EXHIBIT H
This instrument was prepared by and after recording should be returned to:

Jessica L. Standera, Esq.
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, North Carolina 28202

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND Fixture FILING

BY

BORDEN DAIRY COMPANY OF ALABAMA, LLC,
as Mortgagor,

TO

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Mortgagee,

Relating to Premises in:
Houston County, Alabama

DATED: As of August 7, 2018

COLLATERAL IS OR INCLUDES FIXTURES

THIS INSTRUMENT IS ALSO TO BE FILED AS A FIXTURE FILING IN THE INDEX OF FINANCING STATEMENTS AND SHOULD BE INDEXED UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA

THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY FOR MORTGAGE TAX PURPOSES IS $2,760,000.00.
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING

This Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this “Mortgage”) is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF ALABAMA, LLC f/k/a Dairy Fresh of Alabama, LLC, a Delaware limited liability company (“Mortgagor”), whose tax mailing address is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below) and in such capacity, together with its successors and assigns in such capacity, “Mortgagor”), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) Credit Agreement: That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the “Borrowers”), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the “Lenders”) and Mortgagor, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) Mortgaged Property: All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is
presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Personalty”), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “Plans”), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “Leases”), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the “Rents”), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Property Agreements”), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagor), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located; provided, however, that notwithstanding any provision of this Mortgage to the contrary, the Mortgaged Property shall not include any movable personal property or movable contents owned by the
Mortgagor and located within the Improvements which would be insurable as “contents” pursuant to Section III. Property Covered: Coverage B – Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) “UCC”: The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations (subject to Section 7.18 hereof), Mortgagor grants, bargains, sells, assigns, releases, aliens, transfers, warrants, demises, conveys, deeds, pledges, mortgages, hypothecates, sets over and confirms UNTO Mortgagee and its successors and assigns (for the benefit of the Secured Parties) forever, subject, however, to the Permitted Liens, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION TO HAVE AND TO HOLD, the Mortgaged Property, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee (for the benefit of the Secured Parties), subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagee, at Mortgagor’s expense, shall cancel and surrender this Mortgage.

Section 2.3 Revolving Credit. This Mortgage secures revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations secured hereby is ever reduced to a zero ($0.00) balance, the lien, security interest and security title of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Mortgagee and/or the Lenders to make further advances have been terminated and this Mortgage has been cancelled of record.
ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee and the other Secured Parties as follows:

Section 3.1. Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee’s security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee).

Section 3.3. Payment and Performance. Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. Replacement of Fixtures and Personalty. Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personalty, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.
Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6. **Inspection.** Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 **Condemnation.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.
ARTICLE 4.
DEFAULT AND FORECLOSURE

Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration and Foreclosure.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable, and Mortgagee may foreclose this Mortgage by the exercise of the power of sale or by judicial foreclosure.

(b) **Entry on Mortgaged Property.** Mortgagee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Mortgagee’s security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor’s breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee’s prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Power of Sale.** Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased and to receive the proceeds thereof and shall apply the same in the manner prescribed by applicable law. In the event of any foreclosure sale, the Mortgaged Property may be sold in one or more parcels. Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Mortgage and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Obligations or any other liabilities after deducting from the sales price the expenses of the
sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to
deduct under this Mortgage or applicable law.

(e) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage). In lieu of or in addition to foreclosure, Mortgagor may obtain any other remedy provided in this Mortgage or available at law or equity, including the appointment of a receiver for the Property.

Section 4.2. **Separate Sales.** To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee’s election to exercise, or its actual exercise of, any right, remedy or recourse provided for
under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of 
assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other 
Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the 
Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon 
it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so 
and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their 
former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, 
the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee 
and the other Secured Parties shall continue as if the right, remedy or recourse had never been 
invoked, but no such discontinuance or abandonment shall waive any Event of Default which may 
then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, 
remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of 
Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents 
and other amounts generated by the holding, leasing, management, operation or other use of the 
Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in 
 accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale 
pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of 
the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the 
foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It 
shall not be necessary for the purchaser at said sale to bring any action for possession of the 
Mortgaged Property other than the statutory action of forcible detainer in any justice court having 
jurisdiction over the Mortgaged Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.** 

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall 
have the right, but not the obligation, to cure such Event of Default in the name and on behalf of 
Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or 
the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the 
Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the 
Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the 
date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be 
Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and 
expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement 
and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or 
any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the 
curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other 
Secured Parties in respect thereof, by litigation or otherwise.
Section 4.10. **No Mortgagor in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagor and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Mortgagor or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagor or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5.**

**ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Mortgagor unconditionally and absolutely assigns (to the extent assignable) to Mortgagor (for the benefit of the Secured Parties) all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagor and not an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Mortgage and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Mortgagor grants to Mortgagor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Mortgagor, without notice to or demand upon Mortgagor, and Mortgagor immediately shall be entitled to receive and apply all Rents, whether or not Mortgagor enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. **Rights of Mortgagor.** Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Mortgagor shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Mortgagor and that all Rents are to be paid directly to Mortgagor, whether or not Mortgagor has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagor's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of
the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Mortgage and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Mortgagee’s rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. **Right to Apply Rents.** Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

**ARTICLE 6.**

**SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged
Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Mortgage, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the “Recorder’s Office”), shall constitute and operate as a financing statement filed as a “fixture filing” within the meaning of Sections 9-334 and 9-502 of the UCC for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**ARTICLE 7. MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants
running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. **Attorney-in-Fact.** To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee’s interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4. **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5. **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. **Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7. **Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.
Section 7.8. **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9. **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10. **Governing Law.** This Mortgage shall be governed by the laws of the State of Alabama.

Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Future Advances; Variable Rate.**

(a) This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of the holders of the
Obligations, or otherwise, and the Lien securing such future advances shall relate to the date of this Mortgage and have the same priority as the Lien securing loans made on the date hereof. The amount of the Obligations secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(b) This instrument is intended to secure future advances and subject to Section 7.18, is given wholly or partly to secure future obligations which may be incurred hereunder.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent permitted by law.

Section 7.18. **MAXIMUM PRINCIPAL AMOUNT SECURED.** The maximum aggregate principal amount of all indebtedness that is, or under any contingency may be secured at the date hereof or at any time hereafter by this Mortgage is $2,760,000.00, plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Agent by reason of any default by the Mortgagor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby.

Section 7.19. **Obligations to Include Judgments: Other Collateral.** The term "Obligations" shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or the holders of the Obligations and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee and/or the holders of the Obligations (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Mortgaged Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee and/or the holders of the Obligations hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Obligations are secured by the Mortgaged Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Mortgaged Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor’s contemplation that the other collateral pledged to secure the Obligations may be pursued by Mortgagee in separate
proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the holders of the Obligations may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Section 7.20. **State Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of Alabama law regarding foreclosure (the "**State Foreclosure Law**"), the provisions of the State Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with State Foreclosure Law.

[Remainder of page intentionally left blank; signatures follow]
EXECUTED as of the date first above written.

MORTGAGOR:

BORDEN DAIRY COMPANY OF ALABAMA, LLC f/k/a Dairy Fresh of Alabama, LLC, a Delaware limited liability company

By: ________________________________

Name: Diego E. Rosenfeldt
Title: Secretary

STATE OF ____________________________ )

COUNTY OF __________________________ )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Diego E. Rosenfeldt, whose name as Secretary of BORDEN DAIRY COMPANY OF ALABAMA, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 11th day of June, 2018.

______________________________
Delana M. Qiner

My Notary ID #: 6799867
Expires: April 18, 2020

SIGNATURE PAGE TO ALABAMA MORTGAGE
EXHIBIT A

LEGAL DESCRIPTION OF LAND

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF HOUSTON, STATE OF ALABAMA, AND IS DESCRIBED AS FOLLOWS:

Tax Parcel Identification Number: 10-08-34-0-000-027.001; 10-08-34-0-000-009.000; and 10-08-34-0-000-027.004

PARCEL ONE: A tract of land lying and being in Section 34, Township 5 North, Range 27 East, Houston County, Alabama. Said tract being a portion of that property conveyed to Hugh D. Bedsole and wife, Sue D. Bedsole, in Deed Book 424, Page 147 as recorded in the Office of the Judge of Probate of Houston County, Alabama and being more particularly described as follows: Commencing at an existing bolt at the intersection of the south right-of-way of U.S. highway 84 East and the west line of the northeast quarter of the northwest quarter of said Section 34; thence along said right-of-way South 67 degrees 12 minutes 09 seconds East a distance of 2299.18 feet to a #5 rebar with a cap stamped "Garver Engineers CA#445" (typical) set; thence leaving said right-of-way South 01 degrees 03 minutes 27 seconds West a distance of 202.98 feet to an existing iron pin with a cap stamped "LS 501U"; thence South 03 degrees 10 minutes 40 seconds West a distance of 216.34 feet to an existing iron pin, said point being the POINT OF BEGINNING; thence South 87 degrees 27 minutes 09 seconds East a distance of 170.28 feet to a #5 rebar set; thence South 8 degrees 15 minutes 42 seconds East a distance of 134.62 feet to a #5 rebar set on an existing fence line; thence along said fence line North 61 degrees 54 minutes 55 seconds West a distance of 136.82 feet to a #5 rebar set; thence North 87 degrees 20 minutes 46 seconds West a distance of 63.52 feet to a #5 rebar set; thence North 4 degrees 30 minutes 22 seconds East a distance of 48.25 feet to a #5 rebar set; thence North 5 degrees 51 minutes 38 seconds East a distance of 19.29 feet to a #5 rebar set; thence North 4 degrees 13 minutes 14 seconds East a distance of 51.78 feet to the POINT OF BEGINNING. The above described parcel contains 0.52 acres (22,750.34 sq. ft.) and is subject to easements recorded and unrecorded.

PARCEL TWO: A lot or parcel of land in Houston County, Alabama and being more particularly described as follows: Beginning at a point on the South side of U.S. Highway 84, 2000.3 feet East of the West line of the NE 1/4 of the NW 1/4 of Section 34, T3N, R27E (as measured along the South side of said highway) and thence S87°18'0"E along the South side of said highway, 436.0 feet; thence running S2°10'0"W, 359.9 feet; thence running N87°28'0"W, 641.85 feet; thence running N8°20'0"E, 216.42 feet; thence running S87°30'0"E, 203.3 feet; thence running N1°22'0"E, 137.2 feet to the point of beginning. Said lot being in the NW 1/4 of the NE 1/4 and the NE 1/4 of the NE 1/4 of Section 34, T3N, R27E and containing 4,515 acres.

PARCEL THREE: One lot or parcel of land in Houston County, Alabama, as surveyed by Branson Land Surveyors as per plat dated August 15, 1997 and being more particularly described as follows: Commencing at a R/W flare marker on the South R/W of U.S. Highway No. 64 Station 382+00, same being a flare marker leading from the South R/W of U.S. Highway No. 84 to the West R/W of Sanitary Dairy Road and thence a point on NB 0°00'0"E along the South R/W of U.S. Highway 84 a distance of 423.34 feet to an existing R/W marker, same being P.T. Station 377°47'0"E; thence along said road N84°38'19"W a chord distance of 490.00 feet to a set iron pipe and the POINT OF BEGINNING; thence continue along said R/W N93°58'18"W a chord distance of 197.33 feet to an existing marker and R/W change; thence continue along said R/W N93°58'20"W a distance of 39.69 feet to an existing R/W marker; thence continue along said R/W N93°58'20"W a distance of 50.79 feet to an existing iron marker; thence S00°10'0"W a distance of 352.80 feet to an existing iron pipe; thence S08°42'01"E a distance of 1066.30 feet to an existing concrete marker; thence N44°19'35"E a distance of 1348.57 feet to the POINT OF BEGINNING. Said land being located in the NE 1/4 of Section 34, T3N, R27E and containing 4.918 acres.

PARCEL FOUR: One tract or parcel of land located in the NE 1/4 of Section 34, T3N, R27E, Houston County, Alabama and being a part of the real property described in Deed Book 197, Page 268, recorded in the Office of the Judge of Probate of Houston County, Alabama, as surveyed by M. John Steensland, Jr., dated April 24, 1987, and being more particularly described as follows: Beginning at a point on the South side of U.S. Highway No. 84, as existed in 1987, 2000.3 feet East of the West line of the NE 1/4 of the NW 1/4 of Section 34, T3N, R27E (as measured along the South side of said highway), said point being the northwest corner of the Dairy Fresh site (title same vested in Blackbelt Feedy Corporation as recorded in Deed Book 195, Page 267 in the Office of the Judge of Probate of Houston County, Alabama) and thence S87°18'0"E along the South side of said highway, 436.0 feet to the Northeast corner of said Dairy Fresh site; thence N87°18'0"W a distance of 359.9 feet to an existing iron pipe marking the Southeast corner of said Dairy Fresh site and the STARTING POINT; thence S00°39'52"E, 1066.0 feet to a set iron pipe; thence S01°20'06"W, 706.0 feet to a set iron pipe; thence N05°16'14"W, 684.03 feet to a set iron pipe; thence N81°41'27"E, 200.0 feet to a set iron pipe; thence N08°18'32"W, 470.0 feet to a set iron pipe located on the South line of said Dairy Fresh site; thence S87°28'0"E along the South line of said Dairy Fresh site, 471.57 feet to the STARTING POINT and containing 15.3 acres, more or less.
PARCELS TWO, THREE AND FOUR ALSO BEING DESCRIBED AS: One tract or parcel of land in Houston County, Alabama as surveyed by Branton Land Surveyors as per plat dated December 23, 2003 and being more particularly described as follows: Commencing at an existing bolt marking the intersection of the South R/W of Hwy 84 East and the West line of the NE 1/4 of the NW 1/4 of Section 34, T38N, R27E and from said point run in an Easterly direction along the South R/W of said road a measured distance of 2993.18 feet (deed distance of 2900.3 feet) to an existing iron pipe and the POINT OF BEGINNING; thence continue along said R/W S87°18'-00"E a measured and deed distance of 438.00 feet to an existing iron pipe; thence continue along said R/W S85°10'-46"E a measured distance of 54.22 feet (deed distance of 54.29 feet) to an existing concrete R/W marker and R/W change; thence continue along said R/W S09°04'-55"E a measured distance of 36.71 feet (deed distance of 36.65 feet) to an existing iron pipe (same being 120° from centerline of R/W); thence continue along said R/W S85°57'-27"E along a curve to the left having a radius of 14333.40 feet a measured chord distance of 187.30 feet (deed distance of 187.33 feet) to an existing iron pipe; thence S04°15'-44"W a measured distance of 1348.15 feet (deed distance of 1348.37 feet) to an existing concrete marker; thence S81°29'-43"W a measured distance of 705.76 feet (deed distance of 705.00 feet) to an existing concrete marker; thence N05°14'-25"W a measured distance of 684.53 feet (deed distance of 684.53 feet) to an existing concrete marker; thence N81°47'-28"E a measured distance of 400.00 feet (deed distance of 470.31 feet) to a point null in concrete; thence N87°29'-00"W a distance of 170.28 feet to an existing iron pipe; thence N03°12'-10"E a measured distance of 292.96 feet (deed distance of 293.30 feet) to an existing iron pipe; thence N01°01'-58"E a measured distance of 137.21 feet (deed distance of 137.20 feet) to the POINT OF BEGINNING. Said land being located in the NE 1/4 of the above mentioned section and containing 64.42 acres.
RECORDING TAX ORDER

STATE OF ALABAMA §

MONTGOMERY COUNTY §

BEFORE THE ALABAMA DEPARTMENT OF REVENUE,

Comes the Petitioner, BORDEN DAIRY COMPANY OF ALABAMA, LLC, a Delaware limited liability company ("Mortgagor" and "Petitioner"), and pursuant to the petition (the "Petition") filed with the Department of Revenue, has asked the Department of Revenue to fix and determine the amount of mortgage recording privilege tax due pursuant to § 40-22-2(8), Code of Alabama (1975), as amended, in connection with the recording of a Mortgage, Security Agreement, and Fixture Filing by Mortgagor ("Mortgage") in favor of PNC BANK, NATIONAL ASSOCIATION, a national banking association (the "Mortgagee").

