
MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,
a Minnesota limited liability limited partnership, as mortgagor
(Borrower)

to

CITY OF MINNETONKA, MINNESOTA
a municipal corporation, as mortgagee
(Governmental Lender)

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING (SERIES A)**

Dated: September __, 2018

**PREPARED BY AND UPON
RECORDATION RETURN TO:**

Stinson Leonard Street LLP
50 South Sixth Street, Suite 2600
Minneapolis, Minnesota 55402
Attention: David W. Kelley

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING (SERIES A)**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (SERIES A) (this "***Security Instrument***") is made as of this ____ day of September, 2018, by MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership, as mortgagor, having its principal place of business at 2905 Northwest Boulevard, Suite 150, Plymouth, MN 55441-7400, as mortgagor ("***Borrower***") for the benefit of the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota, having an address at 14600 Minnetonka Boulevard, Minnetonka, MN 55345-1502, together with its successors and assigns, as mortgagee ("***Governmental Lender***").

W I T N E S S E T H:

A. Pursuant to Minnesota Statutes Chapter 462C and the Project Loan Agreement dated as of the date hereof (the "***Project Loan Agreement***") by and among Governmental Lender, U.S. Bank National Association, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Saint Paul, Minnesota, as Fiscal Agent (in such capacity, "***Fiscal Agent***") and Borrower, Governmental Lender is agreeing to make a mortgage loan to Borrower in the maximum aggregate principal amount of \$[_____] (the "***Project Loan***") to provide for the financing of a multifamily rental housing development located at 11001 Bren Road East in Minnetonka, Minnesota to be known as "Legends of Minnetonka".

B. Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note (Series A) (the "***Tax Exempt Project Note***") and a Multifamily Note (Series B) (the "***Taxable Project Note***," together with the Tax Exempt Project Note, the "***Project Notes***"), each dated as of the date hereof, delivered to Governmental Lender, which Project Notes will be endorsed by Governmental Lender to the Fiscal Agent as security for the Funding Loan.

C. Governmental Lender is making the Project Loan to Borrower with the proceeds received from the separate loan made to Governmental Lender pursuant to the Funding Loan Agreement dated as of the date hereof by and among U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the "Lenders" under the Loan Agreement referred to below ("***Administrative Agent***"), Governmental Lender and Fiscal Agent (the "***Funding Loan Agreement***") in the maximum aggregate principal amount of \$[_____] (the "***Funding Loan***").

D. Lenders, pursuant to the terms and subject to the conditions of (i) the Funding Loan Agreement, (ii) that certain Construction Loan Agreement dated as of even date herewith, by and among Administrative Agent, Lenders and Borrower (together with any amendment, restatement or modification thereto, the "***Loan Agreement***") and (iii) the Construction Phase Financing Agreement dated as of the date hereof by and among Administrative Agent, on behalf

of the Lenders, Borrower, Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise, and KeyBank National Association (the “**Construction Phase Financing Agreement**”), have agreed to originate and fund the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by Governmental Lender to fund the Project Loan to Borrower in corresponding installments pursuant to the Project Loan Agreement.

E. Administration Agent will administer the Project Loan and the Funding Loan during the construction phase in accordance with the Loan Agreement, the Construction Phase Financing Agreement and the other Loan Documents (as defined in the Loan Agreement).

F. Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to such financing.

G. In order to secure Borrower's obligations under the Tax Exempt Project Note and pursuant to the Project Loan Agreement, the Loan Agreement and the Construction Phase Financing Agreement, Borrower is executing and delivering this Security Instrument to Governmental Lender.

H. The Project Loan will be made under an affordable housing program and Governmental Lender is a political subdivision of the State of Minnesota. Therefore, this Security Instrument is exempt from mortgage registry tax under Minn. Stat. Section 287.04(f).

