

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MICHAEL B. BROWN  
RECORDER

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MORTGAGE,  
ASSIGNMENT OF RENTS  
SECURITY AGREEMENT AND FIXTURE FILING

INDIANA

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Instrument”) is made to be effective as of the 20 day of March, 2019, between **BPDM PROPERTIES 2018-1 LLC**, a Delaware limited liability company, whose address is 11246 Alumni Way, Jacksonville, FL 32246, as mortgagor (“Borrower”), and NEXBANK SSB, whose address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201, as mortgagee (“Lender”).

**Document is  
NOT OFFICIAL!**

Borrower is indebted to Lender in the maximum amount of \$50,000,000.00, or so much thereof as may be advanced pursuant to the Loan Agreement defined herein and as evidenced by Borrower’s Note payable to Lender, dated the date of this Instrument, and maturing on March 20, 2022 (as such date may be extended, subject to two, 1-year extension options pursuant to the terms of the Loan Agreement, the “Maturity Date”).

AGREEMENT

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in LAKE County, State of Indiana and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property (“Schedule of Title Exceptions”).

**Covenants.** In consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration the receipt of which is hereby acknowledged, and the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

- 1. Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), will have the following meanings and any capitalized term not specifically defined in this Instrument will have the meaning ascribed to that term in the Loan Agreement:

Indiana  
Mortgage, Assignment of Rents  
Security Agreement and Fixture Filing

**“Attorneys’ Fees and Costs”** means, without regard to statutory interpretation, actual and reasonable (a) fees and out-of-pocket costs of Lender’s attorneys, as applicable; and (b) costs and fees of expert witnesses, including appraisers.

**“Borrower”** means all Persons identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

**“Business Day”** means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

**“Event of Default”** means the occurrence of any event described in Section 8.

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

**“Governmental Authority”** means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Borrower.

**“HOA”** means a homeowners or condominium association, board, corporation or similar entity with authority to create a Lien on a Mortgaged Property as a result of the non-payment of HOA Fees that are payable with respect to such Mortgaged Property.

**“HOA Fees”** means all homeowner’s and condominium dues, fees, assessments and impositions, and any other charges levied or assessed or imposed against a Mortgaged Property, or any part thereof, by an HOA.

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

**“Indebtedness”** means (i) the principal of, (ii) interest at the fixed or variable rate set forth in the Note on, and (iii) all other amounts due at any time under, the Note, the Loan Agreement, this Instrument or any other Loan Document, including the Release Amount, prepayment charges, late charges, default interest and advances as provided in Section 7 to protect the security of this Instrument.

**“Land”** means the land described in Exhibit A.

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

**“Lender”** means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

**“Loan Agreement”** means the Loan Agreement executed by Borrower and Lender and dated as of the date of this Instrument, as such agreement may be amended from time to time.

**“Loan Documents”** means the Note, this Instrument, the Loan Agreement, all guaranties, all indemnity agreements, all collateral agreements, UCC filings, and any other documents now or in the future executed by Borrower, any Guarantor or any other Person in connection with the Loan evidenced by the Note, as such documents may be amended from time to time.

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

- (a) The Land.
- (b) The Improvements.
- (c) The Fixtures.
- (d) The Personalty.
- (e) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

- (f) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the Insurance pursuant to Lender's requirement.
- (g) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from Condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.
- (h) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.
- (i) All proceeds from the conversion, voluntary or involuntary, of any of the items described in subsections (a) through (h) inclusive into cash or liquidated claims, and the right to collect such proceeds.
- (j) All Rents and Leases.
- (k) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument.
- (l) All refunds or rebates of Taxes by a Governmental Authority (other than refunds applicable to periods before the real property tax year in which this Instrument is dated) or Insurance premiums by an insurance company.
- (m) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.
- (n) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.


**"Note"** means the Note (including any Amended and Restated Note, Consolidated, Amended and Restated Note, or Extended and Restated Note) executed by Borrower in favor of Lender and dated as of the date of this Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended, modified and/or restated from time to time.



