

ASSIGNMENT OF RENTS AND LEASES

From

MVPC PROPERTIES, LLC,
an Indiana limited liability company, as assignor
(Borrower)

to

KEVAIL CAPITAL, LLC,
an Indiana limited liability company, as assignee
(Lender)

Dated: As of June __, 2024
Location: 210 South Indiana Avenue, Crown Point IN 46307
Tax Parcel No.: 45-16-03-284-011.000-042

PREPARED BY AND
UPON RECORDATION RETURN TO:

KEVAIL CAPITAL, LLC
812 White Hawk Drive
Crown Point, Indiana 46307
Attention: Michael T. O'Donnell

CHICAGO TITLE INSURANCE COMPANY

NOT AN OFFICIAL DOCUMENT

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made as of this 17 day of June, 2024 by **MVPC PROPERTIES, LLC**, an Indiana limited liability company with an address of 4638 Torrence Avenue, Hammond, IN 46327 ("Borrower"), to **KEVAIL CAPITAL, LLC**, an Indiana limited liability company, with a principal office address of 812 White Hawk Drive, Crown Point, Indiana 46307 (together with its successors and assigns, "Lender").

WITNESSETH:

A. This Assignment is given in connection with a loan in the original principal sum of **TWO HUNDRED THIRTY-EIGHT THOUSAND and 00/100 DOLLARS (\$238,000.00)** (the "Loan"), or so much thereof as shall be advanced from time to time, made by Lender to Borrower and evidenced by that certain promissory note dated the date hereof made by Borrower to the order of Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Note").

B. The Note is secured by, among other things, that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of the date hereof made by Borrower for the benefit of Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Security Instrument"), which Security Instrument encumbers, as a first mortgage lien thereon, the land more particularly described on Exhibit A annexed hereto and made a part hereof and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, equipment and improvements now or hereafter located thereon (collectively, this "Property"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Security Instrument.

C. Borrower has agreed to execute and deliver this Assignment to further secure the payment and performance of all of the obligations under the Note, the Security Instrument and the other Loan Documents (collectively, the "Obligations").

NOW, THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees as follows:

ARTICLE 1 ASSIGNMENT

Section 1.1 Property Assigned. Borrower hereby presently and unconditionally grants, bargains, sells, assigns and conveys to Lender the following property, rights, interests and estates, now owned or hereafter acquired by Borrower:

(a) Leases. All existing and future Leases (including the right to enforce such Leases at law, in equity or by any other means) affecting the use, enjoyment, or occupancy of all or any part of the Property and the right, title and interest of Borrower, its successors and assigns, therein and thereunder; this Assignment of existing and future Leases being immediately effective without any further or supplemental assignment documents. The term "Leases" shall include any and all agreements (including rental agreements), whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made 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"), together with any amendment, modification, extension, renewal or replacement of the same.

NOT AN OFFICIAL DOCUMENT

(b) Rents. All Rents, which term shall include all Rents paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code.

(c) Security Deposits. Any and all security deposits, in whatever form, paid or given by or on behalf of any Lessee to Borrower (the "Security Deposits").

(d) Bankruptcy Claims. All of Borrower's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a Tenant of any Lease under the Bankruptcy Code.

(e) Lease Guaranties. All of Borrower's right, title and interest in, and claims under, any and all lease guaranties, letters of credit and any other credit support (individually, a "Lease Guaranty", and collectively, the "Lease Guaranties") given by any guarantor in connection with any of the Leases or leasing commissions (individually, a "Lease Guarantor", and collectively, the "Lease Guarantors") to Borrower.

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Security Deposits, the Lease Guaranties and/or the Bankruptcy Claims.

(g) Other. All rights, powers, privileges, options and other benefits of Borrower as the landlord under any of the Leases and Security Deposits and the beneficiary under any of the Lease Guaranties, including, without limitation, the immediate and continuing right to make claims for, and to receive, collect and acknowledge receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the obligations), and to do all other things which Borrower or any landlord is or may become entitled to do under any of the Leases, the Security Deposits or Lease Guaranties.