NOW THEREFORE, in consideration of the foregoing Recitals (which are by this reference incorporated into this Security Instrument and made a part hereof), and the covenants, agreements, representations and warranties set forth in this Security Instrument:

Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Governmental Lender, and grant a security interest to Governmental Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “*Equipment*”);

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “*Fixtures*”);

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof

(collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including all cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Property Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations (as hereinafter defined);

(i) Condemnation Awards. All awards or payments (including any administrative fees or attorneys’ fees), including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property, and including but not limited to any Compensation;

(j) Insurance Proceeds. All proceeds (including any administrative fees or attorneys’ fees) in respect of the Property under any insurance policies covering the Property (including but not limited to the Proceeds), together with the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Governmental Lender in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including all accounts established or maintained pursuant to the Loan Documents; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Swap Contract. All of Borrower's present and future rights, titles and interests, but not its obligations, duties or liabilities for any breach, in, under and to all Swap Contracts and all Swap Transactions, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing including all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Governmental Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to as the "**Real Property**")

appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, will for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Governmental Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Governmental Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower will hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations (as hereinafter defined), for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Governmental Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). If an Event of Default occurs, Governmental Lender, in addition to any other rights and remedies which it may have, will have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Governmental Lender after the occurrence of an Event of Default, Borrower will, at its expense, assemble the Collateral and make it available to Governmental Lender at a convenient place (at the Land if tangible property) acceptable to Governmental Lender. Borrower will pay to Governmental Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Governmental Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least 10 Business Days prior to such action, will, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Governmental Lender to the payment of the Obligations (as hereinafter defined) in such priority and proportions as Governmental Lender in its discretion deems proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Governmental Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in

this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, will operate also as a financing statement naming Borrower as Debtor and Governmental Lender as Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Governmental Lender any and all monies now or hereafter held by Governmental Lender or on behalf of Governmental Lender in connection with the Project Loan, including any sums deposited in the Required Accounts and any and all Proceeds and Compensation, as additional security for the Obligations (as hereinafter defined) until expended or applied as provided in this Security Instrument or the Loan Agreement.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Governmental Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, this grant is made upon the express condition that, if Borrower pays to Governmental Lender the Obligations (as hereinafter defined) at the time and in the manner provided in the Loan Documents, and performs the Obligations (as hereinafter defined) in the time and manner set forth in the Loan Documents and complies with each and every covenant and condition set forth herein and in the other Loan Documents, the estate hereby granted will cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Governmental Lender pursuant to the provisions hereof will survive any such payment or release.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the Project Loan, including but not limited to the obligations of Borrower to pay to Governmental Lender the principal and interest owing pursuant to the terms and conditions of the Tax Exempt Project Note, the Project Loan Agreement, and the Loan Agreement, together with the payment of all breakage costs, swap obligations, fees, costs, expenses, interest and other charges relating to the Project Loan, and any other obligations of Borrower under the Loan Documents, including but not limited to all LIBOR Breakage Costs, Swap Obligations and Fees (collectively, the "**Debt**"):

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein, including all fees and charges payable by Borrower;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and each other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement or any other Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations will be referred to collectively herein as the "*Obligations*."

Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF OBLIGATIONS. Borrower will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Tax Exempt Project Note, (c) the Project Loan Agreement and (d) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower will obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement. In the event Borrower fails to obtain, maintain, keep in force or deliver to Governmental Lender the policies of insurance required by the Loan Agreement in accordance with the terms thereof, Governmental Lender may (but has no obligation to) procure such insurance or single-interest insurance for such risks covering Governmental Lender's interests, and Borrower will pay all premiums thereon promptly upon demand by Governmental Lender, and until such payment is made by Borrower, the amount advanced by Governmental Lender with respect to all such premiums will, at Governmental Lender's option, bear interest at the Default Rate.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower will cause the Property to be maintained in a good and safe condition and repair and otherwise in accordance with the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property will not be removed, demolished or altered without the consent of Governmental Lender other than in accordance with the terms and conditions of the Loan Agreement. Borrower will promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and will complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 WASTE. Borrower will not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy which Borrower is obligated to

maintain pursuant to the Loan Agreement, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Governmental Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS.

