made in cash.

## **ARTICLE VI - EVENTS OF DEFAULT**

**6.1 Events of Default.** The occurrence of any of the following shall, following any applicable period to cure be deemed an "Event of Default":

- (a) An Event of Default under the Note
- (b) Failure of the Mortgagor or Guarantor to timely meet their respective obligations as specified in the Loan Agreement or in the Loan Documentation identified therein.

## **ARTICLE VII - REMEDIES**

**7.1 Remedies.** Upon the occurrence of an Event of Default or at any time thereafter until such Event of Default is cured, Mortgagee may, at its option and without notice to Mortgagor, exercise any or all of the following rights and remedies, and any other rights and remedies now or then available to it, either hereunder or at law or in equity:

(a) Acceleration. Mortgagee may declare the then outstanding balance of the Secured Indebtedness to be immediately due and payable, without notice, grace, presentment, protest, demand for payment or any other action of any nature whatsoever, whereupon the same shall become immediately due and payable. Mortgagor expressly hereby waives the right to receive notice of the intention to accelerate the Secured Indebtedness and notice of acceleration of the Secured Indebtedness.

(b) Mortgagee's Right to Perform. If Mortgagor shall fail, refuse or neglect to make any payment or perform any act required by this Mortgage, then at any time thereafter and whether or not an Event of Default has occurred, and without waiving or releasing any other right, remedy or recourse that Mortgagee may have because of the same, Mortgagee may (but shall not be obligated to), without notice or demand to Mortgagor make such payment or perform such act for the account of and at the expense of Mortgagor and, to the extent allowed by law, Mortgagee shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon and with respect thereto as Mortgagee may deem necessary or appropriate. Any such action on the part of Mortgagee shall not excuse Mortgagor from strict performance of the obligations and payment of the Secured Indebtedness. Mortgagor shall, upon request, immediately reimburse Mortgagee for all amounts expended, advanced or incurred by Mortgagee to pay, perform or satisfy any such obligation, which amounts shall include all court costs, attorneys' fees, fees of auditors and accountants, and investigation expenses incurred by Mortgagee in connection with any such matter. All sums advanced, spent or incurred by Mortgagee pursuant to this Section shall be secured hereby, shall constitute a further lien upon the Mortgaged Property, shall be added to and become a part of the Secured Indebtedness and shall bear interest at the Note rate from the date of disbursement until paid. Any sums advanced or action taken by Mortgagee pursuant to this Section shall not release Mortgagor from any of its

obligations under this Mortgage. Any forbearance on the part of Mortgagee, or any demand by Mortgagee for less than the full amount owing under this Section, shall not constitute a waiver of Mortgagee's right to insist on the payment in full of all such amounts, both with respect to the period of forbearance or at any later period. To the extent funds are at any time advanced by Mortgagee hereunder for the purpose of paying an indebtedness now or hereafter secured by any liens or security interests other than the liens and security interests created by this Mortgage, Mortgagee shall be subrogated to any and all rights, liens, security interests and equities owned or claimed by the holder of such other liens and security interests.