(h) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) Power Of Attorney. Upon the occurrence of an Event of Default, Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment, and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) Other Rights And Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

ARTICLE 2 TERMS OF ASSIGNMENT

Section 2.1 Present Assignment. It is intended by Borrower that this Assignment constitute a present, unconditional and immediately effective assignment of a security interest in Borrower's interest in the Leases, the Rents, the Security Deposits, the Lease Guaranties and the Bankruptcy Claims, and not an assignment for additional security for the repayment of the Obligations only. Nevertheless, subject to the terms of this Section 2.1 and the terms of the Security Instrument, Borrower may enforce the terms of the Leases and collect, receive, use and enjoy the Rents and the Security Deposits, as well as any sums due under the Lease Guaranties, and may otherwise have and possess all rights and obligations with respect to the Leases. Borrower shall hold the Rents and the Security Deposits, as well as all sums received pursuant to any Lease Guaranty, or a portion thereof sufficient to discharge all current sums due on the Obligations, in trust for the benefit of Lender for use in the payment of such sums. Without in any way limiting the foregoing present, unconditional assignment in favor of Lender or any other rights and remedies of Lender under the Loan Documents, Borrower hereby covenants and agrees that Borrower shall hold any

NOT AN OFFICIAL DOCUMENT

early termination fee or payment or other termination fee or payment paid by any tenant under any Lease in trust for the benefit of Lender and that any use of such termination fee or payment shall be subject in all respects to Lender's prior written consent in Lender's sole discretion (which consent may include, without limitation, a requirement by Lender that such termination fee or payment be placed in reserve with Lender to be disbursed by Lender for tenant improvement and leasing commission costs with respect to the Property and/or for payment of the Obligations or otherwise in connection with the Loan evidenced by the Note and/or the Property, as so determined by Lender).

Section 2.2 Notice to Tenants. Borrower hereby authorizes and directs the Tenants named in the Leases, any other future Tenants or occupants of the Property and all Lease Guarantors, to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default exists, and to continue to do so until otherwise notified by Lender.

Section 2.3 Incorporation by Reference. All representations, warranties, covenants, conditions and agreements contained in the Security Instrument and the other Loan Documents, as the same may be modified, renewed, substituted or extended from time to time, are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 REMEDIES

Section 3.1 Remedies of Lender. Upon the occurrence and during the continuance of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and all sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, subject to the terms contained in the other Loan Documents, Lender may 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 indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Obligations or any part thereof. In addition, subject to applicable law, Lender may, at its option, without waiving any Event of Default, without regard to the adequacy of the security for the Obligations, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and their agents and servants from the Property, without liability for trespass, damages or otherwise, and exclude Borrower and their agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto, and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem reasonably proper, and, either with or without taking possession of the Property, in its own name, demand, sue for or otherwise collect and receive all Rents and all sums due under all Lease Guaranties, including, without limitation, those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as Lender may deem reasonably proper, and may apply the Rents and the sums received pursuant to any Lease Guaranties to the payment and performance of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem reasonably necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Obligations, together with all costs and reasonable attorneys' fees and costs. In addition, upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may (i) complete any construction on the Property in such manner and form as Lender reasonably deems advisable, (ii) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict Tenants, and demand, sue for, collect and receive all Rents from

NOT AN OFFICIAL DOCUMENT

the Property and all sums due under any Lease Guaranties, and/or (iii) either (A) require Borrower to pay monthly in advance to Lender or to any receiver appointed to collect the Rents the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in the possession of Borrower or any of its affiliates, or (B) require Borrower and their affiliates to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower and their affiliates may be evicted by summary proceedings or otherwise. Neither this Assignment nor the receipt of Rents by Lender (except to the extent, if any, that the Rents are actually applied to the Obligations by Lender upon and after such receipt) shall effect a pro tanto payment of the Obligations. No credit shall be given by Lender for any Rents until the money collected is actually received by Lender at the address provided in the opening paragraph of this Assignment, or at such other place as the Lender shall designate in writing, and no such credit shall be given for any Rents after foreclosure or other transfer of the Property (or part thereof from which Rents are derived pursuant to this Assignment) to Lender or any other third party.