(a) Borrower will promptly pay when due all bills and costs for labor and materials (“**Labor and Material Costs**”) incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or Security Interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Labor and Material Costs from Borrower and from the Property, or (B) Borrower has paid all of the Labor and Material Costs under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (v) Borrower has furnished such security as may be required in the proceeding, or as may be requested by Governmental Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Labor and Material Costs becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.7 PAYMENT OF TAXES AND IMPOSITIONS.

(a) Borrower will pay, or cause to be paid prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments, duties, levies, imposts, deductions, charges or withholdings, of any kind or nature whatsoever, including nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create or may create a lien upon the Property (all the foregoing, collectively, “**Impositions**”).

(b) After prior notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Impositions, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Impositions from Borrower and from the Property, or (B) Borrower has paid all of the Impositions under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrower will promptly upon final determination thereof pay the amount of any such Impositions, together with all costs, interest and penalties which may be payable in connection therewith, and (vi) Borrower has furnished such security as may be required in the proceeding, or as may be reasonably requested by Governmental Lender to insure the payment of any contested Impositions, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Impositions becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.8 CHANGE OF NAME, JURISDICTION. In addition to the restrictions contained in the Loan Agreement and the Project Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or jurisdiction of formation or organization unless Borrower has first obtained the prior written consent of Governmental Lender to such change, and has taken all actions necessary or required by Governmental Lender to file or amend any financing statements or continuation statements to assure perfection and continuation of perfection of security interests under the Loan Documents. Borrower will notify Governmental Lender in writing of any change in its organizational identification number at least thirty (30) days in advance of such change becoming effective. If Borrower does not now have an organizational identification number and later obtains one, Borrower will promptly notify Governmental Lender in writing of such organizational identification number. At the request of Governmental Lender, Borrower will execute a certificate in form satisfactory to Governmental Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.9 UTILITIES. Borrower will pay or cause to be paid when due all utility charges that are incurred by Borrower for the benefit of the Property or that may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Property or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 3.10 CASUALTY In the event of any damage, destruction or other casualty to the Property or any part thereof, Borrower shall comply in all respects with the terms, conditions and requirements set forth in Section 6.11 of the Loan Agreement, and, in the event of any casualty

or Condemnation, all Proceeds shall be paid, applied and disbursed in accordance with Section 6.11 of the Loan Agreement, and Borrower hereby authorizes and directs any affected insurance company to make payment of such Proceeds in accordance therewith.

Section 3.11 CONDEMNATION. With respect to any Condemnation, Borrower shall comply in all respects with the requirements set forth in Section 6.11 of the Loan Agreement. All Compensation shall be applied in the manner set forth in the Loan Agreement. In the event of a foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrower in and to the Compensation will vest in the purchaser at such foreclosure or in Governmental Lender or other transferee in the event of such other transfer of title.

Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND GOVERNMENTAL LENDER. The relationship between Borrower and Governmental Lender is solely that of debtor and creditor, and Governmental Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Tax Exempt Project Note, this Security Instrument or any of the other Loan Documents will be construed so as to deem the relationship between Borrower and Governmental Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON GOVERNMENTAL LENDER. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Governmental Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Governmental Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO GOVERNMENTAL LENDER OBLIGATIONS.

(a) Notwithstanding anything to the contrary contained in this Security Instrument, Governmental Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Governmental Lender pursuant to this Security Instrument, the Loan Agreement, the Tax Exempt Project Note or the other Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Governmental Lender will not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof will not constitute any warranty or affirmation with respect thereto by Governmental Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note, this Security Instrument and the other Loan Documents, Governmental Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Project

Loan Agreement and in Article 5 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Governmental Lender; that such reliance existed on the part of Governmental Lender prior to the date hereof; that the warranties and representations are a material inducement to Governmental Lender in making the Project Loan; and that Governmental Lender would not be willing to make the Project Loan and accept this Security Instrument in the absence of the warranties and representations set forth in the Project Loan Agreement and in Article 5 of the Loan Agreement.

Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Governmental Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Tax Exempt Project Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at Borrower's sole cost and expense, and without expense to Governmental Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Governmental Lender may, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Governmental Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Governmental Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable Laws and Requirements of Law. Borrower, on demand, will execute and deliver, and in the event it fails to so execute and deliver, hereby authorizes Governmental Lender to execute in the name of Borrower or file or record without the signature of Borrower to the extent Governmental Lender may lawfully do so, one or more financing statements (including initial financing statements and amendments thereto and continuation statements), to evidence more effectively the security interest of Governmental Lender in the Property. Borrower also ratifies its authorization for Governmental Lender to have filed or recorded any like initial financing statements, amendments thereto and continuation statements, if filed or recorded prior to the date of this Security Instrument. Borrower grants to

Governmental Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Governmental Lender at law and in equity, including such rights and remedies available to Governmental Lender pursuant to this Section. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Governmental Lender has lawfully done in the past or will lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Governmental Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any, in accordance with the applicable provisions of the Loan Agreement. If Governmental Lender is advised by counsel chosen by it that the payment of any such tax by Borrower would be unlawful or taxable to Governmental Lender or unenforceable or provide the basis for a defense of usury then Governmental Lender will have the option by written notice of not less than 120 days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction will otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction is required by law, Governmental Lender will have the option, by written notice of not less than 120 days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State will require revenue or other stamps to be affixed to the Tax Exempt Project Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 GOVERNMENTAL LENDER RELIANCE. Borrower acknowledges that Governmental Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Project Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment and performance of the Obligations. Borrower acknowledges that Governmental Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Obligations or the performance of the Obligations, Governmental Lender can recover the Obligations by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower will comply in all respects with the provisions of the Loan Agreement regarding (a) selling, transferring, leasing, conveying or encumbering the Land, the Equipment or the Improvements or the direct or indirect interests in Borrower, and (b) changing control of Borrower.

Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence of any Event of Default, unless such Event of Default is subsequently waived in writing by Governmental Lender (provided that Governmental Lender has no obligation whatsoever to grant any such waiver and any such waiver, if granted, will be considered a one-time waiver), Governmental Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) Exercise any and all rights and remedies specified in the Loan Agreement, including declaring that the Commitment is terminated and/or declaring that the entire unpaid principal balance of the Obligations are immediately due and payment, together with accrued and unpaid interest thereon;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Tax Exempt Project Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Borrower, any guarantor or any indemnitor with respect to the Project Loan or of any Person liable for the payment of the Obligations;

(h) the license granted to Borrower under Section 1.2 hereof will automatically be revoked and Governmental Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records

and accounts to Governmental Lender upon demand, and thereupon Governmental Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Governmental Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Governmental Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Governmental Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Governmental Lender deems appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Governmental Lender, its in-house and outside counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) require Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Governmental Lender at a convenient place acceptable to Governmental Lender. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least 5 days prior to such action, will constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Governmental Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole and absolute discretion:

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Tax Exempt Project Note;
- (iv) The unpaid principal balance of the Tax Exempt Project Note;

(v) All other sums payable pursuant to the Tax Exempt Project Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Governmental Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Governmental Lender may have under the other Loan Documents and/or applicable law; or

(l) apply the undisbursed balance of any Proceeds and/or Shortfall Funds, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Governmental Lender will deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument will continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Governmental Lender pursuant to the Loan Agreement, this Security Instrument or the other Loan Documents, may be applied by Governmental Lender to the payment of the Obligations in such priority and proportions as Governmental Lender in its discretion will deem proper, to the extent consistent with applicable Laws.

Section 7.3 ACTIONS AND PROCEEDINGS. Borrower will give Governmental Lender prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect the Property, the security hereof or the rights or powers of Governmental Lender. Governmental Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Governmental Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.4 RECOVERY OF SUMS REQUIRED TO BE PAID. Governmental Lender will have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations is due, and without prejudice to the right of Governmental Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 7.5 OTHER RIGHTS, ETC.