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. BORDEN DAIRY HOLDINGS, LLC, as Parent, BORDEN DAIRY COMPANY, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Mortgagee, as Administrative Agent and Collateral Agent, have entered into that certain Financing Agreement dated as of July 6, 2017 (as further amended, restated, amended and restated, refinanced, extended, supplemented and/or modified from time to time, the "Credit Agreement"). Mortgagor shall benefit from the proceeds made available to Borrowers pursuant to the terms of the Credit Agreement.

2. In order to secure the obligations of the Borrowers under the Credit Agreement, Mortgagor will each execute the Mortgage encumbering certain real property located in Houston County, Alabama.

3. Said real property is more particularly described in the Mortgage. The Mortgage will be recorded in the Office of the Judge of Probate of Houston County, Alabama. The real property described in the Mortgage, together with all of the buildings, improvements, structures and fixtures now or subsequently located thereon and all other collateral described therein located in Alabama, is collectively referred to as the "Alabama Real Estate Collateral."

4. The total maximum principal indebtedness secured by the Mortgage is TWO HUNDRED SIXTY-FIVE MILLION AND 00/100 DOLLARS ($265,000,000.00) (the "Secured Principal Indebtedness").

5. In addition to the Alabama Real Estate Collateral described in the Mortgage, the Secured Principal Indebtedness is secured with additional property not described in the Mortgage, including real property located outside the State of Alabama.
6. The total value of all property located both inside and outside of the State of Alabama, and given as security for the Secured Principal Indebtedness secured by the Mortgage, is no less than $265,000,000.00.

7. The value of the Alabama Real Estate Collateral described in the Mortgage is no more than $2,760,000.00.

8. Therefore, the total amount of the Secured Principal Indebtedness allocable to the State of Alabama pursuant to Section 40-22-2(8) is $2,760,000.00, the entirety of which amount is allocable to Houston County, Alabama.

9. The amount of recording privilege tax upon the Mortgage which is attributable to the Alabama Real Estate Collateral is $4,140.00, the entirety of which amount of tax is allocable to Houston County, Alabama.

IT IS ORDERED, THEREFORE, that the Probate Judge in Houston County, Alabama shall accept the Mortgage for recording from Mortgagee and Mortgagor upon payment of privilege recording tax in the amount of $4,140.00.

DONE this 8th day of November, 2017.

ALABAMA DEPARTMENT OF REVENUE

BY: [Signature]
Deputy Commissioner of Revenue

ATTEST:

[Signature]
Secretary

[Signature]
Legal Division

| Mortgage Tax | $110.00 |
| Recording Fee | 71.00 |
| **TOTAL** | **$181.00** |
DEED TO SECURE DEBT, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING

BY

GEORGIA SOFT SERVE DELIGHTS, LLC,
as Grantor,

TO

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Grantee,

DATED: As of November 13, 2018

NOTE TO TAX COMMISSIONER AND CLERK OF SUPERIOR COURT. THIS INSTRUMENT SECURES LOANS IN THE ALLOCATED PRINCIPAL AMOUNT OF UP TO TWO HUNDRED SIXTY-FIVE MILLION AND NO/100 DOLLARS ($265,000,000.00) AND HAVING A FINAL MATURITY DATE OF JULY 6, 2025. THE LOANS ARE ALSO SECURED BY REAL PROPERTY LOCATED OUTSIDE THE STATE OF GEORGIA AND THE GRANTEE IS A NON-RESIDENT OF THE STATE OF GEORGIA. CONSEQUENTLY, THE INTANGIBLE RECORDING TAX IS BEING PAID ON THE PRORATED PORTION OF THE LOANS BASED ON THE RATIO OF THE VALUE OF THE REAL PROPERTY SECURING THE LOANS LOCATED IN THE STATE OF GEORGIA TO THE VALUE OF ALL OF THE REAL PROPERTY SECURING THE LOANS LOCATED IN AND OUTSIDE THE STATE OF GEORGIA.
OUTSIDE THE STATE OF GEORGIA, AS MORE PARTICULARLY DESCRIBED IN THE
AFFIDAVIT FROM GRANTEE ACCOMPANYING THIS INSTRUMENT, SEE O.C.G.A. §48-6-69
AND RULE 560-11-8-.07 OF THE RULES AND REGULATIONS OF THE GEORGIA DEPARTMENT
OF REVENUE.

ATTENTION CLERK OF THE SUPERIOR COURT OF DEKALB COUNTY, GEORGIA: THIS SECURITY DEED IS
INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 11-
9-101 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED. POSSESSIONS OF THE PROPERTY (HEREIN AFTER DEFINED)
ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS SECURITY
DEED IS TO BE FILED FOR RECORD IN THE RECORDS OF DEKALB COUNTY, GEORGIA AND SHOULD BE INDEXED AS
BOTH A DEED TO SECURE DEBT AND AS A FINANCING STATEMENT COVERING FIXTURES. THE NAMES AND
ADDRESSES OF GRANTOR (DEBTOR) AND GRANTEE (SECURED PARTY) AND A STATEMENT INDICATING THE TYPES,
OR DESCRIBING THE ITEMS, OF COLLATERAL, ARE SPECIFIED IN SECTION 8.3 OF THIS SECURITY DEED, IN
COMPLIANCE WITH THE REQUIREMENTS OF THE UNIFORM COMMERCIAL CODE, AS ENACTED IN THE STATE OF
GEORGIA.
DEED TO SECURE DEBT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Deed to Secure Debt") is executed as of November 13, 2018, by GEORGIA SOFT SERVE DELIGHTS, LLC, a Delaware limited liability company ("Grantee"), whose tax mailing address is c/o ACON Investments LLC, 1333 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aaron Schwartz, to PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below; and in such capacity, together with its successors and assigns in such capacity, "Grantor"), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Cramlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Grantor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Grantee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to TWO HUNDRED SIXTY-FIVE MILLION AND NO/100 DOLLARS ($265,000,000.00), which Loans have a final maturity date of July 6, 2023.

(b) "Property": All estate, right, title, interest, claim and demand whatsoever which Grantor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Grantee (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all goods, inventory, accounts, general intangibles,
software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property (the "Personality"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Property (the "Rents"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor and to any streets, ways, alley, strips or gors of land adjoining the Land or any part thereof, (11) all easements, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Grantee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personality. As used in this Deed to Secure Debt, the term "Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever locate; provided, however, that notwithstanding any provision of this Deed
to Secure Debt to the contrary, the Property shall not include any movables personal property or
movable contents owned by the Grantor and located within the improvements which would be
insurable as "contents" pursuant to Section III, Property Covered: Coverage B – Personal Property
of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal
Emergency Agency National Flood Insurance Program.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state
where the Land is located (and any time to time be amended); provided that, to the extent
that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan
Document and such term is defined differently in different Articles or Divisions of the UCC, the
definition of such term contained in Article or Division 9 shall govern; provided further, however,
that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority
of, or remedies with respect to, any security interest herein granted is governed by the Uniform
Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is
located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such
other jurisdiction solely for the purposes of the provisions thereof relating to such attachment,
perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.

GRANT

Section 2.1. Grant. To secure the full and timely payment and performance of the
Obligations, Grantor GRANTS, BARGAINS, SELLS and CONVEYS to Grantee (for the benefit
of the Secured Parties) the Property, subject, however, to the Permitted Liens TO HAVE AND TO
HOLD the Property to Grantee (for the benefit of the Secured Parties) IN Fee SIMPLE FOREVER
subject to the terms, covenants and conditions of this Deed to Secure Debt, and Grantor does hereby
bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the
Property unto Grantee (for the benefit of the Lenders), subject to the Permitted Liens.

Section 2.2 Conveyance. THIS CONVEYANCE is intended to operate and is to
be construed as a deed passing title to the Property to Grantee (for the benefit of the Secured Parties)
and is made under those provisions of the existing laws of the State of Georgia relating to deeds to
secure debt, and not as a mortgage, and is given to secure the Obligations.

Section 2.3 Release. Upon payment and performance in full of the Obligations
and the irrevocable termination of the Commitments under the Credit Agreement, Grantee, at
Grantor’s expense, shall cancel and surrender this Deed to Secure Debt.

Section 2.4 Revolving Credit. This Deed to Secure Debt secures revolving credit
loans, the principal of which may be advanced, repaid and readvanced at any time and from time
to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal
balance of the Obligations secured hereby is ever reduced to zero ($0.00) balance, the lien, security
interest and security title of this Deed to Secure Debt shall not be released or extinguished by
operation of law or implied intent of the parties. This Deed to Secure Debt, the Credit Agreement
and the other Loan Documents shall remain in full force and effect as to any further advances under
the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Grantor and/or the Lenders to make further advances have been terminated and this Deed to Secure Debt has been cancelled of record.

ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

Grantor warrants, represents and covenants to Grantee and the other Secured Parties as follows:

Section 3.1. Title to Property and Liens of this Instrument. Grantor owns the Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Property. This Deed to Secure Debt creates valid, enforceable first priority liens and security interests against the Property. Subject to the terms of the Credit Agreement, where any of the Property is in the possession of a third party, Grantor will join with Grantee in notifying the third party of Grantee's security interest and obtaining an acknowledgment from the third party that it is holding such Property for the benefit of Grantee. Subject to the terms of the Credit Agreement, Grantor will cooperate with Grantee in obtaining control (for lien perfection purposes under the UCC) with respect to any Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. First Lien Status. Grantor shall preserve and protect the first lien and security interest status of this Deed to Secure Debt, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Property, Grantor shall promptly, and at its expense, (a) give Grantee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Grantee).

Section 3.3. Payment and Performance. Grantor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. Replacement of Fixtures and Personalty. Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Grantor shall not, without the prior written consent of Grantee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed to Secure Debt, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Grantee. Grantor shall not incorporate into the
Property any item of personality, fixtures or other property that is not owned by Grantor free and clear of all liens or security interests except Permitted Liens.

Section 3.5  **Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Property and will not, without the prior consent of Grantee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Property, except for any Permitted Liens existing as of the date hereof. Grantor shall comply in all material respects with all restrictive covenants affecting the Property and all zoning ordinances and other public or private restrictions as to the use of the Property.

Section 3.6  **Inspection.** Grantor shall permit Grantee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7  **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8  **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Grantor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Grantor shall not adjust, collect or compromise any claims under said policies without Grantee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Grantee instead of to the Grantor and Grantee jointly, and the Grantor appoints Grantee as the Grantor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Grantee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as Grantee may impose in its sole discretion.

Section 3.9  **Condemnation.** The Grantor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Property, shall notify Grantee of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Grantor and shall be received and collected directly by the Grantor. If an Event of Default exists, Grantee may participate in any such proceedings and the Grantor shall deliver to Grantee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Grantee, and any such Award shall be applied, at Grantee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the
repair and restoration of any of the Property under such terms and conditions as Grantee may impose in its sole discretion.

ARTICLE 4.
DEFAULT AND FORECLOSURE

Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Grantee may, at Grantee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration and Foreclosure. Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentation, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable, and Grantee may foreclose this Deed to Secure Debt by the exercise of the power of sale or by judicial foreclosure.

(b) Entry on Property. Grantee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Grantee's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Grantee elects to seek the appointment of a receiver for the Property upon Grantor's breach of any covenant or agreement in this Deed to Secure Debt, Grantor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Property. If Grantor remains in possession of the Property after an Event of Default and without Grantor's prior written consent, Grantee may invoke any legal remedies to dispossess Grantor.

(c) Operation of Property. Hold, lease, develop, manage, operate or otherwise use the Property upon such terms and conditions as Grantee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Grantee deems necessary or desirable), and apply all Rents and other amounts collected by Grantee in connection therewith in accordance with the provisions of Section 4.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Deed to Secure Debt, in which case the Property may be sold for cash (or if Grantor is the successful bidder at foreclosure, by credit bid against the outstanding Obligations) in one or more parcels. With respect to any notices required or permitted under the UCC, but without derogation of Grantor's rights under the Credit Agreement, Grantor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever,
either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Grantee may be a purchaser at such sale and if Grantee is the highest bidder, may credit the portion of the purchase price that would be distributed to Grantee against the Obligations in lieu of paying cash. In connection with any foreclosure sale: (i) Grantee shall have no obligation to clean up, repair or otherwise prepare the Property for sale; (ii) Grantor waives any right it may have to require Grantee to pursue any third party for any of the Obligations; (iii) Grantee may comply with any applicable state or federal law requirements in connection with a disposition of the Property; and (iv) Grantee may specifically disclaim any warranties of title or the like. Compliance by Grantee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Property or portion thereof.

(c) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Deed to Secure Debt). In lieu of or in addition to foreclosure, Grantor may obtain any other remedy provided in this Deed to Secure Debt or available at law or equity, including the appointment of a receiver for the Property. Without limitation of the foregoing, Grantee may make application to a court of competent jurisdiction for, and to the extent permitted by law, obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Property for the repayment of the Obligations, the appointment of a receiver of the Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(i) **Power of Sale.**

(i) Grantee, at its option, may sell the Property or any part of the Property at public sale or sales before the door of the courthouse of the county in which the Property or any part of the Property is situated, to the highest bidder for cash, in order to pay the Obligations secured hereby, including accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys’ fees actually incurred, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff’s sales are advertised in said county. At any such public sale, Grantee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple, with full warranties of title (or without warranties if Grantee shall so elect) and to this end, Grantor hereby constitutes and appoints Grantee the agent and attorney-in-fact of Grantor to make such sale and conveyance, and thereby to divest Grantor of all right, title, interest, equity and equity of redemption that Grantor may have in and to the Property and to vest the same in the purchaser or
purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Grantor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by dissolution, insolvency or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Obligations secured hereby and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Obligations secured hereby. In the event of any such foreclosure sale by Grantee, Grantor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

(ii) Grantee may adjourn from time to time any sale by it to be made under or by virtue of this Deed to Secure Debt by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Grantee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(iii) Upon any sale made under or by virtue of this Deed to Secure Debt (whether made under the power of sale hereby granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Grantee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Grantee is authorized to deduct under this Deed to Secure Debt.

(iv) No recovery of any judgment by Grantee and no levy of an execution under any judgment upon the Property or upon any other property of Grantor shall affect in any manner or to any extent, the lien and title of this Deed to Secure Debt upon the Property or any part thereof, or any liens, titles, rights, powers or remedies of Grantor hereunder, but such liens, titles, rights, powers and remedies of Grantee shall continue unimpaired as before.

(v) Grantee, at its option, is authorized to foreclose this Deed to Secure Debt subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Grantee to collect the sums secured hereby.

Section 4.2. Separate Sales. To the fullest extent permitted by law, the Property may be sold in one or more parcels and in such manner and order as Grantee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. Remedies Cumulative, Concurrent and Nonexclusive. Grantee shall have all rights, remedies and recourse granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative
and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Credit Agreement or the other Loan Documents, or against the Property, or against any one or more of them, at the sole discretion of Grantee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Grantee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release and Resort to Collateral.** Grantee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their status as a first and prior lien and security interest in and to the Property. For payment of the Obligations, Grantee and the other Secured Parties may resort to any other security in such order and manner as Grantee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantee hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Grantee's election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Grantee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Grantee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Grantor, Grantee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Grantee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Grantee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default. Grantor hereby expressly waives any and all benefits Grantor may have under O.C.G.A. §§44-14-85 to claim or assert that the Obligations have been reinstated in accordance with its terms following the withdrawal of any foreclosure proceedings by Grantee, and acknowledges and agrees that reinstatement shall occur only upon written agreement of Grantee.
Section 4.7. Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Grantee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

Section 4.8. Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Property. All occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action or for possession of the Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Property.