(c) Entry Upon and Operation of the Mortgaged Property. To the extent allowed by the laws of the State of Iowa, Mortgagee may peaceably enter upon and into the Mortgaged Property and take exclusive possession thereof and of all books, records, accounts and Rents and Leases or personal property, Fixtures and Improvements relating thereto. If Mortgagor remains in possession of all or any part of the Mortgaged Property after an Event of Default, Mortgagee may (without implying any requirement therefore) invoke any and all legal remedies to dispossess Mortgagor. If Mortgagee shall take possession of the Mortgaged Property as provided herein, Mortgagee may do all or any of the following (provided that nothing herein contained shall obligate Mortgagee to do any of the same): (i) hold, manage, operate, lease and sublease the Mortgaged Property, to Mortgagor or any other person or persons, on such terms and for such periods of time as Mortgagee may deem proper, and the provisions of any lease or sublease made by Mortgagee pursuant hereto shall be valid and binding upon Mortgagor notwithstanding the fact that Mortgagee's right of possession may terminate or this Mortgage may be satisfied of record prior to the expiration of the term of any such lease; (ii) make such alterations, additions, improvements, renovations, repairs and replacements to the Mortgaged Property as Mortgagee may deem proper; (iii) demolish any part or all of the buildings, structures or other Improvements on the Real Property which in the judgment of Mortgagee may be in unsafe condition and dangerous to life or property; (iv) remodel such buildings, structures or other Improvements so as to make them available in whole or in part for any business, dwelling, multiple dwelling or other purposes; (v) operate the Mortgaged Property in the ordinary course of business; and (vi) collect the Rents from the Mortgaged Property, both past due and thereafter becoming due, and apply the same, in order of priority as Mortgagee may determine, to the payment of all charges and commissions incidental to the collection of Rents and the management of the Mortgaged Property and all other sums or charges required to be paid by Mortgagor hereunder or under the Note. All moneys advanced by Mortgagee for the purposes aforesaid and not repaid out of the Rents collected shall immediately and without demand be repaid by Mortgagor to Mortgagee, together with interest thereon at the rate of interest specified in the Note, shall be secured by this Mortgage and shall be added to the Secured indebtedness. The taking of possession and collection of Rents by Mortgagee shall not be construed to be in affirmation of the Leases, or any part thereof, and Mortgagee or any other purchaser at any foreclosure sale may (if otherwise entitled so to do) exercise the right to terminate the Leases as though such taking of possession and collection of Rents had not occurred. In the exercise of any of the foregoing rights and powers, Mortgagee shall not be liable to Mortgagor for any loss or damage thereby sustained unless due solely to the willful misconduct of Mortgagee.

(d) Mortgagee's Right to Redeem. Mortgagee may exercise any and all rights of redemption from sale under any order or decree or foreclosure of this Mortgage, on its own

behalf and on behalf of each and every person, except decree or judgment creditors or Mortgagor, acquiring any interest in or title to the Mortgaged Property subsequent to the date this Mortgage is recorded.

(e) Receiver. Mortgagee shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of Mortgagor, or waste of the Mortgaged Property or adequacy of the security of the Mortgaged Property, to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the Rents; manage the Mortgaged Property so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the premises and perform the terms of this Mortgage and apply the Rents in the following order to (i) payment of the reasonable fees of said receiver, (ii) payment when due of prior or current real estate taxes or special assessments with respect to the Mortgaged Property or if required by this Mortgage, (iii) payment of the periodic escrow for payment of the taxes or special assessments, (iv) the payment when due of premiums for insurance of the type required by this Mortgage or if required by this Mortgage, (v) payment of the periodic escrow for the payment of the premiums, and (vi) as further provided in any assignment of rents executed by Mortgagor as further security for the Secured Indebtedness (whether included in this Mortgage or separate instrument). Mortgagor does hereby irrevocably consent to such appointment. Upon the commencement of or during the pendency of any action to foreclose this Mortgage, the court in which such action is brought may appoint a receiver of the Mortgaged Property, and may empower said receiver to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure action, and may order such rents, issues and profits, once so collected, to be held and applied, as the court shall from time to time erect.

(f) Non-Judicial Foreclosure/Non-Agricultural Mortgage. If the Mortgagor shall fail or neglect punctually to keep and perform any of the covenants and conditions herein prescribed, the Mortgagee may utilize the non-judicial foreclosure provisions of Iowa Code Chapter 655A.

(g) Foreclosure. If the Mortgagor shall fail or neglect punctually to keep and perform any of the covenants and conditions herein prescribed, the Mortgagee may thereby perform the same, and all costs and expenses incurred thereby shall be repaid by Mortgagor to Mortgagee on demand, with interest thereon at the annual rate set forth in the Note and until so paid such interest shall be added to the debt hereby secured. In any such case of failure or neglect, then the whole amount of the principal sum remaining unpaid together with the interest, and all sums so paid by Mortgagee and interest thereon, shall, at the option of the Mortgagee, be deemed to have become due without notice, notice of such option hereby expressly waived, and shall be collectible by foreclosure of this Mortgage in the manner provided in Iowa Code Chapter 654.

(h) Mortgagee may Bid. Mortgagee may bid and become the purchaser of all or any part of the Mortgaged Property at any foreclosure sale held pursuant to the Iowa Mortgage Foreclosure Law and the Secured Indebtedness, or any portion thereof, may be credited on the purchase price in lieu of any cash payments.