(a) The failure of Governmental Lender to insist upon strict performance of any term hereof will not be deemed to be a waiver of any term of this Security Instrument. Borrower will not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Governmental Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Project Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Tax Exempt Project Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Governmental Lender extending the time of payment or otherwise modifying or supplementing

the terms of the Tax Exempt Project Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Governmental Lender will have no liability whatsoever for decline in value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance in force is adequate as to the amount or nature of risks insured. Possession by Governmental Lender will not be deemed an election of judicial relief if any such possession is requested or obtained with respect to all or any portion of the Property or collateral not in Governmental Lender's possession.

(c) Governmental Lender may resort for the payment of the Obligations to any other security held by Governmental Lender in such order and manner as Governmental Lender, in its discretion, may elect. Governmental Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Governmental Lender thereafter to foreclose this Security Instrument. The rights of Governmental Lender under this Security Instrument will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of Governmental Lender will be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Governmental Lender will not be limited exclusively to the rights and remedies herein stated but will be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.6 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Governmental Lender may release any portion of the Property for such consideration as Governmental Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder are reduced by the actual monetary consideration, if any, received by Governmental Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Governmental Lender may require without being accountable for so doing to any other lienholder. This Security Instrument will continue as a lien on, and security interest in, the remaining portion of the Property.

Section 7.7 VIOLATION OF LAWS. If the Property is not in compliance in all material respects with any Requirements of Law, Governmental Lender may impose additional requirements upon Borrower in connection herewith including monetary reserves or financial equivalents.

Section 7.8 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Governmental Lender and its agents will have the right to enter and inspect the Property at all reasonable times.

Section 7.9 BANKRUPTCY.

(a) After the occurrence of an Event of Default, Governmental Lender will have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and

other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there is filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, determines to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower will give Governmental Lender not less than 10 days' prior notice of the date on which Borrower will apply to the bankruptcy court for authority to reject the Lease. Governmental Lender will have the right, but not the obligation, to serve upon Borrower within such 10 day period a notice stating that (i) Governmental Lender demands that Borrower assume and assign the Lease to Governmental Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Governmental Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Governmental Lender serves upon Borrower the notice described in the preceding sentence, Borrower will not seek to reject the Lease and will comply with the demand provided for in clause (i) of the preceding sentence within 30 days after the notice is given, subject to the performance by Governmental Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 7.10 ACCEPTANCE OF CURE. Governmental Lender may, in its discretion, but without any obligation whatsoever to do so, accept a cure of an Event of Default from time to time. Borrower will only be entitled to rely on such an acceptance if Governmental Lender expressly states, in writing, that it has accepted such a cure. If Governmental Lender accepts a cure of an Event of Default, and no other uncured Event of Default is then continuing, then Governmental Lender may agree, in its discretion, but without any obligation to do so, to treat any provision in this Security Instrument or in any other Loan Document as if no Event of Default had ever occurred.

Section 7.11 ACCEPTANCE OF PAYMENTS. Borrower agrees that if Borrower makes a tender of a payment but does not simultaneously tender payment of any late charge, Default Rate interest, LIBOR Breakage Costs, Swap Obligations or other amount then due and owing by Borrower under this Security Instrument or the other Loan Documents, and such payment is accepted by Governmental Lender, with or without protest, such acceptance will not constitute any waiver of Governmental Lender's rights to receive such amounts. Furthermore, if Governmental Lender accepts any payment from Borrower or any Guarantor after a Default or Event of Default, such acceptance will not constitute a waiver or satisfaction of any such Default or Event of Default. Any waiver or satisfaction of a Default or Event of Default must be evidenced by an express writing of Governmental Lender.

Article 8 - ENVIRONMENTAL HAZARDS

Section 8.1 ENVIRONMENTAL COVENANTS. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Indemnity and Borrower will comply with the aforesaid covenants regarding environmental matters.