Section 4.9. Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Grantee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. With respect to all sums advanced and expenses incurred at any time by Grantee or the other Secured Parties under this Section 4.9, or otherwise under this Deed to Secure Debt or any of the Credit Agreement or the other Loan Documents or applicable law, Grantor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Deed to Secure Debt.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed to Secure Debt, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed to Secure Debt, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Grantee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. No Grantee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Grantee and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Grantee or any other Secured Party to be deemed or construed to be a Grantee in possession of the Property, to obligate Grantee or any other Secured Party to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5.
ASSIGNMENT OF RENTS AND LEASES

Section 5.1. Assignment. Grantee unconditionally and absolutely assigns (to the extent assignable) to Grantee (for the benefit of the Secured Parties) all of Grantor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Grantee and
not an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Deed to Secure Debt and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Grantee grants to Grantor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents (ii) Grantor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Grantor under the Leases and (iii) Grantor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Grantee, without notice to or demand upon Grantor, and Grantee immediately shall be entitled to receive and apply all Rents, whether or not Grantee enters upon and takes control of the Property. Prior to such revocation, Grantor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. Rights of Grantee. Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Grantee shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Grantee and that all Rents are to be paid directly to Grantee, whether or not Grantee has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Grantee's request, Grantor shall deliver a copy of this Deed to Secure Debt to each tenant under a Lease and to each manager and managing agent or operator of the Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Grantee under this Deed to Secure Debt and to turn over to Grantee on demand all Rents which it receives.

Section 5.3. No Obligation. Notwithstanding Grantee's rights hereunder, Grantee shall not be obligated to perform, and Grantee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Deed to Secure Debt. Grantee shall have no responsibility on account of this Deed to Secure Debt for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

Section 5.4. Right to Apply Rents. Grantee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.
Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Grantor irrevocably appoints Grantee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Grantor, and Grantee ratifies and confirms any and all acts done or omitted to be done by Grantee, its agents, servants, employees or attorneys in, to or about the Property.

Section 5.7. **Liability of Grantee.** Grantee shall not in any way be liable to Grantor for any action or inaction of Grantee, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, mutatis mutandis.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Grantee, any lessee or any third party by purchase or otherwise.

ARTICLE 6. SECURITY AGREEMENT

Section 6.1. **Security Interest.** This Deed to Secure Debt constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Grantor grants to Grantee (for the benefit of the Secured Parties), a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property which is personal property to secure the payment and performance of the Obligations, and agrees that Grantee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Grantee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantee.

Section 6.2. **Financing Statements.** Grantor hereby irrevocably authorizes Grantee at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Property, without the signature of Grantor where permitted by law. Grantor agrees to furnish Grantee, promptly upon request, with any information required by Grantee to complete such financing or continuation statements. If Grantee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Grantee, and agrees that it will not do so without
Grantee's prior written consent, subject to Grantor's rights under Section 9-509(4)(2) of the UCC. Grantor shall execute and deliver to Grantee, in form and substance satisfactory to Grantee, such additional financing statements and such further assurances as Grantee may, from time to time, reasonably consider necessary to create, perfect and preserve Grantee's security interest hereunder and Grantee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor hereby authorizes the filing of a financing statement in the office of the state in which Grantor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Grantor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Deed to Secure Debt, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the "Recorder's Office"), shall constitute and operate as a financing statement filed as a "Fixture filing" within the meaning of Sections 9-334 and 9-502 of the UCC for the purposes of the UCC against all of the Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Grantee) as set forth in the first paragraph of this Deed to Secure Debt. The description of the collateral is the description of the fixtures and other personal property described in the definition of "Property". The description of real estate to which the collateral is attached or upon which it is or will be located is described on Exhibit "A" attached hereto.

**ARTICLE 7. MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Deed to Secure Debt shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Deed to Secure Debt are intended by Grantor and Grantee to be, and shall be construed as, covenants running with the Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed to Secure Debt and to any subsequent owner of all or any portion of the Property (without in any way implying that Grantee has or will consent to any such conveyance or transfer of the Property). All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Grantee.

Section 7.3. **Attorney-in-Fact.** To the fullest extent permitted by law, Grantor hereby irrevocably appoints Grantee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Grantee deems appropriate to protect Grantee's interest, if Grantor
shall fail to do so within ten (10) days after written request by Grantor, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed to Secure Debt or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Grantor hereunder, however: (1) Grantee shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Grantee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Grantee as such attorney-in-fact shall only be accountable for such funds as are actually received by Grantee; and (4) neither Grantee nor any other Secured Party shall be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4. Successors and Assigns. This Deed to Secure Debt shall be binding upon and inure to the benefit of Grantee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Grantee, assign any rights, duties or obligations hereunder.

Section 7.5. No Waiver. Any failure by Grantee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Grantee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. Subrogation. To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Property, then Grantee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Grantee (on behalf of the Secured Parties).

Section 7.7. Credit Agreement. If any conflict or inconsistency exists between this Deed to Secure Debt and the Credit Agreement, the Credit Agreement shall govern.

Section 7.8. Waiver of Stay, Moratorium and Similar Rights. Grantor agrees to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed to Secure Debt or the Obligations, or any agreement between Grantor and Grantee and/or the Secured Parties or any rights or remedies of Grantee and/or the Secured Parties.

Section 7.9. Obligations of Grantor, Joint and Several. If more than one person or entity has executed this Deed to Secure Debt as "Grantor," the obligations of all such persons or entities hereunder shall be joint and several.
Section 7.10. **Governing Law.** This Deed to Secure Debt shall be governed by the laws of the State of Georgia.

Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Deed to Secure Debt, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Grantee, the Secured Parties and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Deed to Secure Debt, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.13. **Severability.** Any provision of this Deed to Secure Debt that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS DEED TO SECURE DEBT AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Deed to Secure Debt is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Future Advances; Variable Rate.**

(a) This Deed to Secure Debt secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of the holders of the Obligations, or otherwise, and the Lien securing such future advances shall relate to the date of this Deed to Secure Debt and have the same priority as the Lien securing loans made on the date hereof. The amount of the Obligations secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(b) This instrument is intended to secure future advances and is given wholly or partly to secure future obligations which may be incurred hereunder.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Deed to Secure Debt secures unpaid balances of advances made with respect to the Property for the payment of taxes,
assessments, insurance premiums, or costs incurred for the protection of the Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Deed to Secure Debt to the fullest extent permitted by law.

Section 7.18. **Obligations to Include Judgments; Other Collateral.** The term “Obligations” shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Grantor to Grantee and/or the holders of the Obligations and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Grantor under this Deed to Secure Debt or any or all of the other Loan Documents. The obtaining of any judgment by Grantee and/or the holders of the Obligations (other than a judgment foreclosing this Deed to Secure Debt) and any levy of any execution under any such judgment upon the Property shall not affect in any manner or to any extent the lien of this Deed to Secure Debt upon the Property or any part thereof, or any liens, powers, rights and remedies of Grantee and/or the holders of the Obligations hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Grantor acknowledges and agrees that the Obligations are secured by the Property and various other collateral at the time of execution of this Deed to Secure Debt. Grantor specifically acknowledges and agrees that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Grantor acknowledges that it is in Grantor’s contemplation that the other collateral pledged to secure the Obligations may be pursued by Grantee in separate proceedings in the various states and counties where such collateral may be located and additionally that Grantor will remain liable for any deficiency judgments in addition to any amounts Grantee and/or the holders of the Obligations may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Deed to Secure Debt, that the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Section 7.19. **State Foreclosure Law.** In the event that any provision in this Deed to Secure Debt shall be inconsistent with any provision of Georgia law regarding foreclosure (the “State Foreclosure Law”), the provisions of the State Foreclosure Law shall take precedence over the provisions of this Deed to Secure Debt, but shall not invalidate or render unenforceable any other provision of this Deed to Secure Debt that can be construed in a manner consistent with State Foreclosure Law.

Section 7.20. **State Specific Provisions.** To the extent of any conflict between the provisions of this Section 7.20 and the other provisions of this Deed to Secure Debt, the provisions of this Section 7.20 shall control.

(a) **Commercial Use.** Grantor represents and warrants that the loans or other financial accommodations included as Obligations secured by this Deed to Secure Debt were
obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

(b) **Construction.** Any reference herein to the term "lien" or words of similar import shall be deemed also to mean "security title" and "security interest" of this Deed to Secure Debt.

(c) **Additional Waivers.** By execution of this Deed to Secure Debt, Grantor expressly: (a) acknowledges the right to accelerate the obligations and the power of attorney given herein to Grantee to sell the property by nonjudicial foreclosure upon default by Grantor without any judicial hearing and without any notice (except as otherwise provided herein); (b) except to the extent provided otherwise herein, waives any and all rights which Grantor may have under the constitution of the United States (including the Fifth and Fourteenth Amendments thereof), the various provisions of the constitutions for the several States, or by reason of any other applicable law, to notice and to judicial hearing prior to the exercise by Grantee of any right or remedy herein provided to Grantee; (c) acknowledges that Grantor has read this Deed to Secure Debt and its provisions have been explained fully to Grantor and Grantor has consulted with counsel of Grantor's choice prior to executing this Deed to Secure Debt; and (d) acknowledges that all waivers of the aforesaid rights of Grantor have been made knowingly, intentionally and willingly by Grantor as part of a bargained for loan transaction.

(d) **Reasonable Attorney Fees.** Whenever the term "reasonable attorneys fees" or similar language is used herein or in any of the Loan Documents, it is understood that such language shall mean "reasonable attorney fees actually incurred without regard to any statutory presumption under Georgia law." Grantor shall not be liable under any circumstances for additional attorneys' fees or expenses, however described or referenced, under O.C.G.A. Section 13-1-11.

[Remainder of page intentionally left blank; signatures follow]
IN WITNESS WHEREOF, Grantor, intending to be legally bound, has duly executed and delivered this Deed to Secure Debt under seal as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature]
June 1, 2018
Notary Public
My Commission Expires: April 8, 2020

GRANTOR:

GEORGIA SOFT SERVE DELIGHTS,
LLC, a Delaware limited liability company

By: [Signature] (SEAL)
Name: Diego E. Rosenfeld
Title: Secretary

SIGNATURE PAGE TO GEORGIA DEED TO SECURE DEBT
EXHIBIT A

LEGAL DESCRIPTION OF LAND

All that tract or parcel of land lying and being in Land Lot 63 of the 18th District of DeKalb County, Georgia and being more particularly described as follows:

To arrive at the TRUE POINT OF BEGINNING, commence at a point at the southwestern corner of land Lot 63, being the common corner to land lots 63, 48, 49 and 62; thence along the western line of land Lot 63 North 90 degrees 35 minutes 57 seconds East a distance of 287.65 feet to a p. k. nail found; thence North 00 degrees 24 minutes 42 seconds East a distance of 13.26 feet to a 1/2" rebar found and the TRUE POINT OF BEGINNING; thence from said TRUE POINT OF BEGINNING thus established, continue along said land lot line North 00 degrees 05 minutes 05 seconds, East a distance of 627.27 feet to a 1/2" rebar set; thence departing said land lot line North 67 degrees 03 minutes 46 seconds East a distance of 46.67 feet to a 1/2" rebar set on the southwesterly right-of-way of DeKalb Industrial Way (R/W varies); thence along said right-of-way South 22 minutes 57 minutes 20 seconds East a distance of 11.00 feet to a point; thence North 67 degrees 02 minutes 40 seconds East a distance of 8.00 feet to a point; thence South 22 degrees 57 minutes 20 seconds East a distance of 282.84 feet to a Point; thence South 67 degrees 05 minutes 21 seconds West a distance of 8.00 feet to a point; thence South 22 degrees 57 minutes 20 seconds East a distance of 20.00 feet to a Point; thence North 67 degrees 05 minutes 21 seconds East a distance of 8.00 feet to a point; thence South 22 degrees 57 minutes 20 Seconds East a distance of 66.66 feet to a point; thence along curve to the left an arc distance of 67.76 feet (being subtended by chord distance of 67.75 feet, a bearing South 25 degrees 33 minutes 04 seconds East and a 1,510.55 foot radius) to a point; thence South 62 degrees 40 minutes 39 seconds West distance of 14.00 feet to a point; thence along a curve to the left an arc distance of 18.00 feet (being subtended by a chord distance of 18.00 feet, a bearing South 27 degrees 10 minutes 44 seconds East and a 1,524.55 foot radius) to a point; thence North 62 degrees 40 minutes 39 seconds East a distance of 14.00 feet to a point; thence along a curve to the left an arc distance of 267.69 feet (being subtended by a chord distance of 267.34 feet, a bearing South 32 degrees 35 minutes 44 seconds East and a 1,510.55 foot radius) to a 1/2" rebar set; thence departing said right-of-way North 89 degrees 22 minutes 31 seconds West a distance of 381.16 feet to said 1/2" rebar found and the TRUE POINT OF BEGINNING. Said tract containing 2.92 acres as shown on survey prepared by Pearson & Associates, Inc., dated October 20, 2006.
ALLOCATION AFFIDAVIT
(BORROWER)

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME came in person Diego E. Rosenfeldt (hereinafter referred to as the "Deponent"), who, having been duly sworn and on oath, deposes and says as follows:

That Deponent is the duly elected and acting Secretary of GEORGIA SOFT SERVE DELIGHTS, LLC, a Delaware limited liability company (the "Grantor"), and as such Deponent is authorized to make this affidavit and is personally familiar with the matters set forth herein.

1. That Grantor intends to execute and deliver to PNC BANK, NATIONAL ASSOCIATION, as Collateral Agent for the Secured Parties, as defined in the Deed to Secure Debt defined below ("Lender"), that certain Deed to Secure Debt, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing dated as of November 13, 2018 (the "Deed to Secure Debt"), to secure certain aggregate indebtedness of Borden Dairy Holdings, LLC and certain affiliated companies (collectively, the "Borrowers") in the original principal amount of $265,000,000, having a term of more than three (3) years, with respect to property located in DeKalb County, Georgia (the "Loan").

2. That the repayment of the Loan is also secured by real property located outside of the State of Georgia.

3. That based upon appraisals, the total fair market value of the real property interests in the State of Georgia securing the Loan is $1,000,000; the total fair market value of the real property interests securing the Loan located within and outside the State of Georgia is $47,900,000; and the fair market value of the real property interests in the State of Georgia represents 2.09% of the total fair market value of all of the real property interests securing the Loan.

4. That, after proration pursuant to O.C.G.A. §48-6-69(b), intangible recording tax is due in Georgia only on $5,532,359 of the Loan, said amount being 2.09% of the total amount of the Loan; and the amount of such intangible recording tax due is $16,597.50 ($1.50 per each $500 of indebtedness or fraction thereof).

5. That this affidavit is made with the knowledge that Lender and the Tax Commissioner of the State of Georgia will rely upon this affidavit.
Deponent say further not.

[Signature]

[SEAL]

Print Name: Diego E. Rosenfeldt

Sworn to and subscribed before me, a Notary Public in and for the aforesaid State and County by Diego E. Rosenfeldt, known personally to me, who, being duly sworn and on oath, deponed and said that the within and foregoing statements are true and correct as of this 11th day of June, 2018.

[Signature]

Notary Public

My Commission Expires: April 18, 2020

[Seal]

[Signature Page to Georgia Allocation Affidavit]
ALLOCATION AFFIDAVIT

(LENDER)

STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

BEFORE ME came in person Robert Orzechowski (hereinafter referred to as the "Deponent"), who, having been duly sworn and on oath, deposes and says as follows:

That Deponent is the duly elected and acting Vice President of PNC BANK, NATIONAL ASSOCIATION, as Collateral Agent for the Secured Parties, as defined in the Deed to Secure Debt defined below ("Lender"), and as such Deponent is authorized to make this affidavit and is personally familiar with the matters set forth herein.

1. That GEORGIA SOFT SERVE DELIGHTS, LLC, a Delaware limited liability company (the "Grantee"), intends to execute and deliver to Lender that certain Deed to Secure Debt, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing dated as of November 13, 2018 (the "Deed to Secure Debt"), to secure certain aggregate indebtedness of Borden Dairy Holdings, LLC and certain affiliated companies (collectively, the "Borrowers") in the original principal amount of $265,000,000, having a term of more than three (3) years, with respect to property located in DeKalb County, Georgia (the "Loan").

2. That the repayment of the Loan is also secured by real property located outside of the State of Georgia.

3. That solely based upon the representations set forth in that certain Allocation Affidavit of Diego E. Rosenfeld, the Secretary of Grantee, the total fair market value of the real property interests in the State of Georgia securing the Loan is $1,000,000; the total fair market value of the real property interests securing the Loan located within and outside the State of Georgia is $47,000,000; and the fair market value of the real property interests in the State of Georgia represents 2.09% of the total fair market value of all of the real property interests securing the Loan.