(i) Application of Proceeds of Sale. From the proceeds arising from sale and foreclosure, Mortgagee may retain the principal and interest due on the Note and the Secured Indebtedness together with such sums of money as Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure including without limitation lawful attorney fees, appraiser fees, outlays for a documentary and expert evidence, publication costs and costs of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee may deem necessary to prosecute suit and conduct such action, shall be immediately due and payable by Mortgagor with interest thereon at the rate specified in the Note, with the balance, if any, to be paid to the persons entitled thereto by law. Mortgagee may sell the entire Mortgaged Property as a single tract or may sell any portion or separate tract thereof at public sale free and clear of any equity or redemption by Mortgagor and free from any claim of homestead, dollar, marital share and all other exemptions.

(j) Other. Mortgagee may exercise any and all other rights, remedies and recourse as now or hereafter exist at law or in equity, by virtue of any statutes in the State of Iowa, or otherwise.

**7.2 Discontinuance of Proceedings.** Mortgagee shall have the unqualified right to invoke any right, remedy or recourse permitted hereunder and thereafter to elect to discontinue or abandon same for any reason, and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Indebtedness, the obligations hereunder, the Mortgaged Property and otherwise, and all of the rights, remedies, recourse and powers of Mortgagee shall continue as if same had never been invoked.

**7.3 Redemption Period Limitations.**

(a) It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action, files an election to waive any deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

(b) If Mortgaged Property is abandoned it is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) the real estate is less than ten (10) acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagor or their successor in interest in such action. If the redemption period is so reduced, Mortgagor or its successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days.

This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 or any other Chapter of the Iowa Code, whether now in effect or hereafter adopted or of the right of the Mortgagee to elect to foreclose this Mortgage without redemption of any kind or by any non-judicial foreclosure proceeding available.

**7.4 No Release Implied.** Mortgagor shall not be relieved of any obligation hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor to foreclose the lien of this Mortgage, or to enforce any provisions of the other credit documents, (b) any agreement or stipulation between Mortgagor, or any subsequent owner of the Mortgaged Property and Mortgagee extending, renewing, rearranging or in any other way modifying the terms of this Mortgage without first having obtained the consent of, given notice to, or paid any consideration to, Mortgagor and in such event Mortgagor shall continue to be liable to make payment hereunder according to the terms of such extension or modification agreement unless expressly released and discharged in writing by Mortgagee, or (c) by any other act or occurrence, save and except the complete release of this Mortgage by Mortgagee.

**7.5 Release of and Resort to Collateral.** For payment of the Secured Indebtedness, Mortgagee may resort to any security therefore in such order and manner as Mortgagee may elect without in any way affecting the lien and security interests hereof.

**7.6 Waivers.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, right of redemption (equitable or legal) or extension of time for payment, (b) all right to receive notices of an election by Mortgagee to exercise, or its actual exercise of, any right, remedy or recourse provided for herein, and (c) any right to a marshalling of assets or sale in inverse order of alienation, any rights pertaining to the administration of the estates of descendants and any other right or matter which would defeat the right of Mortgagee to sell the Mortgaged Property for the collection of the Secured Indebtedness (without any prior or different resort for collection).

**7.7 Cumulative Rights.** Each right, power or remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Mortgagee, at law or in equity, or under the Uniform Commercial Code or other law, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of Mortgagee to resort thereto at a later date or be construed to be a waiver of any Event of Default under this Mortgage or the Note.

## ARTICLE VIII - PARCEL RELEASE

**8.1 Parcel Release.** The Mortgaged Property consists of two (2) individual Parcels of Record, identified on **Exhibit I** as Parcel 1 and Parcel 2. Provided there exists no uncured Event of Default under this Mortgage or under any Loan Documentation as defined in the Loan Agreement at the time of written request, either Parcel 1 or Parcel 2 will be released from the lien of this Mortgage subject to the following:

(a) Release of Parcel 1 is conditioned upon the simultaneous payment of \$1,250,000.00 in direct reduction of the then outstanding Principal Balance secured by this Mortgage; or

(b) Release of Parcel 2 is conditioned upon the simultaneous payment of \$1,300,000.00 in direct reduction of the then outstanding Principal Balance secured by this Mortgage.

(c) Notwithstanding the foregoing, neither Parcel 1 nor Parcel 2 shall be released until (i) the current Lease for Parcel 2 is extended by timely exercised option to extend the current Lease; or (ii) Mortgagor and the existing Tenant have executed a Lease Amendment extending the term of the current Lease upon terms and conditions approved by Mortgagee, which approval shall not to be unreasonably withheld or delayed.