Article 9 - INDEMNIFICATION

Section 9.1 INDEMNIFICATION. The provisions of Section 10.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 10 - CERTAIN WAIVERS

Section 10.1 WAIVER OF OFFSETS; DEFENSES; COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Governmental Lender to offset any obligations to make the payments required by the Loan Documents. No failure by Governmental Lender to perform any of its obligations hereunder will be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption Laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all other Persons to the extent permitted by applicable law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower will not be entitled to any notices of any nature whatsoever from Governmental Lender except with respect to matters for which this Security Instrument or any of the other Loan Documents specifically and expressly provides for the giving of notice by Governmental Lender to Borrower and except with respect to matters for which Governmental Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Governmental Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Governmental Lender to Borrower. All sums payable by Borrower pursuant to this Security Instrument must be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder will 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 Property or any part thereof; (b) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the 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 Governmental Lender, or any action taken with respect to this Security Instrument by any trustee or receiver of Governmental Lender, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Governmental Lender; (f) any default or failure on the part of Governmental Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower has notice or knowledge of any of the foregoing.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

Article 11 - NOTICES

Section 11.1 NOTICES. All notices or other written communications hereunder will be delivered in accordance with the notice provisions of the Loan Agreement.

Article 12 - APPLICABLE LAW

Section 12.1 ***GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION***. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MINNESOTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA, AND ANY LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO NATIONAL BANKS.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND GOVERNMENTAL LENDER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF MINNESOTA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS SECURITY INSTRUMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF MINNESOTA, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN WILL AFFECT THE RIGHT OF GOVERNMENTAL LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES

DESCRIBED IN THIS SECURITY INSTRUMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE WILL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN WILL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

Section 12.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof will be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term will not be affected thereby.

Article 13 - DEFINITIONS

Section 13.1 DEFINITIONS. All capitalized terms not defined herein will have the respective meanings set forth in the Loan Agreement. If a capitalized term is defined herein and the same capitalized term is defined in the Loan Agreement, then the capitalized term that is defined herein shall be utilized for the purposes of this Security Instrument, *provided* that the foregoing shall not impact provisions that are incorporated herein by reference. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" will mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the words "**Governmental Lender**" will mean "Governmental Lender and any subsequent holder of the Tax Exempt Project Note," the words "**Tax Exempt Project Note**" and "**Note**" will mean "the Tax Exempt Project Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" will include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" will include any and all in-house and outside attorneys', paralegals' and law clerks' fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Governmental Lender in protecting its interest in the Property, the Leases and the Rents, and enforcing its rights hereunder.

Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Governmental Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument will be binding upon and inure to the benefit of Borrower and Governmental Lender and their respective successors and assigns forever.

Section 14.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Tax Exempt Project Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Tax Exempt Project Note and this Security Instrument will be construed without such provision.

Section 14.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 SUBROGATION. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Governmental Lender will be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Governmental Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.6 ENTIRE AGREEMENT. The Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Governmental Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Governmental Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Governmental Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.7 LIMITATION ON GOVERNMENTAL LENDER'S RESPONSIBILITY. No provision of this Security Instrument will operate to place any obligation or liability for the control, care, management or repair of the Property upon Governmental Lender, nor will it operate to make Governmental Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained will be construed as constituting Governmental Lender a "mortgagee in possession."

Section 14.8 JOINT AND SEVERAL. If more than one Person has executed this Security Instrument as "Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder will be joint and several.

Section 14.9 GOVERNMENTAL LENDER'S DISCRETION. Whenever, pursuant to this Security Instrument or any of the other Loan Documents, Governmental Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable to Governmental Lender, or Governmental Lender exercises any right to grant or withhold consent, or Governmental Lender exercises its discretion in making any decision, the decision of Governmental Lender will, except as is otherwise specifically herein provided, be in the sole and absolute discretion of Governmental Lender and will be final and conclusive.

Section 14.10 NO MERGER. So long as the Obligations remain unpaid and undischarged and unless Governmental Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of estates (without implying Borrower's consent to such union) either in Borrower, Governmental Lender, any tenant or any third party by purchase or otherwise. In the event this Security Instrument is originally placed on a leasehold estate and Borrower later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

Article 15 - STATE-SPECIFIC PROVISIONS

Section 15.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 15 will control and be binding.