“Notice” or “Notices” means all notices, demands, Lender approvals and other communication required under the Loan Documents, provided in accordance with the requirements of Section 11.11 of the Loan Agreement.

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

“Personalty” means all of the following:

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- (a) Accounts (including deposit accounts) of Borrower related to the Mortgaged Property.
  - (b) Equipment and Inventory owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).
  - (c) Other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).
  - (d) Any operating agreements relating to the Land or the Improvements.
  - (e) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.
  - (f) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.
  - (g) Any rights of Borrower in or under letters of credit.

**“Property Jurisdiction”** means the jurisdiction in which the Land is located.

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

**“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the Improvements, including any payments made in lieu of Taxes.

**“UCC”** means the Uniform Commercial Code as promulgated in the applicable jurisdiction.

**2. Uniform Commercial Code Security Agreement.**

(a) This Instrument is also a security agreement under the UCC for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the UCC, for the purpose of securing Borrower’s obligations under this Instrument and to further secure Borrower’s obligations under the Note, this Instrument and other Loan Documents, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and by this Instrument, Borrower grants to Lender a security interest under the UCC in the UCC Collateral. To the extent necessary under applicable law, Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest.

(b) This Instrument, upon being filed for record in the real estate records of the city or county wherein such Fixtures are situated, also constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

**3. Assignment of Rents; Appointment of Receiver; Lender in Possession.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents.

- (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower.
- (ii) Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
- (iii) For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents will not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Instrument.

- (b)
  - (i) Until the occurrence and continuance of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums, tenant improvements and other capital expenditures.
  - (ii) So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.
  - (iii) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. From and after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower will pay to Lender upon demand all Rents to which Lender is entitled.



- (iv) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower will not interfere with and will cooperate with Lender's collection of such Rents.
- (c) If an Event of Default has occurred and is continuing, then Lender will have each of the following rights and may take any of the following actions:
- (i) Lender may, subject to the provisions of the Loan Agreement, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its reasonable discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of Repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable.
- (ii) Alternatively, if an Event of Default has occurred and is continuing, Lender may, subject to the provisions of the Loan Agreement, apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law.
- (iii) Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

- (d) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes will become an additional part of the Indebtedness as provided in Section 7.
- (e) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

**4. Assignment of Leases; Leases Affecting the Mortgaged Property.**

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
  - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
  - (ii) For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases will not be deemed to be a part of the Mortgaged Property.
  - (iii) However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on the Leases in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower will have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, and during the continuance of such Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases will automatically terminate. Borrower will comply with and observe Borrower's obligations under all Leases, including

Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.


- (c) (i) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements.
- (ii) The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.
- (iii) Except to the extent of Lender's negligence or willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property.
- (iv) Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will not be obligated for any of the following:
- (A) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease).
- (B) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property.
- (C) Lender will not be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Borrower, prior to such actual entry and taking of possession.
- (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately will have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

5. [Reserved].

6. [Reserved].

7. **Protection of Lender's Security; Instrument Secures Future Advances.**

(a) If, during the continuance of any Event of Default, Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including all of the following:

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- (i) Lender may pay Attorneys' Fees and Costs.
  - (ii) Lender may pay fees and out-of-pocket expenses of accountants, inspectors and consultants.
  - (iii) Lender may enter upon the Mortgaged Property to make Repairs or secure the Mortgaged Property, subject to the rights of tenants and upon reasonable prior notice to Borrower.
  - (iv) Lender may procure the Insurance required by the Loan Agreement.
  - (v) Lender may pay any amounts which Borrower has failed to pay under the Loan Agreement.
  - (vi) Lender may perform any of Borrower's obligations under the Loan Agreement.
  - (vii) Lender may make advances to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a Prior Lien.

(b) Any amounts disbursed by Lender under this Section 7, or under any other provision of this Instrument that treats such disbursement as being made under this Section 7, will be secured by this Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the Default Rate.