4. That the statements made in this affidavit are limited to the actual, present knowledge of the Deponent as of the date of this affidavit.

5. That this affidavit is made with the knowledge that the Tax Commissioner of the State of Georgia will rely upon this affidavit.
Deponent say further not.

(SEAL)

Print Name: Robert Orzechowski

Sworn to and subscribed before me, a Notary Public in and for the aforesaid State and County by , known personally to me, who, being duly sworn and on oath, deposes and said that the within and foregoing statements are true and correct as of this day of , 2018.

Notary Public

My Commission Expires: 1/31/2021

[NOTARIAL SEAL]
Official Receipt : 2018-00087503

Printed On : 11/13/2018 at 3:50:25 PM

Customer : TUTEN TITLE & ESCROW LLC
           326 SETTLERS TRACE BLVD, STE 101A
           LAFAYETTE, LA  70508

Date Recorded : November 13, 2018

Instrument ID : 2018-00038514

Recorded Time : 3:50:15 PM

Amount : $205.00

Transaction : MORTGAGE

Name(s) : BORDEN DAIRY COMPANY OF TEXAS LLC
           To : PNC BANK NA

Remarks : STEPHANIE

Accounts

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Total Due : $205.00

Amount Charged : $205.00

Change Tendered : $0.00

THANK YOU FOR ALLOWING US TO SERVE YOU -
LOUIS J. PERRET, CLERK OF COURT
Lafayette Parish Recording Page

Louis J. Perret
Clerk of Court
P.O. Box 2009
Lafayette, LA 70502-2009
(337) 291-6400

First MORTGAGOR
BORDEN DAIRY COMPANY OF TEXAS LLC

First MORTGAGEE
PNC BANK NA

Index Type: MORTGAGES
Type of Document: MORTGAGE
Recording Pages: 23

File Number: 2018-00038514

Recorded Information
I hereby certify that the attached document was filed for registry and recorded in the Clerk of Court's office for Lafayette Parish, Louisiana

On (Recorded Date): 11/13/2018
At (Recorded Time): 3:50:15PM

Doc ID - 041436260023

CLERK OF COURT
LOUIS J. PERRET
Parish of Lafayette
I certify that this is a true copy of the attached document that was filed for registry and recorded 11/13/2018 at 3:50:15
File Number 2018-00038514
Deputy Clerk
MULTIPLE INDEBTEDNESS MORTGAGE TO SECURE PRESENT AND FUTURE INDEBTEDNESS, PLEDGE OF LEASES AND RENTS AND SECURITY AGREEMENT

BY

BORDEN DAIRY COMPANY OF TEXAS, LLC

IN FAVOR OF

PNC BANK, NATIONAL ASSOCIATION

* * * * * * * * * * * * * * * * *

BE IT KNOWN, that on the date set forth on the signature page below, before the undersigned notary public, duly commissioned and qualified in and for the jurisdiction set forth below, and in the presence of the undersigned competent witnesses, personally came and appeared:

BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company ("Mortgagor"), represented herein by Diego Rosenfeldt, Secretary ("Mortgagor"), having a Tax Identification Number of xx-xxx5060, having an address of c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz and being duly authorized by resolutions of its manager(s) or member(s), as applicable.

Mortgagor, after being duly sworn, declares that it does hereby execute and deliver this Multiple Indebtedness Mortgage to Secure Present and Future Indebtedness, Pledge of Leases and Rents and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time, this "Mortgage") for the benefit of

PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent (in such capacity, together with its successors and assigns in such capacity, "Mortgagor"), having an address of 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

AFTER RECORDING RETURN TO:
Fidelity National Title Insurance Company
Commonwealth Land Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, D.C. 20036
File No. 17-064748 3 of 4
Although this Mortgage has been executed by Mortgagor on the date set forth below, it is intended to be effective as of August 7, 2018 (the “Effective Date”). Accordingly, references in this Mortgage or in any of the Loan Documents to the date of this Mortgage, the execution of this Mortgage and words of similar import will refer to the Effective Date.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) “Credit Agreement”: That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the “Borrowers”), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the “Lenders”) and Mortgagee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00.

(b) “Mortgaged Property”: All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or
reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personalty"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rent")s, (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accretions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagor), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, alluvial, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located; provided, however, that notwithstanding any provision of this Mortgage to the contrary, the Mortgaged Property shall not include any movable personal property or movable contents owned by the Mortgagor and located within the Improvements which would be insurable as "contents" pursuant to Section III. Property Covered: Coverage B—Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan
Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

(d) “Obligations”: All present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders, the L/C Issuer and the Bank Product Providers arising under or in connection with any of the Loan Documents, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01 of the Credit Agreement. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (i) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, attorneys’ fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (ii) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its Permitted Discretion) may elect to pay or advance on behalf of such Person. Notwithstanding any of the foregoing, Obligations shall not include any Excluded Hedge Obligations.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations, Mortgagor has granted and conveyed by these presents DOES HEREBY GRANT, BARGAIN, SELL, CONVEY, TRANSFER, AFFECT, HYPOTHECATE, PLEDGE AND ASSIGN MORTGAGEE (FOR THE BENEFIT OF THE SECURED PARTIES), ITS SUCCESSORS AND ASSIGNS, in fee simple, with right of entry and possession, all of Mortgagor’s estate, right, title and interest now owned or hereafter acquired in and to the Mortgaged Property, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagor (for the benefit of the Secured Parties), subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagor, at Mortgagor’s expense, shall cancel and surrender this Mortgage.

Section 2.3 Revolving Credit. This Mortgage is a multiple indebtedness mortgage as defined and authorized under applicable Louisiana law, including Louisiana Civil Code article 3298 and secures all future advances and obligations constituting the Obligations, whether
now existing or arising at any time hereafter, and whether direct or indirect, primary or secondary, joint, several, joint and several, solidary, liquidated or unliquidated, absolute or contingent, voluntary or involuntary, determined or undetermined, due or to become due, or otherwise secured or unsecured, and whether Mortgagor is obligated alone or with others on a joint, several or solidary basis as principal obligor or as a surety, with the preferences and priorities provided under applicable Louisiana law. However, nothing under this Mortgage shall be construed as limiting the duration of this Mortgage or the purpose or purposes for which the Obligations may be requested or extended. As to all Obligations, whether now existing or arising at any time hereafter, this Mortgage has effect between the parties from the time the Mortgage is established and as to third parties from the time the Mortgage is filed for registry. If the outstanding principal balance of the Obligations is ever reduced to a zero ($0.00) balance, the lien and security interest of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of Mortgagee and/or the other Secured Parties to make further advances have been terminated and this Mortgage has been cancelled of record. This Mortgage shall secure not only presently existing Obligations under the Credit Agreement and the other Loan Documents but also future advances that constitute Obligations, to the same extent and with the same priority as if such future advances were made on the date of the execution of this Mortgage and without regard as to whether or not there is any advance made at the time of execution of this Mortgage and without regard as to whether or not there are any Obligations outstanding at the time any advance is made. All advances, disbursements or other payments required by the Credit Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by, but subject to, applicable law (including without limitation the Louisiana Private Works Act, La. R.S. 9:4801, et seq.), have priority over all mechanics’ liens and other liens and encumbrances arising after this Mortgage is recorded. All payments with respect to any of the Obligations shall be applied in the order specified in the Credit Agreement. Notwithstanding anything to the contrary, the maximum amount of Obligations that may be outstanding at any time and from time to time that are secured by this Mortgage, including without limitation as a mortgage and as a pledge and collateral assignment of Leases and Rents and including any amounts incurred by the Mortgagee under this Mortgage, shall be Five Hundred Thirty Million and No/100 Dollars ($530,000,000.00).

ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee and the other Secured Parties as follows:

Section 3.1. **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, affect, hypothecate, pledge, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority
liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee).

Section 3.3. **Payment and Performance.** Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personalty.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personalty, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.
Section 3.6. **Inspection.** Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Intentionally Deleted.**

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 **Condemnation.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

**ARTICLE 4.**

**DEFAULT AND FORECLOSURE**

Section 4.1. **Remedies.** If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration and Foreclosure.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall
become immediately due and payable, and Mortgagee may foreclose this Mortgage by the exercise of the power of sale or by judicial foreclosure.

(b) **Entry on Mortgaged Property.** Mortgagee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor's breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Power of Sale.** Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, to receive the proceeds thereof and shall apply the same in the manner prescribed by applicable law. In the event of any foreclosure sale, the Mortgaged Property may be sold in one or more parcels. Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Mortgage and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Obligations or any other liabilities after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage or applicable law.

(e) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage, and including any of the rights and remedies provided for in Section 7.20 hereof). In lieu of or in addition to foreclosure, Mortgagor may obtain any other remedy provided in this Mortgage or available at law or equity, including the appointment of a receiver for the Property.
Section 4.2. **Separate Sales.** To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee’s election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee
and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the pledge and collateral assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Mortgagee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur
any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the
Leases or otherwise.

ARTICLE 5.
PLEDGE OF RENTS AND LEASES

Section 5.1. **Pledge.** Mortgagor pledges and collaterally assigns (to the extent
assignable) to Mortgagor (for the benefit of the Secured Parties) all of Mortgagor’s right, title and
interest in and to the Leases and Rents. So long as no Event of Default shall exist, (i) Mortgagor
grants to Mortgagor the sole right to collect and receive its Rents and to retain, use and enjoy such
Rents (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges
afforded to such Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all
rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the
occurrence and during the continuance of any Event of Default, (y) such right to the Rents and rights
under the Leases may be revoked by Mortgagor, without notice to or demand upon Mortgagor, and
Mortgagor immediately shall be entitled to receive and apply all Rents, whether or not Mortgagor
enters upon and takes control of the Mortgaged Property and (z) prior to such revocation, Mortgagor
shall apply any Rents which it receives in accordance with the terms of the Credit Agreement.

Section 5.2. **Rights of Mortgagor.** Subject to the provisions of Section 5.1, and
following the occurrence and during the continuance of an Event of Default, Mortgagor shall have
the right, power and authority to: (a) notify any person that the Leases have been assigned to
Mortgagor and that all Rents are to be paid directly to Mortgagor, whether or not Mortgagor has
commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle,
compromise, release, extend the time of payment of, and make allowances, adjustments and
discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other
rights under the Leases, prosecute any action or proceeding, and defend against any claim with
respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property;
(e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of
Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full
extent of Mortgagor’s rights and obligations thereunder, with or without the bringing of any action or
the appointment of a receiver. At Mortgagor’s request, Mortgagor shall deliver a copy of this
Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the
Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or
operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor,
to comply with all demands of Mortgagor under this Mortgage and to turn over to Mortgagor on
demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Mortgagor’s rights hereunder,
Mortgagor shall not be obligated to perform, and Mortgagor does not undertake to perform, any
obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of
this Mortgage. Mortgagor shall have no responsibility on account of this Mortgage for the control,
care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged
Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. **Right to Apply Rents.** Mortgagor shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis.*

Section 5.9. **Intentionally Deleted.**

**ARTICLE 6.**

**SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any
initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.

Section 6.3. Intentionally Deleted.

ARTICLE 7.
MISCELLANEOUS

Section 7.1. Notices. Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. Attorney-in-Fact. To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an
Event of Default, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4. **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5. **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. **Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7. **Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

Section 7.8. **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9. **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as “Mortgagor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10. **Governing Law.** This Mortgage shall be governed by the laws of the State of Louisiana.
Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagor, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Future Advances: Variable Rate.**

(a) This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of the holders of the Obligations, or otherwise, and the Lien securing such future advances shall relate to the date of this Mortgage and have the same priority as the Lien securing loans made on the date hereof. The amount of the Obligations secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(b) This instrument is intended to secure future advances and is given wholly or partly to secure future obligations which may be incurred hereunder.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such
advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent permitted by law.

Section 7.18. **Obligations to Include Judgments; Other Collateral.** The term "Obligations" shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or the holders of the Obligations and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee and/or the holders of the Obligations (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Mortgaged Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee and/or the holders of the Obligations hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Obligations are secured by the Mortgaged Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Mortgaged Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor’s contemplation that the other collateral pledged to secure the Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the holders of the Obligations may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Section 7.19. **State Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of Louisiana law regarding foreclosure (the "State Foreclosure Law"), the provisions of the State Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with State Foreclosure Law.

Section 7.20. **State Specific Provisions.** To the extent of any conflict between the provisions of this Section 7.20 and the other provisions of this Mortgage, the provisions of this Section 7.20 shall control.

(a) **Insurance Proceeds.** Mortgagor hereby agrees that included with the security and any additional security, the "Mortgaged Property" (as contemplated by the granting paragraphs of this Mortgage and the security agreement contained therein) is, and Mortgagor hereby irrevocably pledges and collaterally assigns to the Mortgagee, its successors and assigns, for the purpose of securing the Obligations the right to receive all proceeds attributable to the insured loss of the Mortgaged Property and other incorporeal rights, all as provided in La. R.S. § 9:5386.
(b) **Pact de Non Alienando.** The Mortgaged Property is to remain so specifically mortgaged, affected, hypothecated and pledged unto and in favor of Mortgagee, and Mortgagor acknowledges and agrees that Mortgagor is herein and hereby bound and obligated not to sell or alienate the Mortgaged Property to the prejudice of this act.

(c) **Leases and Rents.** This Mortgage, including the pledge and collateral assignment of the Leases and the Rents set forth in Article 5, constitutes a pledge and collateral assignment of leases and rents pursuant to Louisiana Civil Code articles 3141 *et seq.*, as supplemented by La. R.S. § 9:4401 and any successor or similar provision of applicable Louisiana law, a pledge and collateral assignment of insurance proceeds and other corporeal rights pursuant to La. R.S. § 9:5386, a right to receive condemnation awards in accordance with La. R.S. § 19:11 and a grant of authority to carry out and enforce rights pursuant to La. R.S. § 9:5388. The parties acknowledge that they do not intend to create an absolute assignment of leases and rents, but rather a pledge and collateral assignment as security for the Obligations.

(d) **Louisiana Remedies.** For purposes of foreclosure under Louisiana executory process procedures, Mortgagor acknowledges the Obligations secured hereby and does hereby confess judgment and acknowledges to be indebted unto and in favor of the Mortgagee and the other Secured Parties for the full amount of the Obligations, in principal, interest, costs, expenses, attorneys' fees and other fees and charges. Mortgagor agrees that during the existence of any Event of Default, the Mortgagee may cause the Mortgaged Property, or any part or parts thereof, to be seized and sold, whether in term of court or in vacation, under executory or ordinary process, at the Mortgagee's sole option, in accordance with applicable Louisiana law, with or without appraisement, and without the necessity of making further demand upon Mortgagor or further notifying or placing Mortgagor in default, all of which are expressly waived by Mortgagor, as an entirety or in parcels, to the highest bidder for cash or credit, all as the Mortgagee may determine, and otherwise exercise the rights, powers and remedies afforded herein and under applicable Louisiana law. In the event any proceedings are taken hereunder by way of executory or other process, any and all declarations of fact made by authentic act before a Notary Public in the presence of two witnesses by a person declaring that such facts lie within his knowledge shall constitute authentic evidence of such facts for the purpose of executory or other process, and also for purposes of La. R.S. 9:3509.1, La. R.S. 9:3504(D)(6) and La. R.S. 10:9-629, where applicable. To the extent permitted under applicable Louisiana law, Mortgagor specifically agrees that such an affidavit by a representative of the Mortgagee as to the existence, amount, terms and maturity of the Obligations and of a default thereunder shall constitute authentic evidence of such facts for purpose of executory process. Mortgagor hereby waives in favor of the Mortgagee: (a) the benefit of appraisement, as provided in Louisiana Code of Civil Procedure Annotated arts. 2332, 2336, 2723 and 2724, and all other laws conferring the same benefits; (b) the notice of seizure required by Louisiana Code of Civil Procedure Annotated arts. 2293 and 2721; (c) the three days' delay provided by Louisiana Code of Civil Procedure Annotated arts. 2331 and 2722; and (d) all other benefits provided under Louisiana Code of Civil Procedure Annotated arts. 2331, 2721, 2722 and 2723 and all other articles not specifically mentioned above. In the event the Mortgaged Property, or any part thereof, is seized as an incident to an action for the recognition or enforcement of this Mortgage by executory process, ordinary process, sequestration, writ of fieri facias or otherwise, Mortgagor and the Mortgagee agree that the court
issuing any such order shall, if petitioned by the Mortgagor, direct the applicable sheriff to appoint as a keeper of the Mortgaged Property, the Mortgagor or any person, firm or corporation designated by the Mortgagor at the time such seizure is effected. This designation is pursuant to La. R.S. §§ 9:5136 to 9:5140.2, and the Mortgagor shall be entitled to all the rights and benefits afforded thereunder, as the same are amended. It is hereby agreed that the keeper shall be entitled to receive reasonable compensation, in excess of its reasonable costs and expenses incurred in the administration or preservation of the Mortgaged Property, an amount equal to the greater of (i) $1,000 per day or (ii) the reasonable fees paid to a third party to guard the Mortgaged Property. The designation of keeper made herein shall not be deemed to require the Mortgagor to provoke the appointment of such a keeper. During the existence of an Event of Default hereunder, the Mortgagor, without in any way waiving such default, at its option, upon notice and without regard to the adequacy of the security for the Obligations or to whether it has exercised any of its other rights or remedies hereunder, shall have the right to directly collect and receive all Rents and any other proceeds and/or payments arising under or in any way accruing under the Leases pledged and collaterally assigned herein, as such amounts become due and payable and to apply the same to the Obligations, as provided herein.