Section 15.2 REMEDIES OF GOVERNMENTAL LENDER; MORTGAGE FORECLOSURE. Borrower does hereby grant and confer upon Governmental Lender the fullest rights and remedies available for foreclosure of this Security Instrument by action or by advertisement pursuant to Minnesota Statutes Chapters 580, 581 and 582, as said statutes may be amended from time to time, and pursuant to other applicable Minnesota laws and statutes, as amended, governing and authorizing mortgage foreclosures by action and by advertisement including, but not limited to, a grant to Governmental Lender of the power of sale; and the power of sale granted Governmental Lender in this Security Instrument shall include, without limitation, the power of sale required to permit, at Governmental Lender's option, lawful foreclosure of this Security Instrument by advertisement in accordance with the statutes then made and provided. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is waived, Governmental Lender may, at its option, exercise any or all of the following rights and remedies:

(a) Foreclose this Security Instrument by judicial action or advertisement, and Borrower hereby authorizes Governmental Lender to do so, power being herein expressly granted to sell any or all of the Property at public auction and to convey the same to the purchaser, in fee simple, pursuant to the statutes of the State of Minnesota; or

(b) proceed under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Property which are fixtures or personal property.

Section 15.3 ASSIGNMENT OF RENTS AND LEASES; RECEIVER. This Security Instrument constitutes an assignment of leases and rents within the meaning of Minnesota Statutes §§ 559.17 and 576.25, and is intended to comply fully with the provisions thereof, and to afford Governmental Lender, the fullest rights and remedies of a secured lender under those statutes. The exercise by Governmental Lender of the statutory remedies referenced in this Section 15.3 shall not constitute Governmental Lender a “lender-in-possession” under Minnesota law. Notwithstanding anything apparently to the contrary in the Loan Documents, all Rents collected by Governmental Lender or any receiver of the Property subsequent to the occurrence of an Event of Default will be held and applied in the following order:

(a) First as provided in Minnesota Statutes § 576.25, Subd. 5.

(b) Thereafter, prior to any non-judicial foreclosure sale of the Property, or prior to the entry of a decree of foreclosure in an action to foreclose this Security Instrument, to Governmental Lender for the payment of the Debt, but no such payment made after the acceleration of all or any of the Debt will affect such acceleration unless such payment is sufficient to reinstate this Security Instrument under Minnesota Statutes § 580.30.

(c) Thereafter as follows:

(i) If the purchaser at the foreclosure sale is not Governmental Lender, first to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt, second to the purchaser as a credit to the redemption price, but if the Property is not redeemed, then to the purchaser of the Property.

(ii) If the purchaser at the foreclosure sale is Governmental Lender, to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt and the balance to be retained by Governmental Lender as a credit to the redemption price, but if the Property is not redeemed, then to Governmental Lender, whether or not such deficiency exists.

(d) The rights and powers of Governmental Lender and receivers under this Security Instrument and the application of Rents under this Section 15.3 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

(e) If Governmental Lender makes any advances to a receiver, or otherwise for the benefit of the Property, such advances shall become Debt secured by this Security Instrument.

Section 15.4 INTENTIONALLY OMITTED.

Section 15.5 NON-AGRICULTURAL USE. Borrower represents and warrants that as of the date of this Security Instrument the Property is not in agricultural use as defined in Minnesota Statutes § 40A.02, Subd. 3, and is not used for agricultural purposes.

Section 15.6 MAXIMUM INDEBTEDNESS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECURITY INSTRUMENT, THE MAXIMUM PRINCIPAL AMOUNT OF INDEBTEDNESS SECURED BY THIS SECURITY INSTRUMENT, EXCLUDING ADVANCES MADE BY THE MORTGAGEE IN PROTECTION OF THE PROPERTY OR THIS MORTGAGE, IS \$[_____].

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first written above.

BORROWER:

MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP

By: MINNETONKA LEASED HOUSING ASSOCIATES III, LLC, its general partner

By: _____
Name: _____
Title: _____

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by _____, the _____ of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company, as General Partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of said company and said partnership.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

[to be inserted]