- (c) Nothing in this Section 7 will require Lender to incur any expense or take any action.
8. **Events of Default.** An Event of Default under the Loan Agreement will constitute an Event of Default under this Instrument.
9. **Remedies Cumulative.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument, the Loan Agreement or any other Loan Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.
10. **Waiver of Statute of Limitations, Offsets and Counterclaims.** Borrower waives the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce any Loan Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.
11. **Waiver of Marshalling.**
- (a) Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender will have the right to determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided in this Instrument, the Note, the Loan Agreement or any other Loan Document or under applicable law. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.
- (b) Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.
12. **Reserved.**
13. **Governing Law; Consent to Jurisdiction and Venue.** This Instrument will be



governed by the laws of the Property Jurisdiction. Borrower agrees that any controversy arising under or in relation to this Instrument may be litigated in the Property Jurisdiction or the State of Texas and the applicable laws of the United States of America. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to this Instrument. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 13 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction. If Lender brings an action in the state of Indiana to enforce this Mortgage and during pendency of such action brings a separate action in the State of Indiana under this Mortgage, such actions shall be consolidated if and to the extent required pursuant to Ind. § Code 32-30-10-10; provided further that in the event it is necessary to enforce this Mortgage at the same time Lender is enforcing any other Mortgage of Borrower in another jurisdiction that secures the same indebtedness secured hereby, then to the fullest extent permitted by applicable law, the Borrower waives the provisions of Indiana § Code 32-30-10-10(1)(A).

- 14. Notice.** All Notices, demands and other communications under or concerning this Instrument will be governed by the terms set forth in the Loan Agreement.
- 15. Successors and Assigns Bound.** This Instrument will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Instrument will inure to Lender's successors and assigns.
- 16. Joint and Several Liability.** If more than one Person signs this Instrument as Borrower, the obligations of such Persons will be joint and several.
- 17. Relationship of Parties; No Third Party Beneficiary.**
- (a) The relationship between Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship between Lender and Borrower. Nothing contained in this Instrument will constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.
  - (b) No creditor of any party to this Instrument and no other Person will be a third party beneficiary of this Instrument or any other Loan Document.
- 18. Severability; Amendments; Integration.**
- (a) The invalidity or unenforceability of any provision of this Instrument will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement

among the parties as to the rights granted and the obligations assumed in this Instrument.

- (b) This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.
- (c) This Instrument and the other Loan Documents embody the entire agreement and understanding between Borrower and Lender and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof.

**19. Construction.**

- (a) The captions and headings of the Sections of this Instrument are for convenience only and will be disregarded in construing this Instrument. Any reference in this Instrument to a "Section" will, unless otherwise explicitly provided, be construed as referring to a Section of this Instrument.
- (b) Any reference in this Instrument to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
- (c) Use of the singular in this Instrument includes the plural and use of the plural includes the singular. The use of one gender includes the other gender, as the context may require.
- (d) As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation."
- (e) Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document in this Instrument will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument), and (ii) any reference in this Instrument to any Person will be construed to include such Person's successors and assigns.

- 20. Subrogation.** If, and to the extent that, the proceeds of the Loan evidenced by the Note, or subsequent advances under Section 7, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances will be deemed to have been advanced by Lender at Borrower's request, and Lender will automatically, and without further action on its part, be subrogated to the rights, including Lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