(c) **Louisiana Certificates.** Mortgagor and the Mortgagor waive the production of mortgage, conveyance, tax research and other certificates, and relieve and release the undersigned Notary Public, from any responsibility and liability in connection therewith.

(f) **No Paraph.** No note or other evidence of the Obligations has been delivered to the undersigned Notary Public for purposes of paraphrasing it for identification with this Mortgage.

(g) **Certain Terms; Powers of Attorney.** As used in this Mortgage, the terms “real property” and “real estate” shall be deemed to include immovable property; the term “fee simple” shall include full ownership; the term “personal property” shall be deemed to include movable property; the term “tangible property” shall be deemed to include corporeal property; the term “intangible property” shall be deemed to include incorporeal property; the term “easements” shall be deemed to include servitudes; the term “buildings” shall be deemed to include other constructions; the phrase “covenant running with the land” and other words of similar import shall be deemed to include a real right or a recorded lease of immovable property; the term “county” shall be deemed to include parish; the term “joint and several liability” and words of similar import shall be deemed to include solidary liability; the terms “deed in lieu of foreclosure”, “conveyance in lieu of foreclosure” and words of similar import shall include a *dation en paiement* or a giving in payment; references to the Uniform Commercial Code, the UCC or the Louisiana UCC shall include the Louisiana Commercial Laws, La. R.S. §§ 10:1-101, *et seq.*; and references to a “receiver” or words of similar import shall include a keeper appointed pursuant to La. R.S. §§ 9:5136, *et seq.* To the extent applicable, any powers of attorney and similar grants of authority given by Mortgagor to Mortgagee in this Mortgage shall be deemed given pursuant to the provisions of La. R.S. § 9:5388.

(h) **Acceptance by Mortgagor.** The acceptance of this Mortgage by Mortgagor and the consent by Mortgagor to the terms and conditions of this Mortgage are presumed and, under
the provisions of Louisiana Civil Code Articles 3289 and 3150, Mortgagee has not been required to sign this Mortgage.

(i) Intentionally Deleted.

(j) Intentionally Deleted.

(k) Intentionally Deleted.

(l) Intentionally Deleted.

[Remainder of page intentionally left blank; signatures follow]
THUS DONE AND PASSED in Dallas, Texas on the 11th day of June, 2018, but effective as of the Effective Date set forth above, in the presence of the unsersigned competent witnesses who hereunto sign their names with Mortgagor and me, Notary, after due reading of the whole.

WITNESSES (as to all signatures):

Print Name: Holly H. Harris

Print Name: David Riley

BORDEN DAIRY COMPANY OF TEXAS, LLC
f/k/a Milk Products, LLC, a Delaware limited liability company

By:

Name: Diego E. Rosenfeld
Title: Secretary

Delana M. Jones
Print Name: Delana M. Jones
Notary Public
Notary I.D./Bar No. (if applicable):
County/Parish,
My commission expires: April 18, 2020
EXHIBIT A

LEGAL DESCRIPTION OF LAND

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF Lafayette, STATE OF LOUISIANA, AND IS DESCRIBED AS FOLLOWS:

That certain lot or parcel of ground, together with all buildings and improvements thereon, and all rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging and all appurtenances thereof, situated in Section 63, Township 9 South, Range 4 East, Lafayette Parish, Louisiana, containing 6.456 acres, more or less, being known and designated as “Tract “A” George E. Fleming R.A. = 6.456 Acres”, said lot having such shape, form, dimensions, boundaries and measurements as are more fully shown on that certain plat of survey prepared by David S. Huval, dated October 10, 2002, attached to that certain Act recorded under File Number 2002-57294 of the records of Lafayette Parish Clerk of Court, which plat of survey is made part hereof by reference thereto.

Being the same property acquired by Milk Products, LLC from Milk Products, LP by way of Merger, dated June 30, 2007, recorded under File Number 2007-36117 of the records of Lafayette Parish Clerk of Court.

Being the same property acquired by Milk Products, LP from George E. Fleming and Karol Holston Fleming by way of Cash Sale, dated October 21, 2002, recorded under File Number 2002-48933 of the records of Lafayette Parish Clerk of Court.

Said lot bears a municipal address of 1312 Bertrand Drive, Lafayette, LA 70506.

Note: Bertrand Drive is a public road maintained by the city of Lafayette, Louisiana.

Tax Parcel Identification Number: 6015543

(said Tract being hereinafter referred to as “Tract 1”)
AND

That certain lot or parcel of ground, together with all buildings and improvements thereon, and all rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging and all appurtenances thereof, situated in Section 63, Township 9 South, Range 4 East, Lafayette Parish, Louisiana, containing 5.60813 acres, more or less, being known and designated as "The Borden Company 5.60813 ACRES", said lot having such shape, form, dimensions, boundaries and measurements as are more fully shown on that certain plat of survey prepared by R. W. Laurent, dated March 10, 1962, attached to that certain Act recorded under File Number 423576 of the records of Lafayette Parish Clerk of Court, which plat of survey is made part hereof by reference thereto.

Being the same property acquired by Milk Products, LLC from Milk Products, LP by way of Cash Sale, dated June 28, 2007, recorded under File Number 2007-36117 of the records of Lafayette Parish Clerk of Court.

Said lot bears a municipal address of 1308 Bertrand Drive, Lafayette, LA 70506.

Note: Bertrand Drive is a public road maintained by the city of Lafayette, Louisiana.

Tax Parcel Identification Number: 6016272

(said Tract being hereinafter referred to as "Tract 2")
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

STATE OF: MISSISSIPPI
COUNTY OF: FORREST

Document Date: August 7, 2018

GRANTOR: BORDEN DAIRY COMPANY OF ALABAMA, LLC
Address: c/o ACON Investments LLC
1133 Connecticut Avenue, NW, Suite 700
Washington, DC 20036
Attention: Aron Schwartz
Telephone: (202) 454-1100

BENEFICIARY: PNC BANK, NATIONAL ASSOCIATION
Address: 1600 Market Street, 31st Floor
Philadelphia, PA 19103
Attention: Jim Crumlish
Telephone: (215) 585-3920

TRUSTEE: LAWYERS TITLE REALTY SERVICES, INC.
Address: 1620 L Street, NW, 4th Floor
Washington, DC 20036-5605
Attention: Michael Segal
Telephone: (202) 737-4747

Indexing Instructions: SW ¼ of Section 10 and NW ¼ of Section 15, Township 5 North, Range 14 West, Forrest County, Mississippi

This instrument was prepared by and after recording should be returned to:

King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, North Carolina
Attention: Jessica L. Standera, Esq.
(704) 503-2600

Prepared in consultation as to form only and without review of title with:

Rod Clement
Miss Bar No. 6294
Bradley Arant Boult Cummings LLP
188 E. Capitol Street, Suite 400
Jackson, MS
(601) 592-9944

AFTER RECORDING RETURN TO:

Fidelity National Title Insurance Company
Commonwealth Land Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, D.C. 20036

File No. 17-101728 1 of 1
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND Fixture FILING

THE STATE OF MISSISSIPPI §

COUNTY OF FORREST §

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this “Deed of Trust”) is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF ALABAMA, LLC, a Delaware limited liability company (“Grantor”), whose address for notice hereunder is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to LAWYERS TITLE REALTY SERVICES, INC., a Virginia corporation (“Trustee”), whose address for notice hereunder is 1620 L Street, NW, 4th Floor, Washington, DC 20036-5605, Attention: Michael Segal, for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent (in such capacity, together with its successors and assigns in such capacity, “Beneficiary”) for the Secured Parties (as defined in the Credit Agreement described below), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1. DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not herein defined, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) “Credit Agreement”: That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the “Borrowers”), the guarantors from time to time party thereto (including, without limitation, Grantor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the “Lenders”) and Beneficiary, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) “Trust Property”: All estate, right, title, interest, claim and demand whatsoever which Grantor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Grantor (the “Land”), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (3) all materials, supplies, appliances, equipment (as such term is defined in the UCC), apparatus and other items of personal property and fixtures now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (4) all
goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Trust Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and franchise agreements, or any one or all of them, rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Trust Property (the "Personality"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Trust Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Trust Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Trust Property (the "Rents"), (9) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Trust Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accretions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Trust Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personality. As used in this Deed of Trust, the term “Trust Property” shall mean any interest of Grantor in all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.
(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and performance of the Obligations, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION for the benefit and security of Beneficiary and its successors and assigns (for the benefit of the Secured Parties) forever TO HAVE AND TO HOLD the Trust Property with all privileges and appurtenances thereunto belonging to Trustee and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary against the claims of all persons claiming by, through or under Grantor, subject to the Permitted Liens.

Section 2.2. Revolving Credit. A part of the Obligations secured hereby are revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations is ever reduced to a zero ($0.00) balance, the lien and security interest of this Deed of Trust shall not be released or extinguished by operation of law or implied intent of the parties. This Deed of Trust, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of Beneficiary and/or Lenders to make further advances have been terminated and this Deed of Trust has been cancelled of record.

ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

Grantor warrants, represents and covenants to Beneficiary and the other Secured Parties as follows:

Section 3.1. Title to Trust Property and Lien of this Instrument. Grantor owns the Trust Property free and clear of any liens, claims or interests, except the Permitted Liens, and has rights and the power to transfer each item of the Trust Property. This Deed of Trust creates valid, enforceable first priority liens and security interests against the Trust Property. Subject to the terms of the Credit Agreement, where any of the Trust Property is in the possession of a third party, Grantor will join with Beneficiary in notifying the third party of Beneficiary’s security interest and
obtaining an acknowledgment from the third party that it is holding such Trust Property for the benefit of Beneficiary. Subject to the terms of the Credit Agreement, Grantor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the UCC) with respect to any Trust Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Beneficiary).

Section 3.3. **Payment and Performance.** Grantor shall pay and perform the Obligations in full when they are due and required to be paid and performed as provided in the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personalty.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Grantor shall not, without the prior written consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except Permitted Liens and such as may be first approved in writing by Beneficiary. Grantor shall not incorporate into the Trust Property any item of personalty, fixtures or other property that is not owned by Grantor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Trust Property and will not, without the prior consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Trust Property except for any Permitted Liens existing as of the date hereof. Grantor shall comply in all material respects with all restrictive covenants affecting the Trust Property and all zoning ordinances and other public or private restrictions as to the use of the Trust Property.

Section 3.6. **Inspection.** Grantor shall permit Beneficiary, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Trust Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.
Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Grantor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Grantor shall not adjust, collect or compromise any claims under said policies without Beneficiary’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Beneficiary instead of to the Grantor and Beneficiary jointly, and the Grantor appoints Beneficiary as the Grantor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Beneficiary’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

Section 3.9. **Condemnation.** The Grantor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Trust Property, shall notify Beneficiary of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Grantor and shall be received and collected directly by the Grantor. If an Event of Default exists, Beneficiary may participate in any such proceedings and the Grantor shall deliver to Beneficiary all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Beneficiary, and any such Award shall be applied, at Beneficiary’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

**ARTICLE 4. DEFAULT AND FORECLOSURE**

Section 4.1. **Remedies.** If an Event of Default exists, Beneficiary may, at Beneficiary’s election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Trust Property.** Enter the Trust Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Trust Property following the occurrence and during the continuance of an Event of Default and without Beneficiary’s prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Trust Property.** Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements
and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions of Section 4.7.

(d) **Nonjudicial Foreclosure and Judicial Foreclosure.**

(i) **Nonjudicial Foreclosure.** If an Event of Default occurs and the Beneficiary so requests, the Trustee, or his or her successor or substitute, shall sell the Trust Property or any portion thereof after having given notice of the time, place and terms of the sale in accordance with Section 89-1-55 of the Mississippi Code of 1972, as amended, and any amendments thereof or replacements thereof. If the Trust Property is situated in two or more counties, or in two judicial districts of the same county, Trustee shall have the full power to select in which county or judicial district the sale of the Trust Property is to be made, newspaper advertisement published and notice of sale posted and Trustee’s selection shall be binding upon the Grantor and Beneficiary. Grantor waives the provisions of Section 111 of the Mississippi Constitution and Section 89-1-55 of the Mississippi Code of 1972, as amended, if any, as far as this section restricts the right of the Trustee to offer at sale more than 160 acres at a time. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Beneficiary may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Trust Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Trust Property shall be sold; and, if the proceeds of such sale of less than the whole of the Trust Property shall be less than the aggregate of the secured indebtedness and the expense of executing this trust as provided herein, the Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Trust Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Trust Property but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Trust Property. After each sale, Trustee shall make to the purchaser or purchasers at such sale a trustee’s deed conveying the Trust Property so sold to the purchaser or purchasers without warranty of title and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his or her substitute or successor, and such power of sale may be exercised from time to time as many times as Beneficiary may deem necessary until all of the Trust Property has been duly sold and all secured indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Trustee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee or his or her successor or substitute. At any such sale: (i) Trustee shall not be required to have physically present, or to have constructive possession of, the Trust Property to be sold (Grantor hereby covenying and agreeing to deliver to Trustee any portion of the Trust Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and the right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale, (ii) each and every recital contained in any instrument of
conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law, and appointment of any successor Trustee hereunder, (iii) any and all prerequisites to the validity of such sale shall be conclusively presumed to have been performed; (iv) the receipt of Trustee or of such other party making the sale shall be a sufficient discharge to the purchaser for the purchase money, and no such purchaser, or purchaser’s assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in the way answerable for any loss, misapplication or nonapplication thereof, (v) Grantor shall be completely and irrevocably divested of all of their right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the Trust Property sold, and such sale shall be a perpetual bar both at law and in equity against Grantor, and against any and all other persons claiming or to claim the Trust Property sold or any part thereof; and (vi) Beneficiary may be a purchaser at any such sale.

(ii) **Judicial Foreclosure.** This Deed of Trust shall be effective as a mortgage as well as a deed of trust and during the continuance of an Event of Default may be foreclosed judicially as to any of the Trust Property in any manner permitted by the laws of the State. In the event Trustee commences a non-judicial foreclosure at the request of Beneficiary, Beneficiary may at any time before the sale of the Trust Property instruct the Trustee to abandon the sale, and Beneficiary may then institute suit for the collection of the Indebtedness, and for the judicial foreclosure of this Deed of Trust. If Beneficiary should institute a suit for the collection of the Indebtedness and for the judicial foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, or Trustee’s substitute or successor, to sell the Trust Property by non-judicial foreclosure in accordance with the provisions of this Deed of Trust.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and to the extent permitted by law, obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Deed of Trust).