Section 3.2 Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument or the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Obligations and to enforce any other security thereof held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the Obligations of Borrower under this Assignment, the Security Instrument, the Note or the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect the same, or any portion thereof, or to enforce and realize upon the Lien and security interest created by this Assignment, the Note, the Security Instrument or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of either Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 Other Security. Lender may (a) take or release other security for the payment and performance of the Obligations, (b) release any party primarily or secondarily liable therefor, and/or (c) apply any other security held by it to the payment and performance of the Obligations, including, without limitation, the reduction or satisfaction thereof, in each instance, without prejudice to any of its rights under this Assignment.

Section 3.4 Non-Waiver. The exercise by Lender of any option granted to Lender in Section 3.1 of this Assignment and the collection of the Rents and the sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any Default or Event of Default by Borrower under the Note, the Security Instrument, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of its obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Note, the Security Instrument or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the other Loan Documents, unless expressly provided in such agreement or stipulation. Lender may resort for the payment and performance of the Obligations to any other security held by Lender in such order and manner as Lender, in its sole discretion, may elect. Lender may take any action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

NOT AN OFFICIAL DOCUMENT

Section 3.4 Bankruptcy.

Section 3.4.1 Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of one or both Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, 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 Tenant under such Lease under the Bankruptcy Code.

Section 3.4.2 If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as landlord under any Lease (other than a residential Lease), shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior written notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject such Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after Lender's notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4 **NO LIABILITY, FURTHER ASSURANCES**

Section 4.1 No Liability of Lender This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after the occurrence of an Event of Default or from any other act or omission of Lender in managing the Property after the occurrence of an Event of Default unless and to the extent such loss occurs solely as a result of Lender's gross negligence or willful misconduct. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment (unless Lender takes possession of the Property in accordance with the terms of this Assignment). This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender (unless Lender exercised its remedies hereunder), nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any Regulated Substances, 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, unless and to the extent caused solely by Lender's gross negligence or willful misconduct.

Section 4.2 **BORROWER'S INDEMNITIES** **BORROWER SHALL INDEMNIFY LENDER FOR, AND HOLD LENDER HARMLESS FROM, (A) ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED UNDER THE LEASES, ANY LEASE GUARANTIES OR UNDER OR BY REASON OF THIS ASSIGNMENT, AND (B) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER, INCLUDING THE DEFENSE OF ANY SUCH CLAIMS OR DEMANDS WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS AND UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN THE LEASES OR ANY LEASE GUARANTIES, UNLESS AND TO THE EXTENT SUCH LIABILITY, LOSS OR DAMAGE OCCURS SOLELY AS A RESULT OF LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SHOULD LENDER INCUR ANY SUCH LIABILITY, THE AMOUNT THEREOF, INCLUDING COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES AND COSTS, SHALL BE SECURED BY THIS ASSIGNMENT, THE SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND BORROWER SHALL REIMBURSE LENDER THEREFOR IMMEDIATELY**

NOT AN OFFICIAL DOCUMENT

UPON DEMAND AND UPON THE FAILURE OF BORROWER TO DO SO, LENDER MAY, AT ITS OPTION, DECLARE THE OBLIGATIONS TO BE IMMEDIATELY DUE AND PAYABLE.