**21-30. Reserved.**

**STATE SPECIFIC PROVISIONS**

31. **Acceleration; Remedies.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may institute an action of mortgage foreclosure pursuant to applicable law and proceed to final judgment and execution thereon for the amount of the Indebtedness (as of the date of such judgment) and may invoke any other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Upon an Event of Default Lender may request the appointment of a receiver and Borrower consents to same. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, costs of documentary evidence, abstracts and title reports and all other expenses described in the Section of the Note titled "Costs and Expenses". If Lender is the purchaser at the foreclosure sale of the Mortgaged Property, the foreclosure sale price (Lender's final bid) will be applied against the Indebtedness.
32. **Preparation And Filing Of Financing Statements.** Borrower irrevocably authorizes Lender at any time and from time to time to prepare and file, on Borrower's behalf, all financing statements, amendments thereto and continuation statements under the Uniform Commercial Code necessary or appropriate to establish or maintain the validity, perfection and priority of Lender's security interest in UCC Collateral. Such financing statements, amendments and continuation statements may be unsigned or, if required to be signed by the applicable office with which Lender intends to file such financing statement, signed only by a representative of Lender.
33. **Release.** Upon payment of the Indebtedness, Lender will release this Instrument. Borrower will pay Lender's reasonable costs incurred in releasing this Instrument.
34. **Waiver Of Valuation And Appraisalment.** Borrower waives all right of valuation and appraisalment.
35. **Intentionally Deleted.**
36. **Modifications To Sections 3 and 4.** Sections 3(e) and 4(c) of this Instrument are modified to read as follows:

**Section 3(e)** If Lender enters the Mortgaged Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

**Section 4(c)**

- (i) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 will not be

construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements.

- (ii) The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.
- (iii) Except to the extent of Lender's willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person or Persons, firm or corporation in or about the Mortgaged Property.
- (iv) Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will not be obligated for any of the following:
  - (A) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease).
  - (B) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property.
  - (C) Lender will not be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Borrower, prior to such actual entry and taking of possession.

**37. WAIVER OF TRIAL BY JURY.**

- (a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) **BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**





IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

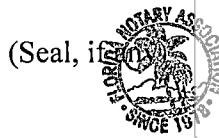
**BPDM PROPERTIES 2018-1 LLC,**  
a Delaware limited liability company

By: Michael S. Gough  
Michael S. Gough, Manager

State of Florida  
County of Duval

I, a Notary Public, in and for said County in said State, hereby certify that Michael S. Gough whose name as Manager of BPDM PROPERTIES 2018-1 LLC, a limited liability company, is signed to the foregoing instrument or conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 20<sup>th</sup> day of March, 2019.



Tamar J. Jackson  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF981853  
Expires 4/13/2020

Tamar J. Jackson  
(Signature of notarial officer)

Title (and Rank) ofc notary

My commission expires: 4/13/2020



This instrument was prepared by, and after recording return to:

DAVID L. THURSTON, attorney at law,  
CROWN TITLE CORPORATION  
1 SANFORD AVENUE  
CATONSVILLE, MD 21228

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

David L. Thurston (Attorney Name)

DAVID L. THURSTON, ATTORNEY

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**



EXHIBIT "A"

PARCEL ONE:

Lot 17, and the West 10 feet of Lot 18, in Block 1, as marked and laid down on the recorded Plat of Briargate, in the City of Hammond, Lake County, Indiana, as the same appears of record in Plat Book 19, page 18, in the Recorder's Office of Lake County, Indiana.

BEING all and the same lot of ground which by Warranty Deed dated January 29, 2018, and recorded among the Land Records of Lake County, Indiana as Instrument number 2018009525, was granted and conveyed by DayMark Master Trust unto BPDM Properties 2018-1, LLC, a Delaware limited liability company.

The improvements thereon being known as 1631 173rd Place, Hammond, Indiana 46324 (45-07-17-101-017.000-023)

PARCEL TWO:

Lot 4, Parrish Avenue, Addition to the City of Hammond, as shown in Plat Book 23, page 70, in Lake County, Indiana.

BEING all and the same lot of ground which by Warranty Deed dated April 11, 2018, and recorded among the Land Records of Lake County, Indiana as Instrument number 2018027642, was granted and conveyed by DayMark Master Trust unto BPDM Properties 2018-2 LLC, a Delaware limited liability company.

The improvements thereon being known as 7214 Parrish Avenue, Hammond, Indiana 46323 (45-07-09-483-009.000-023)