Section 4.2. **Separate Sales.** The Trust Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative
and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Credit Agreement or the other Loan Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or any Secured Party in the enforcement of any rights, remedies or recourse under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Trust Property. For payment of the Obligations, Beneficiary and the other Secured Parties may resort to any other security in such order and manner as Beneficiary and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, right or equity of redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement and the other Loan Documents, all notices of any Event of Default or Trustee’s or Beneficiary’s election to exercise or their actual exercise of any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Beneficiary and the other Secured Parties, or any one or more of them, shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary and the other Secured Parties shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement or the other Loan Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement unless otherwise required by applicable laws.
Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Trust Property. All occupants of the Trust Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Trust Property other than the statutory action of forcible detainer in any court having jurisdiction over the Trust Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary or the other Secured Parties under this Section 4.9, or otherwise under this Deed of Trust, the Credit Agreement or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Post-Default Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys’ fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgage in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary and the other Secured Parties, or any one or more of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Beneficiary or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or any Secured Party to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5. ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Grantor hereby absolutely, presently, unconditionally and irrevocably pledges, grants, sells, conveys, delivers, hypothecates, assigns, transfers and sets over to Beneficiary (for its benefit and the benefit of the Secured Parties) all of Grantor’s right, title and interest in and to the Leases and Rents. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Land.

Section 5.2. **Rights of Beneficiary.** Subject to the provisions of Section 5.5 below, Beneficiary shall have the right, power and authority to do any or all of the following: (a) notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to
Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Trust Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Trust Property; (e) lease all or any part of the Trust Property; and (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor’s rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary’s request, Grantor shall deliver a copy of this Deed of Trust to each tenant under a Lease and to each manager and managing agent or operator of the Trust Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Trust Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Deed of Trust and to turn over to Beneficiary on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Beneficiary’s rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Trust Property on account of this Deed of Trust. Except as otherwise expressly provided in the Credit Agreement, Beneficiary shall have no responsibility on account of this Deed of Trust for the control, care, maintenance or repair of the Trust Property, for any waste committed on the Trust Property, for any dangerous or defective condition of the Trust Property, or for any negligence in the management, upkeep, repair or control of the Trust Property.

Section 5.4. **Right to Apply Rents.** Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Revocable License.** Notwithstanding the absolute assignment of the Rents and Leases granted pursuant to this Deed of Trust and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Beneficiary grants to Grantor a revocable license to collect and receive the Rents, to retain, use and enjoy such Rents, and to administer and enforce the Leases as landlord thereunder. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Beneficiary, without notice to or demand upon Grantor, and Beneficiary immediately shall be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Trust Property. Prior to such revocation, Grantor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement.

Section 5.6. **Appointment.** Grantor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Grantor, and Grantor ratifies and confirms any and all acts done or omitted to be done by Beneficiary, its agents, servants, employees or attorneys in, to or about the Trust Property.

Section 5.7. **Liability of Beneficiary.** Beneficiary shall not in any way be liable to Grantor for any action or inaction of Beneficiary, its employees, representatives or agents under this Article 5.
Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations secured hereby remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

**ARTICLE 6. SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Deed of Trust constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Grantor grants to Trustee and Beneficiary (on behalf of the Secured Parties), a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Trust Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Grantor at least ten (10) business days prior to any action under the UCC shall constitute reasonable notice to Grantor.

Section 6.2. **Financing Statements.** Grantor hereby irrevocably authorizes Beneficiary at any time and from time to time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Trust Property, without the signature of Grantor where permitted by law. Grantor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary’s prior written consent, subject to Grantor’s rights under Section 9-509(d)(2) of the UCC. Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. The Grantor hereby authorizes the filing of a financing statement in the office of the state in which Grantor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Grantor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of
Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

ARTICLE 7.
CONCERNING THE TRUSTEE

Section 7.1. Certain Rights. With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. GRANTOR SHALL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HERUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY, DEFEND AND SAVE TRUSTEE HARMLESS AGAINST, ALL LIABILITY AND REASONABLE EXPENSES WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES. GRANTOR’S OBLIGATIONS UNDER THIS SECTION 7.1 SHALL NOT BE REDUCED OR IMPAIRED BY PRINCIPLES OF COMPARATIVE OR CONTRIBUTORY NEGLIGENCE.

Section 7.2. Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

Section 7.3. Successor Trustees. If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

Section 7.4. Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

ARTICLE 8.
MISCELLANEOUS

Section 8.1. Notices. Any notice required or permitted to be given under this Deed of Trust shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 8.2. Covenants Running with the Land. All obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Trust Property. As used herein, “Grantor” shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust
Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Trust Property). All persons or entities who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 8.3. **Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Grantor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) neither Beneficiary nor any Secured Party shall be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 8.4. **Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 8.5. **No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement or the other Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.6. **Subrogation.** To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Trust Property, then Beneficiary (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Trust Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary (on behalf of the Secured Parties).

Section 8.7. **Credit Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

Section 8.8. **Release.** Upon payment and performance in full of the Obligations, Beneficiary, at Grantor's expense, shall record a release of the liens and security interests created by this Deed of Trust. In addition, the Credit Agreement provides for certain partial releases upon satisfaction of all conditions therefor set forth in the Credit Agreement.
Section 8.9. **Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary and the Secured Parties, or any one or more of them, or any rights or remedies of Beneficiary and the Secured Parties, or any one or more of them. Grantor further waives any and all rights of homestead, dower, elective or distributive share and redemption from foreclosure and from sale under any order or decree of foreclosure of the lien created by this Deed of Trust, for itself and on behalf of: (i) any trust estate of which the Land is a part; (ii) all beneficially interested persons; (iii) each and every person acquiring any interest in the Trust Property or title to the Land subsequent to the date of this Deed of Trust; and (iv) all other persons to the extent permitted by the provisions of laws of the State in which the Land are located.

Section 8.10. **Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Deed of Trust as “Grantor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.11. **Governing Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI.

Section 8.12. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.13. **Counterparts.** This Deed of Trust may be executed in counterparts, all of which counterparts together shall constitute one and the same instrument (and original signature pages and notary pages from each counterpart may be assembled into one original document to be recorded).

Section 8.14. **Entire Agreement.** This Deed of Trust, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Beneficiary, the other Secured Parties and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Deed of Trust, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.15. **Severability.** Any provision of this Deed of Trust that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.16. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY
LEGAL ACTION OR PROCEEDING RELATING TO THIS DEED OF TRUST AND FOR ANY COUNTERCLAIM THEREIN.

ARTICLE 9.
STATE SPECIFIC PROVISIONS

Section 9.1. State Specific Provisions. In the event of any material inconsistencies between this Article 9 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Article 9 shall control and be binding.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any provision of Mississippi law regarding foreclosure (the "Mississippi Foreclosure Law"), the provisions of the Mississippi Foreclosure Law shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with Mississippi Foreclosure Law.

(b) If any provision of this Deed of Trust shall grant to Beneficiary (including Beneficiary acting as a mortgagee-in-possess) or a receiver appointed pursuant to the provisions of this Deed of Trust, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Beneficiary or such receiver under the Mississippi Foreclosure Law in the absence of said provision, Beneficiary and such receiver shall be vested with the rights granted under the Mississippi Foreclosure Law to the full extent permitted by law.

(c) For purposes of Miss. Code Ann. Section 89-1-49 and Section 89-5-21, this Deed of Trust secures a line of credit.

(d) This Deed of Trust secures all future advances of the Loans, including reimbursement obligations under letters of credit, regardless of whether such future advances are obligatory or optional, and whether additional advances of principal or advances made to protect collateral.

(e) The indebtedness secured by this Deed of Trust may bear interest at a variable rate based on the London Interbank Offering Rate or another index.

(f) The cancellation of this Deed of Trust shall be deemed to be reconveyance of Beneficiary’s interest in the Leases and Rents, and a termination of the security interest granted in Section 6.1 of this Deed of Trust.

[Remainder of page intentionally left blank; signatures follow]
IN WITNESS WHEREOF, Grantor has duly signed and delivered this Deed of Trust on the date of its acknowledgment below, and effective as of the date first above written.

GRANTOR:

BORDEN DAIRY COMPANY OF ALABAMA, LLC, a Delaware limited liability company

By:  
Name: Diego E. Rosenfeldt
Title: Secretary

ACKNOWLEDGMENT

STATE OF Texas
COUNTY OF Dallas

Personally appeared before me, the undersigned authority in and for the said county and state, on this 11th day of June, 2018, within my jurisdiction, the within named Diego E. Rosenfeldt, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he executed the same in his representative capacity, and that by his signature on the instrument, and as the act and deed of the person or entity upon behalf of which he acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

Delana M. Jones
Notary Public
Printed Name: Delana M. Jones
My commission expires: April 18, 2020

[Signature Page to Deed of Trust - Mississippi]
EXHIBIT A
LEGAL DESCRIPTION OF LAND

A parcel of land situated in the Southeast ¼ of the Southwest ¼ of Section 10, Township 5 North, Range 14 West, and the Northeast ¼ of the Northwest ¼ of Section 15, Township 5 North, Range 14 West, Forrest County, Mississippi, more particularly described as follows:

Commencing at a 3" iron pipe at the Southwest corner of the Southeast ¼ of the Southwest ¼ of Section 10, Township 5 North, Range 14 West, Forrest County, Mississippi, thence S 89°42'16" E 898.86 feet to a point on a drainage manhole and the Point of Beginning, thence S 45°37'47" W 261.20 feet to an iron pipe on the North margin of Highway 49, thence N 43°33'48" W along said North margin of Highway 49 275.38 feet to an iron rod in the asphalt, thence departing said North margin run N 51°57'55" E 202.88 feet to a cotton spindle in the asphalt, thence N 05°35'09" W 162.93 feet to an iron pipe, thence N 05°38'25" W 72.89 feet to an iron rod, thence S 85°44'44" W 367.50 feet to an iron pipe on the North margin of said Highway 49, thence N 43°3'25" W along said North margin 645.59 feet to an iron pipe, thence departing said North margin run N 32°03'03" E 548.33 feet to an iron pipe, thence N 26°00'36" W 244.86 feet to an iron pipe, thence S 78°47'36" E 492.90 feet to an iron rod, thence S 89°00'16" E 352.46 feet to an iron pipe, thence S 00°00'50" E 1271.83 feet to a point on a drainage manhole and the Point of Beginning. Said parcel contains 21.84 acres or 951,347 square feet.

ALSO DESCRIBED AS:

A certain parcel of land lying in Hattiesburg, Forrest County, Mississippi, more particularly described as follows:

Unless stated otherwise, any monument referred to herein as an iron pin set is a 5/8" rebar 18" in length with plastic cap stamped "K. Crowe #2892". All bearings are based on Geodetic North by G.P.S. observations dated 10-02-17.

Commencing at a 3" Iron Pipe, being the SW Corner of the SE 1/4, SW 1/4, Section 10, T5N, R14W, Forrest County, Mississippi, thence N 89° 42' 16" W, a distance of 899.86' to the point of beginning at the true corner of property of Harold Cox, (Tax ID: 182-000-010-029.00) and subject property;

Thence along Harold Cox property line S 45° 55' 20" W, a distance of 10.00' to an iron pin found on-line as witness to true corner;

Thence, S 45° 55' 20" W, a distance of 250.28', for a total of 260.28' to an iron pin found at the corner of Harold Cox property and the eastern right-of-way line of US Highway 49;

Thence leaving Harold Cox property and along US Highway 49 eastern right-of-way line, N 43° 32' 08" W, a distance of 274.80' to a 1" iron pipe found at the corner of Elmo and Dorothy Montague (Tax ID:182-0000-010-026.00);

Thence leaving the eastern right-of-way line of US Highway 49 and along the Elmo and Dorothy Montague property line for the next four calls, N 52° 13' 46" E, a distance of 202.82' to a mag nail found;

Thence N 05° 13' 06" W, a distance of 163.06' to a 1" iron pipe found;

Thence N 05° 31' 44" W, a distance of 72.80' to a mag nail with shiner set;
Thence S 66° 06' 43" W, a distance of 367.21' to a 1" iron pipe found on the eastern right-of-way line of US Highway 49;

Thence leaving the Elmo and Dorothy Montague property and along the US Highway 49 eastern right-of-way line, N 43° 16' 29" W, a distance of 644.83' to a 1" iron pipe found at the corner of Martin Transport Inc. (D.B. 1165, Pg. 698);

Thence leaving the eastern right-of-way line and along the Martin Transport Inc. for the next two calls, N 32° 17' 23" E, a distance of 547.81' to an 1/2" iron pin found;

Thence N 25° 36' 20" W, a distance of 245.05' to a 1" iron pipe found at the corner of Martin Transport Inc. and Broome Construction Co. Inc. (Tax ID: 1-008-10-018.00);

Thence leaving the Martin Transport Inc. and along the Broome Construction Co. Inc. for the next two calls, S 76° 28' 54" E, a distance of 492.92' to a 5/8" iron pin found capped Flint 01762;

Thence N 89° 19' 52" E, a distance of 352.48' to a 3/4" iron pipe found at the corner of Broome Construction Co. Inc. and AA Property Holdings Inc. (Tax ID: 182-0000-010-029.01);

Thence leaving the Broome Construction Co. Inc. and along the AA Property Holdings Inc. property line and into Harold Cox, S 00° 07' 47" W, a distance of 1270.99' to the point of beginning, having an area of 950,582.2 square feet, 21.82 acres

Taxes Parcel Nos. are listed below, as reference and information only:

Parcel #
1-008-10-033.00
1-008-10-030.00
2-011-15-022.00
1-008-10-018.01
1-008-10-029.00
1-008-10-031.00
OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

BY

BORDEN DAIRY COMPANY OF KENTUCKY, LLC,
formerly known as FLAV-O-RICH DAIRIES, LLC,
as Mortgagor,

TO

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Mortgagee,

Relating to Land in:
Laurel County, Kentucky

DATED: As of August 7, 2018

COLLATERAL IS OR INCLUDES FIXTURES

AFTER RECORDING RETURN TO:
Fidelity National Title Insurance Company
Commonwealth Land Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, D.C. 20036
File No. 16299222v2
OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement (this "Mortgage") is executed actually on the date indicated in the notarial certificate affixed to it, but is made and delivered effective as of August 7, 2018, by BORDEN DAIRY COMPANY OF KENTUCKY, LLC, a Delaware limited liability company formerly known as FLAV-O-RICH DAIRIES, LLC ("Mortgagor"), having a mailing address of c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to and in favor of PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Administrative Agent and Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below; and in such capacity, together with its successors and assigns in such capacity, "Mortgagee"), having a mailing address of 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Mortgagee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) "Mortgaged Property": All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is
presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personalty"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rents"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagor), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located; provided, however, that notwithstanding any provision of this Mortgage to the contrary, the Mortgaged Property shall not include any movable personal property or movable contents owned by the
Mortgagor and located within the Improvements which would be insurable as “contents” pursuant to “Section III. Property Covered; Coverage B – Personal Property” of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article 9 or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations (including without limitation the full and timely payment of the Loans), Mortgagor grants, bargains, sells, assigns, releases, transfers, transfers, conveys, deeds, pledges, mortgages, hypothecates, sets over and confirms UNTO Mortgagee and its successors and assigns (for the benefit of the Secured Parties) forever, subject, however, to the Permitted Liens, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION TO HAVE AND TO HOLD, the Mortgaged Property, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee (for the benefit of the Secured Parties), subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagee, at Mortgagor's expense, shall cancel and surrender this Mortgage.

Section 2.3 Revolving Credit. Subject to Section 7.21, this Mortgage secures revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations secured hereby is ever reduced to a zero ($0.00) balance, the lien, security interest and security title of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Mortgagee and/or the Lenders to make further advances have been terminated and this Mortgage has been cancelled of record.
ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee and the other Secured Parties as follows:

Section 3.1. Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee).

Section 3.3. Payment and Performance. Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. Replacement of Fixtures and Personality. Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personality, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.
Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6. **Inspection.** Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 **Condemnation.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.
ARTICLE 4.
DEFAULT AND FORECLOSURE

Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration and Foreclosure.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable, and Mortgagee may foreclose this Mortgage by the exercise of the power of sale or by judicial foreclosure.

(b) **Entry on Mortgaged Property.** Mortgagee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor's breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Power of Sale.** Foreclose and sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, to receive the proceeds thereof and shall apply the same in the manner prescribed by applicable law. In the event of any foreclosure sale, the Mortgaged Property may be sold in one or more parcels. Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Mortgage and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Obligations or any other liabilities after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage or applicable law.
(e) Other. Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage). In lieu of or in addition to foreclosure, Mortgagor may obtain any other remedy provided in this Mortgage or available at law or equity, including the appointment of a receiver for the Mortgaged Property.