Section 4.3 No Mortgagee In Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted to Lender, except as expressly provided herein, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.4 Further Assurances. Borrower will, at its sole cost and expense, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall reasonably require, from time to time, for the better assuring, conveying, assigning, transferring and confirming unto Lender the Property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver, and hereby authorizes Lender to execute, in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 5 MISCELLANEOUS PROVISIONS

Section 5.1 Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

Section 5.2 No Oral Change. This Assignment 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 Lender, but only by an agreement in writing signed by the party or parties against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in the singular or plural form and the word "Borrower" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Lender in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

Section 5.4 Inapplicable Provisions. If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Assignment, such provision shall be fully severable and this Assignment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Assignment, and the remaining provisions of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Assignment, unless such continued effectiveness of this Assignment, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

NOT AN OFFICIAL DOCUMENT

Section 5.5 Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

Section 5.6 Termination of Assignment. This Assignment shall be in full force and effect continuously from the date hereof until payment of the Obligations in full. Upon such payment of the Obligations in full, this Assignment shall terminate and be null and void and of no effect whatsoever.

Section 5.7 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 11.04 of the Security Instrument.

Section 5.8 Waiver of Trial by Jury. BORROWER AND LENDER BY ACCEPTANCE OF THIS ASSIGNMENT EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THIS ASSIGNMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER AND IS INTENDED TO ENCOMPASS EACH INDIVIDUAL INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 5.9 Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns. Lender shall have the right to assign or transfer its rights under this Assignment in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Assignment. Borrower shall not have the right to assign or transfer its rights or obligations under this Assignment without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

Section 5.10 Headings, Etc. The headings and captions of the various paragraphs of this Assignment 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 5.11 Recitals. The recitals hereof are a part hereof, form a basis for this Assignment and shall be considered *prima facie* evidence of the facts and documents referred to therein.

Section 5.12 State Specific Provisions. Notwithstanding anything to the contrary contained in this Assignment, in the event of any conflict or inconsistency between the provisions of this Section 5.12 and the other provisions of this Assignment, the provisions of this Section 5.12 will govern.

(a) In the event a court of competent jurisdiction construes this Assignment to be collateral that secures the indebtedness evidenced by the Note rather than an absolute assignment, this Assignment shall constitute an assignment of rents as set forth in Ind. Code 32-21-4-2 and thereby creates a security interest in the Rents that will be perfected upon the recording hereof.

(b) To the extent necessary to interpret this Assignment, the provisions of the Loan Documents are hereby incorporated by reference into this Assignment with the same effect as if set forth herein. In the event that any such incorporated provisions of the Loan Documents are inconsistent with the provisions hereof, such provisions shall be construed, to the extent possible and to the extent permitted by applicable law, to be in addition to, and not in lieu of, the provisions of this Assignment and if not possible or if not permitted by applicable law, then if any such

NOT AN OFFICIAL DOCUMENT

inconsistency exists between the provisions of the Loan Documents and the provisions of this Assignment with respect to the Leases or Rents, the provisions of this Assignment shall control.

(c) Upon, or at any time after, instituting any judicial foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, Lender may make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Assignor and without regard to the adequacy of the Property for the repayment of the indebtedness evidenced by the Note or the solvency of Borrower or any person or persons liable for the payment of indebtedness, and Borrower does hereby irrevocably consent to such appointment. Such receiver shall have all of the usual powers and duties of receivers pursuant to applicable law, as amended or modified from time to time.

(d) The lien and security interest of this Assignment shall be released from the Property upon payment in full of the indebtedness evidenced by the Note, or otherwise in accordance with the provisions of the Security Instrument. Lender, upon the written request and at the expense of Borrower, will execute and deliver such proper instrument of release and satisfaction as may reasonably be requested to evidence such release, and any such instrument, when duly executed by Lender and duly recorded by Borrower in the place where this Assignment is recorded, shall conclusively evidence the release of this Assignment.

Section 5.13 Counterparts. This Agreement may be executed in any number of counterparts, each shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

NOT AN OFFICIAL DOCUMENT

EXHIBIT A

DESCRIPTION OF PROPERTY

For APN/Parcel ID(s): 45-16-08-284-011.000-042

THE SOUTH 85 FEET OF LOTS 45 TO 48, BOTH INCLUSIVE IN BARTHOLDY'S ADDITION, TO THE OWN (NOW CITY) OF CROWN POINT, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 11, PAGE 2, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

Property of Lake County Recorder