## ARTICLE IX - MISCELLANEOUS

**9.1 Collection.** Mortgagor agrees to pay, upon demand, any and all costs incurred in collecting any amounts due under this Mortgage, including, but not limited to, all reasonable attorneys' fees, expenses and court costs, whether or not any legal action shall be instituted to enforce this Mortgage in bankruptcy court, probate court or any other court, or in any other manner.

**9.2 No Consent.** Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving Mortgagor or any party in interest with Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Mortgagee in respect thereof, or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

**9.3 Miscellaneous Rights of Mortgagee.** Without affecting the liability of any party liable for payment of the Secured Indebtedness or the performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time, and without notice to or the consent of Mortgagor or any party with an interest in the Mortgaged Property or the Note (a) release any person or entity liable for payment of all or any part of the Secured Indebtedness or for the performance of any obligation herein, (b) make any agreement extending the time or otherwise



altering the terms of payment of all or any part of the Secured Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof, (c) accept any additional security, (d) release or otherwise deal with any property, real or personal, including any or all of the Mortgaged Property, including making partial releases of the Mortgaged Property, or (e) resort to any security agreements, pledges, contracts of guaranty, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine. No act or thing, except full payment of the Secured Indebtedness, which but for this provision could act as a release, termination, satisfaction or impairment of this Mortgage shall in any way release, terminate, satisfy or impair this Mortgage. The taking of additional security shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any permitted junior lienholder; and this Mortgage shall be and remain a lien subject only to the Permitted Encumbrances, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Secured Indebtedness is fully paid.

**9.4 Covenant Running with the Land.** Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns as if they personally made such agreement.

**9.5 No Waiver.** No waiver of any default on the part of Mortgagor or breach of any of the provisions of this Mortgage or of any other instrument executed in connection with the Secured Indebtedness shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. Acceptance by Mortgagee of partial payments shall not constitute a waiver of the default by failure to make full payments, and acceptance by Mortgagee of late payments shall not constitute a waiver of Mortgagor's obligation to make timely payments in the future.

**9.6 Successors and Assigns; Use of Terms.** The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. The term "Mortgagor" shall include, in their individual capacities and jointly, all parties hereinabove named a Mortgagor. The term "Mortgagee" shall include any lawful owner, holder, pledgee, or assignee of any of the Secured Indebtedness. The duties, covenants, conditions, obligations, and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and of each Mortgagor, if more than one, and of each Mortgagor's heirs, personal representatives, successors and assigns. Each party who executes this Mortgage and each subsequent owner of the Mortgaged Property, or any part thereof (other than Mortgagee or any purchaser at foreclosure), covenants and agrees that it will perform, or cause to be performed, each term and covenant of this Mortgage as if such party were the named Mortgagor.

**9.7 Severability.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage, a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Secured Indebtedness shall be unsecured, the unsecured portion of the Secured Indebtedness shall be completely paid prior to the payment of the secured portion of such Secured Indebtedness, and all payments made on account of the Secured Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Indebtedness. The foreclosure of this Mortgage will not affect or limit any remedy of Mortgagee on account of any breach by Mortgagor of the terms of this Mortgage occurring prior to such foreclosure, except to the extent of the amount bid at foreclosure.

**9.8 Entire Agreement.** This Mortgage constitutes the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee in connection therewith.

**9.9 Modification or Termination.** Mortgagor, for itself and for all future owners of the Mortgaged Property, agrees that this Mortgage may be modified, varied, extended, renewed or reinstated at any time by agreement between the holder of this Mortgage and Mortgagor or the then owner of the Mortgaged Property, without notice to, or the consent of, any subordinate mortgagee, judgment creditor or lienor, and any such modification, variance, extension, renewal or reinstatement shall be binding upon such subordinate mortgagee, judgment creditor or lienor with the same force and effect as if said subordinate mortgagee, judgment creditor or lienor had affirmatively consented thereto. It is the intention of Mortgagor and Mortgagee that any modification shall maintain the same lien priority as the original Mortgage.