Section 4.2. Separate Sales. To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee's election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.
Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security
interests under Article 6, nor any other remedies afforded to Mortgagor and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Mortgagor or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagor or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5.
ASSIGNMENT OF RENTS AND LEASES

Section 5.1. Assignment. Mortgagor unconditionally and absolutely assigns (to the extent assignable) to Mortgagor (for the benefit of the Secured Parties) all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagor and not merely an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Mortgage and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Mortgagor grants to Mortgagor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Mortgagor, without notice to or demand upon Mortgagor, and Mortgagor immediately shall be entitled to receive and apply all Rents, whether or not Mortgagor enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. Rights of Mortgagor. Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Mortgagor shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Mortgagor and that all Rents are to be paid directly to Mortgagor, whether or not Mortgagor has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagor's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor,
to comply with all demands of Mortgagee under this Mortgage and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. **Right to Apply Rents.** Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

**ARTICLE 6. SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with
respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Mortgage, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the "Reconder's Office"), shall constitute and operate as a financing statement filed as a "fixture filing" within the meaning of Sections 9-334 and 9-502 of the UCC for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**ARTICLE 7.**

**MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in
the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. Attorney-in-Fact. To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4. Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5. No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. Subrogation. To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7. Credit Agreement. If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.
Section 7.8. **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9. **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as “Mortgagor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10. **Governing Law.** This Mortgage shall be governed by the laws of the Commonwealth of Kentucky.

Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Future Advances: Variable Rate.**

(a) Subject to Section 7.21 and Section 7.23, this Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to
be made at the option of the holders of the Obligations, or otherwise, and the Lien securing such future advances shall relate to the date of this Mortgage and have the same priority as the Lien securing loans made on the date hereof. Subject to Section 7.21 and Section 7.23, the amount of the Obligations secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(b) Subject to Section 7.21 and Section 7.23, this Mortgage is given to secure not only the existing Obligations, but also any Obligations incurred on or after the date hereof, including but not limited to any future advances and/or additional indebtedness or readvances (whether such advances are obligatory or are made at the option of Mortgagee, or otherwise) made by Mortgagee and/or the Lenders pursuant to and under the Credit Agreement, any other Loan Document or this Mortgage, to the same extent as if such future advances and/or additional indebtedness were made on the date of the execution of this Mortgage. Subject to Section 7.21 and Section 7.23, funds disbursed that, in the reasonable exercise of Mortgagee’s judgment, are needed to complete Improvements or to protect Mortgagee’s and Lenders’ security interest in the Mortgaged Property, are to be deemed obligatory advances hereunder, and will be added to the Obligations and shall be part of the Obligations secured by this Mortgage, and the Obligations shall be increased accordingly. Subject to Section 7.21 and Section 7.23, this Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law. This Mortgage is intended to comply with KRS Section 382.520 and KRS Section 382.385.

Section 7.17. Protective Advances. Notwithstanding anything contained herein to the contrary and subject to Section 7.21 and Section 7.23, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent permitted by law.

Section 7.18. Obligations to Include Judgments; Other Collateral. The term “Obligations” shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or the holders of the Obligations and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee and/or the holders of the Obligations (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Mortgaged Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee and/or the holders of the Obligations hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Obligations are secured by the Mortgaged Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Mortgaged Property, in and of
itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor’s contemplation that the other collateral pledged to secure the Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the holders of the Obligations may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Section 7.19. **State Foreclosure Law.** Notwithstanding anything in this Mortgage or the other Loan Documents to the contrary, Mortgagee shall be entitled to all rights and remedies that a lender or mortgagee would have under Applicable State Law (as defined below). In the event of any conflict or inconsistency between the provisions of this Mortgage or other Loan Documents and the provisions of Applicable State Law, the provisions of Applicable State Law shall take precedence over such provisions of this Mortgage and such other Loan Documents, but shall not invalidate or render unenforceable any other provisions of this Mortgage or such other Loan Documents that can be construed in a manner consistent with Applicable State Law. Conversely, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default of the Mortgagor which are more limited than the rights or remedies that would otherwise be vested in this Mortgage under Applicable State Law in the absence of said provision, Mortgagee shall be vested with the rights and remedies granted under Applicable State Law. For the purposes hereof, "**Applicable State Law**" means statutory and case law in the Commonwealth of Kentucky, including, but not by way of limitation, the Kentucky Mortgage Foreclosure Act and the Code, as amended, modified and/or recodified from time to time.

Section 7.20. **Maturity Date.** The maturity date of the Obligations, unless extended, is no later than July 6, 2023.

Section 7.21. **Lines of Credit and Revolving Credit Plans.** To the extent that the indebtedness or other Obligations are deemed to be a "line of credit" pursuant to KRS 382.385, Mortgagor and Mortgagee intend that this Mortgage secure such line of credit, and the maximum principal amount of credit which may be extended at any time or times under any and all of such lines of credit in the aggregate, and which is to be secured by this Mortgage is $60,000,000. To the extent that the indebtedness or other Obligations are deemed to be a "revolving credit plan" pursuant to KRS 382.385, Mortgagor and Mortgagee intend that this Mortgage secure such revolving credit plan, and the maximum credit limit of any and all of such revolving credit plans which may be outstanding at any time or times under such plans in the aggregate, and which is to be secured by this Mortgage is $60,000,000.

Section 7.22. **Attorneys’ Fees.** For purposes hereof, the terms “attorneys’ fees,” “reasonable attorneys’ fees” or similar terms shall include such fees only to the extent actually paid or agreed to be paid, and shall not be allowed to a salaried employee of any creditor, obligor or lien holder.
Section 7.23. **Future Advances.** With reference to KRS 382.520, it is acknowledged and agreed that this Mortgage secures not only the indebtedness and other Obligations but also all future advances and all other additional indebtedness, with interest thereon, whether direct, indirect, future, contingent or otherwise, that Mortgagee and/or Lenders may make to or for Mortgagor and/or Borrowers, to the maximum extent of not more than a total of $265,000,000. It shall be a default under this Mortgage if Mortgagor requests a release of any portion of the lien securing any of such additional indebtedness secured by this Mortgage prior to the date that all of the Obligations have been paid and the Loan Documents have been terminated, and Mortgagor hereby waives any and all right to request such a release to the maximum extent permitted by law.

Section 7.24. **Remedies Against Other Collateral.** Mortgagor hereby acknowledges that certain Loan Documents other than this Mortgage create liens on collateral located in counties or states other than the counties and state in which the Land is located. Mortgagor further acknowledges that this Mortgage and the other Loan Documents are cross-defaulted and the Obligations secured hereby are also secured by the other Loan Documents. Mortgagor agrees that Mortgagee may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Obligations.
IN TESTIMONY WHEREOF, witness the signature of Mortgagor to this Mortgage effective as of the date set forth above.

MORTGAGOR:

BORDEN DAIRY COMPANY OF KENTUCKY, LLC, a Delaware limited liability company formerly known as FLAV-O-RICH DAIRIES, LLC

By: ____________________________
Name: Diego E. Rosenfeldt
Title: Secretary

ACKNOWLEDGMENT

STATE OF __________ )
COUNTY OF __________ ) SS

The foregoing instrument was acknowledged before me this 11th day of June, 2018, by Diego E. Rosenfeldt, as Secretary of BORDEN DAIRY COMPANY OF KENTUCKY, LLC, a Delaware limited liability company formerly known as FLAV-O-RICH DAIRIES, LLC, on behalf of the limited liability company.

My commission expires: April 18, 2020

[SEAL]

DELANA M. JONES
My Notary ID # 6799887
Expires April 18, 2020

NOTARY PUBLIC

SIGNATURE PAGE TO KENTUCKY MORTGAGE
This Instrument Prepared By and Return To:

Jessica Standera, Esq.
King & Spalding LLP
300 S. Tryon Street, Suite 1700
Charlotte, North Carolina 28202
(704) 503-2600

[Signature]

SIGNATURE PAGE TO KENTUCKY MORTGAGE
EXHIBIT A

LEGAL DESCRIPTION OF LAND

A certain tract or parcel of land lying in the City of London, Laurel County Kentucky and being more particularly described as follows:

Beginning at a found 5/8” iron pin with an aluminum cap stamped “KYDOT” on the easterly right-of-way line of Frontage Road at 75.85 feet right of station 218+70.43 as conveyed to the Commonwealth of Kentucky and recorded in deed book 713, page 583 and the True Point of Beginning; thence South 23°17’52” East with the westerly line of a parcel conveyed to Kajal, LLC recorded in deed book 597, page 287 a distance of 140.87 feet to a found 5/8” iron pin stamped “6670”; thence South 18°27’52” East continuing with the westerly line of said Kajal, LLC a distance of 262.42 feet to a found 5/8” iron pin stamped “6670” at 3.20 feet south and 0.27 feet west; thence South 18°50’57” East with the westerly lines of parcels conveyed to Cihaya, LLC recorded in deed book 583, page 67, Wesley R. Tipton recorded in deed book 689, page 192 and James E. Hibbard, Trustee recorded in deed book 598, page 660 a distance of 776.68 feet to a set 5/8” iron pin; thence South 22°59’02” East continuing with the westerly line of said James E. Hibbard, Trustee and a parcel conveyed to Thomas C. & Marilyn C. Jones recorded in deed book 484, page 278 a distance of 197.37 feet to a set 5/8” iron pin; thence South 87°18’10” West with the northerly line of a parcel conveyed to Blankenship & Lee Investments, Inc. recorded in deed book 703, page 327 a distance of 339.76 feet to a set 5/8” iron pin; thence South 12°45’23” West with the westerly line of said Blankenship & Lee Investments, Inc. a distance of 243.23 feet to a set 5/8” iron pin; thence South 87°47’38” West with the northerly line of said Blankenship & Lee Investments, Inc. a distance of 520.50 feet to a found 5/8” iron pin with an aluminum cap stamped “KYDOT” on the easterly right-of-way line of said Frontage Road; thence along the easterly right-of-way line of said Frontage Road the following 10 courses:
1. North 23°01’22” West a distance of 213.68 feet to a set 5/8” iron pin;
2. North 06°58’43” West a distance of 360.96 feet to a found 5/8” iron pin with an aluminum cap stamped “KYDOT”;
3. North 35°06’04” East a distance of 153.88 feet to a set 5/8” iron pin;
4. North 22°05’13” East a distance of 84.81 feet to a set 5/8” iron pin;
5. North 07°53’43” West a distance of 31.47 feet to a set 5/8” iron pin;
6. North 26°07’21” East a distance of 238.90 feet to a set 5/8” iron pin;
7. North 43°10’05” East a distance of 165.98 feet to a set 5/8” iron pin;
8. North 31°37’30” East a distance of 128.49 feet to a set 5/8” iron pin;
9. North 54°25’03” East a distance of 90.38 feet to a found 5/8” iron pin with an aluminum cap stamped “KYDOT”;
10. North 19°18’25” East a distance of 65.07 feet to a set 5/8” iron pin; thence leaving the easterly right-of-way line of said Frontage Road, South 57°46’36” East a distance of 114.34 feet to a set 5/8” iron pin; thence North 18°07’52” West a distance of 183.33 feet to a set 5/8” iron pin on the easterly right-of-way line of said Frontage Road; thence North 19°18’25” East along the easterly right-of-way line of said Frontage Road a distance of 111.74
feet to the True Point of Beginning, containing 20.560 acres more or less and subject to all
rights-of-ways and easements of record.

Being a portion of the same tract of land conveyed to Flav-O-Rich Dairies, LLC by deed dated
December 21, 2001 and recorded in Deed Book 536, Page 25, in the Office of the Clerk of
Laurel County, Kentucky.
OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Mortgage") is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF OHIO, LLC, a Delaware limited liability company ("Mortgagor"), whose tax mailing address is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below); and in such capacity, together with its successors and assigns in such capacity, ("Mortgagee"), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial

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institutions and other entities from time to time parties as lenders thereunder (collectively, the “Lenders”) and Mortgagee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) “Mortgaged Property”: All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Personality”), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “Plans”), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “Leases”), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the “Rents”), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility
contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgator in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgator, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations, Mortgator MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, to Mortgagee (for the benefit of the Secured Parties) the Mortgaged Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee (for the benefit of the Secured Parties), and Mortgator does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee (for the benefit of the Secured Parties), subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagee, at Mortgator's expense, shall cancel and surrender this Mortgage.
Section 2.3  **Revolving Credit.** This Mortgage secures revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations secured hereby is ever reduced to a zero ($0.00) balance, the lien, security interest and security title of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Mortgagor and/or the Lenders to make further advances have been terminated and this Mortgage has been cancelled of record.

**ARTICLE 3.**

**WARRANTIES, REPRESENTATIONS AND COVENANTS**

Mortgagor warrants, represents and covenants to Mortgagor and the other Secured Parties as follows:

Section 3.1. **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagor in notifying the third party of Mortgagor's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagor. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagor in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagor a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagor).

Section 3.3. **Payment and Performance.** Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personalty.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the
prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personality, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6. **Inspection.** Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 **Condemnation.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings.
Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an "Award") shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

ARTICLE 4.
DEFAULT AND FORECLOSURE

Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Mortgagee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Mortgagee’s security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor’s breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee’s prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels in accordance with Ohio law. With respect to any notices required or permitted under the
UCC, but without derogation of Mortgagee's rights under the Credit Agreement, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. In connection with any foreclosure sale: (i) Mortgagor shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee to pursue any third party for any of the Obligations; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) to the fullest extent permitted by law, if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (v) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee to the fullest extent permitted by law. Compliance by Mortgagee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage).

Section 4.2. **Separate Sales.** To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.
Section 4.4. **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee's election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.
Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Mortgagee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to oblige Mortgagee or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5. ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Mortgagor unconditionally and absolutely assigns (to the extent assignable) to Mortgagee (for the benefit of the Secured Parties) all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Mortgage and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Mortgagee grants to Mortgagor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Mortgagee, without notice to or demand upon Mortgagor, and Mortgagee immediately shall be entitled to
receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. Rights of Mortgagee. Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Mortgage and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3. No Obligation. Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. Right to Apply Rents. Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. Reserved.

Section 5.6. Appointment. To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. Liability of Mortgagee. Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.
Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

**ARTICLE 6. SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Ohio Revised Code ("O.R.C.") Section 1309.509(D)(2) (Section 9-509(d)(2) of the UCC). Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.
Section 6.3. **Fixture Filing.** This Mortgage, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the "Recorder’s Office"), shall constitute and operate as a financing statement filed as a "fixture filing" within the meaning of O. R. C. Sections 1309.334 and 1309.502 (Sections 9-334 and 9-502 of the UCC) for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**ARTICLE 7.**

**MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. **Attorney-in-Fact.** To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Mortgagor hereunder; however; (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.
Section 7.4.  **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5.  **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6.  **Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagor (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7.  **Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

Section 7.8.  **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshaling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9.  **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as “Mortgagor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10.  **Governing Law.** This Mortgage shall be governed by the laws of the State of Ohio.

Section 7.11.  **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12.  **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Open-End Mortgage Provision: Future Advances.** In addition to any other amount secured hereby, this Mortgage shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced, readvanced or paid by Mortgagee or the Lenders to or for the account and benefit of Mortgagor, after this Mortgage is delivered and filed with the Recorder’s Office for recording (each such advance herein called a “Future Advance”). Any such Future Advance is to be made by Mortgagor or the Lenders pursuant to the terms of the Credit Agreement. The maximum amount of the unpaid balance of such which may be unpaid and outstanding at any time is Five Hundred Thirty Million and No/100 Dollars ($530,000,000.00), and all Future Advances, exclusive of interest thereon, and exclusive of any sums advanced as provided in Section 7.17 below, it being intended by this Section 7.16 to acknowledge, affirm and comply with the provisions of O.R.C. §5301.232. Mortgagor hereby waives any right it may have under O.R.C. §5301.232(C) to limit the amount of Obligations secured by this Mortgage.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by O.R.C §5301.233, it being intended by this Section 7.17 to acknowledge, affirm and comply with the provisions of O.R.C. §5301.233.