**9.10 Descriptive Headings.** The descriptive headings used herein are for convenience in reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of Mortgagor or Mortgagee. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**9.11 Subordination.** The rights of any person to be subrogated to the liens created by and under this Mortgage, by virtue of the payment or satisfaction of any portion of the Secured Indebtedness shall be subordinated and remain inferior to the rights of Mortgagee hereunder until all of the Secured Indebtedness shall have been paid in full and Mortgagee shall have released its rights hereunder, and any such person shall be regarded as a junior lienholder at any foreclosure proceeding and shall not be entitled to notice thereof and, until Mortgagee is fully paid, shall not be entitled to participate in any proceeds therefrom. If any payment applied by the Mortgagee to the Secured Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including without limitation the bankruptcy, insolvency or reorganization of the Mortgagor or any other person or entity), the Secured Indebtedness to which such payment was applied shall for the purposes of this Mortgage be deemed to have continued in existence,

notwithstanding such application, and this guaranty shall be enforceable as to such Secured Indebtedness as fully as if such application had never been made.

**9.12 Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to their respective addresses as set forth on page one herein, or to such other places any party hereto may hereafter by notice in writing designate shall constitute service of notice hereunder.

**9.13 Governing Law.** This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Iowa (excluding conflict of law rules).

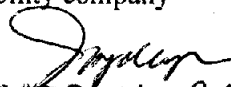
**9.14 Time of Essence.** Time is of the essence of this Mortgage and of each provision hereof.

**9.15 Subrogation.** If Mortgagee pays any prior lien from the proceeds of the advance secured by this Mortgage, it shall be subrogated to the rights of the holder of such prior lien as fully as if such lien had been assigned to Mortgagee.

**8.16 Waiver of Jury Trial.** The Mortgagor hereby waives any right to a trial by jury under any action or proceeding arising directly or indirectly out of this Mortgage and Security Agreement and Fixture Financing Statement, the loan transaction generally, and all loan documents incident thereto.

Executed as of the day and year first above written.

**BOSTON COMMONS, LLC,** a Delaware  
limited liability company

By:   
JOSEFINA GALAPON

Its: VICE PRESIDENT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

} ss.

On May 3, 2013 before me, B. Roberts a Notary Public, personally appeared Joseina Galan who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument that person(s), or the entity upon behalf of which the person(~~s~~) 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.

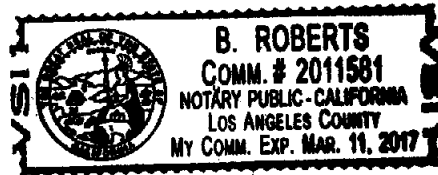
Signature

B. Roberts

Name:

B. ROBERTS

(typed or printed)



(Area reserved for official notarial seal)

## **EXHIBIT I**

### **LEGAL DESCRIPTION**

Parcel 1:

Lots 21 and 153 in Clover Acres, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Parcel 2:

Lots 154 and 155 in Clover Acres, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa: EXCEPT that part deeded to the State of Iowa by Warranty Deed filed February 24, 2010, in Book 13365, Page 718.

## **EXHIBIT II**

### **PERMITTED ENCUMBRANCES**

Terms, conditions, rights of others and easements in Overhead Easement filed May 6, 1992, in Book 6554, Page 38, Official Records, Polk County, Iowa.

Terms and conditions of Resolution No. 8-69, Joint Public Improvement Agreement filed May 2, 1969, in Book 4027, Page 623, Official Records, Polk County, Iowa.

Terms and conditions and rights of others in Lease by and between M.R.A.G. Investments, Ltd., as landlord, and Tires Plus Groupe, Ltd., as tenant, as evidenced by the Memorandum of Lease filed April 1, 1994, in Book 6990, Page 191; refiled April 18, 1994, in Book 7001, Page 132, Official Records, Polk County, Iowa.

Terms and conditions and rights of others in Lease by and between Boston Commons Limited Company, as landlord, and Dolgencorp, LLC, as tenant, as evidenced by the Memorandum of Lease filed July 27, 2011, in Book 13920, Page 574, Official Records, Polk County, Iowa.

Terms and conditions of Environmental Representations and Warrantics contained in the Offer to Purchase Real Estate and Acceptance, as referenced in Warranty Deed filed February 24, 2010, in Book 13365, Page 718, Official Records, Polk County, Iowa.

Matters depicted and identified on the survey of Parcel 1 and the survey of Parcel 2, each respectively prepared by American Surveying & Mapping, Inc. dated April \_\_, 2013.