Section 7.18. **Mechanics’ Lien Law.** Mortgagee shall be and hereby is authorized and empowered to do, as mortgagee, all things provided to be done in the mechanics’ lien laws of the State of Ohio (including O.R.C §1311.14), and all acts amendatory or supplementary thereto.
EXECUTED as of the date first above written.

BORDEN DAIRY COMPANY OF OHIO, LLC,
a Delaware limited liability company

By: [Signature]
Name: Diego E. Rosenfeldt
Title: Secretary

STATE OF TEXAS

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me on June 11th, 2018, by Diego E. Rosenfeldt, Secretary of BORDEN DAIRY COMPANY OF OHIO, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Delana M. Quine
Notary Public, State of Texas

My Commission Expires: April 18, 2020

This instrument prepared by:

Roland Macher
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, NC 28202

SIGNATURE PAGE TO OHIO MORTGAGE
EXHIBIT A

LEGAL DESCRIPTION OF LAND

Parcel 1: (PPN: 005-12-008)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township Lots Nos. 7 and 8, and bounded and described as follows:
Beginning on the Westerly line of West 106th Street, 1375.80 feet Northerly from the point of intersection of said Westerly line with the Northerly line of Lorain Avenue;

Thence Westerly on a line at right angles with the Easterly line of West 110th Street, 344.08 feet to the Northeasterly line of land conveyed to The Lang Body Company by deed dated July 31, 1917, and recorded in Volume 1994, Page 325 of Cuyahoga County Records;

Thence Northwesterly along said Northeasterly line of land so conveyed to The Lang Body Company, 121.07 feet to a point on the Easterly line of land conveyed to The Lake Shore and Michigan Southern Railroad Company by deed dated June 26, 1907, and recorded in Volume 1051, Page 476 of Cuyahoga County Records, distant Northerly 120 feet from the intersection of said Easterly line with the Westerly prolongation of the first course herein described;

Thence Northerly along said Easterly line of land so conveyed to The Lake Shore and Michigan Southern Railroad Company (which line is parallel with and 400 feet Easterly, measured at right angles from the Easterly line of West 110th Street), 190 feet;

Thence Southeasterly 151.33 feet to a point, which is 20 feet Easterly (measured at right angles from its Easterly line of land so conveyed to The Lake Shore and Michigan Southern Railroad Company and 160 feet Northerly, measured at right angles from the first course herein described;

Thence Easterly on a line at right angles with the Easterly line of West 110th Street, 340.09 feet to the Westerly line of West 106th Street;

Thence Southerly along said Westerly line of West 106th Street, 160 feet to the place of beginning and containing 1.335 Acres of land, according to the survey of Charles W. Root, Civil Engineer, be the same more or less, but subject to all legal highways.

Parcel 2: (PPN: 005-12-002)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township Lot No. 7, and bounded and described as follows:

Beginning on the Easterly line of West 110th Street, (formerly Stevens Street), 60 feet wide, at a point distant 660 feet Southerly, measured along the Easterly line of West 110th Street, from its intersection with the Southerly line of Western Avenue N.W., 60 feet wide, said place of beginning, being also the Southwesterly corner of land conveyed to General Motors Corporation by Deed dated December 27, 1948, and recorded in Volume 6661, Page 521 of Cuyahoga County Records;

Thence Northerly along the Easterly line of West 110th Street, 200 feet;
Thence Easterly and parallel with the Southerly line of land so conveyed to General Motors Corporation, 370 feet to the Westerly line of the third parcel of land conveyed to the Lake Shore and Michigan Southern Railway Company by deed dated January 26, 1907, and recorded in Volume 1051, Page 476 of Cuyahoga County Records;

Thence Southerly along the Westerly line of the third parcel of land so conveyed, 200 feet to the Southeasterly corner of land conveyed to General Motors Corporation, as aforesaid;

Thence Westerly along the Southerly line of land so conveyed 370 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel 3: (PPN: 005-12-005)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township Lot Nos. 7 and 8, as being more particularly bounded and described in accordance with a Plat of Survey prepared by Robert J. Bohning, Registered Surveyor No. 5000 of Donald G. Bohning and Associates Inc., Civil Engineering and Surveying, dated October, 1982 as follows:

Beginning on the Southerly line of Western Avenue (60 feet wide) at the Northeasterly corner of the third parcel of land conveyed to the New York Central Railroad Company by deed recorded in Volume 1051, Page 476 of Cuyahoga County Deed Records;

Thence South 0 deg. 19' 05" East, along the Easterly line of land so conveyed 957.66 feet to the Northeasterly corner of land conveyed to the State of Ohio by deed recorded in Volume 14268, Page 857 of Cuyahoga County Deed Records, being further known as Parcel No. 5503-WL and being on the Northerly Limited access/right of way line of Interstate 90;

Thence South 82 deg. 41' 42" West, along said limited access/right of way line, 30.22 feet to the Northwesterly corner of land so conveyed to the State of Ohio;

Thence North 0 deg. 19' 05" West, along the Westerly line of land so conveyed to the New York Central Railroad Company, 961.33 feet to the Northwesterly corner thereof, said point being on the Southern line of Western Avenue;

Thence North 89 deg. 40' 42" East, along the Southerly line of Western Avenue, 30.00 feet to the place of beginning, containing 28,785 square feet or 0.6608 of an acre.

Being a part of the premises which the Trustees of the Property of the Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-146, dated March 30, 1976 and recorded in Cuyahoga County, Ohio in Deed Record Volume 14899 at Page 785, granted and conveyed unto Consolidated Rail Corporation.

Parcel 4: (PPN: 005-12-006 and 005-12-007)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township Lots Nos. 7 and 8 and being bounded and described as follows:
Beginning in the Westerly line of West 106th Street at a point distant Northerly 1535.80 feet from the intersection of said Westerly line of West 106th Street with the Northerly line of Lorain Avenue;

Thence Westerly at right angles with the Easterly line of West 110th Street 340.09 feet to a point 20 feet Easterly from the Easterly line of land conveyed to the Lake Shore and Michigan Southern Railroad Company by deed dated June 26, 1907, and recorded in Volume 1051, Page 476 of Cuyahoga Records;

Thence Northwesterly 151.33 feet to a point in the Easterly line said land conveyed to the Lake Shore and Michigan Southern Railroad Company distant Northerly 150 feet from the intersection of the Easterly line of said land conveyed to the Lake Shore and Michigan Southern Railroad Company with the extension Westerly of the first course herein described;

Thence Northerly along the Easterly line of said land conveyed to the Lake Shore and Michigan Southern Railroad Company which line is parallel with and 400 feet Easterly at right angles from the Easterly line of West 110th Street 269.00 feet to the Southerly line of Western Avenue;

Thence Easterly along the Southerly line of Western Avenue, 360.10 feet to the intersection of said Southerly line of Western Avenue, with the Westerly line of West 106th Street;

Thence Southerly along the Westerly line of West 106th Street, 419.00 feet to the place of beginning, and containing 3.4292 acres of land according to the survey of Charles Root, Civil Engineer, be the same more or less, but subject to all legal highways.

Parcel 5: (PPN: 005-12-009)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Parcel A in a Lot Split for G.W.C. Inc. as shown by the plat recorded in Volume 240, Page 8, C.M.R., of part of Original Brooklyn Township Lot No. 7 and bounded and described as follows:

Beginning on the Westerly line of West 106th Street (60 feet wide), at its intersection with the Northerly limited access/right of way line of Interstate 90, said point being distant North 00 deg. 00' 07" West, 1046.66 feet measured along said Westerly line from its intersection with the Northwesterly line of Lorain Avenue (80 feet wide);

Course No. 1: Thence South 81 deg. 21' 19" West, 140.42 feet measured along said Northerly limited access right of way of Interstate 90 to an angle therein;

Course No. 2: Thence South 82 deg. 41' 57" West, 223.16 feet, continuing along said Northerly limited access right of way of Interstate 90 to the Southeasterly corner of a parcel of land conveyed to Oberlin Farms Dairy, Inc. by deed dated May 3, 1984 and recorded in Volume 84-1891, Page 20 of Cuyahoga County deeds;

Course No. 3: Thence North 00 deg. 00' 20" East, 498.64 feet, along said Easterly line of land so conveyed to Oberlin Farms Dairy, Inc. to an angle point in the Westerly line of Parcel No. 1 of lands conveyed to Oberlin Farms Dairy, Inc. by Deed Dated December 1, 1972 and recorded in Volume 13161, Page 851 of Cuyahoga County Records;

Course No. 4: Thence South 7 deg. 35' 21" East, 121.06 feet, along said Westerly line of said Parcel No. 1, to the Southwesterly corner thereof;
Course No. 5: Thence South 89 deg. 59' 40" East, 344.13 feet, along the Southerly line of said Parcel No. 1 to the Westerly line of West 106th Street;

Course No. 6: Thence South 00 deg. 00' 07" East, 329.14 feet to the place of beginning and containing approximately 2.956 Acres of land be the same more or less but subject to all legal highways.

NOTE: Parcels 1, 2, 3, 4, 5, and 6 have been consolidated as shown by the Consolidation Plat prepared for Oberlin Farms Dairy, Inc., containing 10.0840 acres of land and shown on the recorded plat filed for record March 31, 1997 in Volume 283 of Maps, page 48, of Cuyahoga County Records.

Parcel 6: (PPN: 005-12-001)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Original Brooklyn Township Lots Nos. 7 and 8, and bounded and described as follows:

Beginning on the Southerly line of Western Avenue, N.W., 60 feet wide, at its Intersection with the Easterly line of West 110th Street, 60 feet wide;

Thence Southerly along the Easterly line of West 110th Street, 460 feet to the Northwesterly corner of Parcel No. 6 of land conveyed to Wayne Cooperative Milk Producers, Inc., by Deed dated February 26, 1957 and recorded in Volume 8835, Page 325 of Cuyahoga County Records;

Thence Easterly along the Northerly line of land so conveyed to Wayne Cooperative Milk Producers, Inc., 370 feet to the Westerly line of the third Parcel of land conveyed to the Lake Shore and Michigan Southern Railway Company by Deed dated January 26, 1907, and recorded in Volume 1051, Page 476 of Cuyahoga County Records;

Thence Northerly along the Westerly line of land so conveyed to the Lake Shore and Michigan Southern Railway Company, 460 feet to the Southerly line of Western Avenue, N.W.;

Thence Westerly along the Southerly line of Western Avenue, N.W., 370 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel 7: (PPN: 005-15-014, including 005-15-015, 016, 017, 018, and 019)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being Sublots Nos. 325, 326, 327, 328, 329, 330, 331, 332, and 333 in The Longview Allotment of part of Original Brooklyn Township Lots No. 7 and 8, as shown by the recorded plat in Volume 16 of Maps, Page 26 of Cuyahoga County Records, together forming a parcel of land 225 feet front on the Easterly side of West 106th Street (formerly Motley Street) and extending back of equal width 105 feet to the Westerly side of West 106th Place, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 8: (PPN: 005-15-024)
Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being Sublots Nos. 340 and 341 in the H. Clark Ford and others Subdivision of part of Original Brooklyn Township Lot No. 8, as shown by the recorded plat in Volume 16 of Maps, Page 26 of
Cuyahoga County Records and together forming parcel of land having a frontage of 50 feet on the Easterly side of West 106th Street, and extending back of equal width 105 feet, as appears by said plat, be the same more or less but subject to all legal highways.

Site Address: 3068-3150 W. 106th Street, Cleveland, Ohio
OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS SECURITY AGREEMENT AND FIXTURE FILING

This Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Mortgage") is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF CINCINNATI, LLC, a Delaware limited liability company ("Mortgagor"), whose tax mailing address is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below); and in such capacity, together with its successors and assigns in such capacity, ("Mortgagge"), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial
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institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Mortgagee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) "Mortgaged Property": All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personality"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rents"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility
contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personality. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, to Mortgagee (for the benefit of the Secured Parties) the Mortgaged Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee (for the benefit of the Secured Parties), and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee (for the benefit of the Secured Parties), subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagee, at Mortgagor's expense, shall cancel and surrender this Mortgage.
Section 2.3  **Revolving Credit.** This Mortgage secures revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations secured hereby is ever reduced to a zero ($0.00) balance, the lien, security interest and security title of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Mortgagor and/or the Lenders to make further advances have been terminated and this Mortgage has been cancelled of record.

ARTICLE 3.

**WARRANTIES, REPRESENTATIONS AND COVENANTS**

Mortgagor warrants, represents and covenants to Mortgagee and the other Secured Parties as follows:

Section 3.1.  **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2.  **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee).

Section 3.3.  **Payment and Performance.** Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4.  **Replacement of Fixtures and Personalty.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the
prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personalty, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6. Inspection. Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. Other Covenants. All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. Rights to Insurance Proceeds. Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 Condemnation. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings.
Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

ARTICLE 4.
DEFAULT AND FORECLOSURE

Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Mortgagee may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Mortgagee’s security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor’s breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee’s prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels in accordance with Ohio law. With respect to any notices required or permitted under the
UCC, but without derogation of Mortgagee's rights under the Credit Agreement, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor.

In connection with any foreclosure sale: (i) Mortgagee shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee to pursue any third party for any of the Obligations; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) to the fullest extent permitted by law, if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (v) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee to the fullest extent permitted by law. Compliance by Mortgagee with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(c) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage).

Section 4.2. **Separate Sales.** To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.
Section 4.4. **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee's election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.
Section 4.9. **Additional Advances and Disbursements: Costs of Enforcement**

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Mortgagee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5. ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Mortgagor unconditionally and absolutely assigns (to the extent assignable) to Mortgagee (for the benefit of the Secured Parties) all of Mortgagor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Mortgage and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Mortgagee grants to Mortgagor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Mortgagee, without notice to or demand upon Mortgagor, and Mortgagee immediately shall be entitled to
receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. **Rights of Mortgagee.** Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Mortgage and to turn over to Mortgagee on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. **Right to Apply Rents.** Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.
Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*.

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

**ARTICLE 6. SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Ohio Revised Code ("O.R.C.") Section 1309.509(D)(2) (Section 9-509(d)(2) of the UCC). Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. The Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.
Section 6.3. **Fixture Filing.** This Mortgage, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the “Recorder’s Office”), shall constitute and operate as a financing statement filed as a “fixture filing” within the meaning of O. R.C. Sections 1309.334 and 1309.502 (Sections 9-334 and 9-502 of the UCC) for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**ARTICLE 7.**

**MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, “Mortgagor” shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. **Attorney-in-Fact.** To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee’s interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.
Section 7.4. **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5. **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. **Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7. **Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

Section 7.8. **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9. **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as “Mortgagor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10. **Governing Law.** This Mortgage shall be governed by the laws of the State of Ohio.

Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Open-End Mortgage Provision; Future Advances.** In addition to any other amount secured hereby, this Mortgage shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced, readvanced or paid by Mortgagee or the Lenders to or for the account and benefit of Mortgagor, after this Mortgage is delivered and filed with the Recorder’s Office for recording (each such advance herein called a “Future Advance”). Any such Future Advance is to be made by Mortgagor or the Lenders pursuant to the terms of the Credit Agreement. The maximum amount of the unpaid balance of such which may be unpaid and outstanding at any time is Five Hundred Thirty Million and No/100 Dollars ($530,000,000.00), and all Future Advances, exclusive of interest thereon, and exclusive of any sums advanced as provided in Section 7.17 below, it being intended by this Section 7.16 to acknowledge, affirm and comply with the provisions of O.R.C. §5301.232. Mortgagor hereby waives any right it may have under O.R.C. §5301.232(C) to limit the amount of Obligations secured by this Mortgage.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by O.R.C §5301.233, it being intended by this Section 7.17 to acknowledge, affirm and comply with the provisions of O.R.C. §5301.233.

Section 7.18. **Mechanics’ Lien Law.** Mortgagee shall be and hereby is authorized and empowered to do, as mortgagee, all things provided to be done in the mechanics’ lien laws of the State of Ohio (including O.R.C §1311.14), and all acts amendatory or supplementary thereto.
EXECUTED as of the date first above written.

BORDEN DAIRY COMPANY OF
CINCINNATI, LLC, a Delaware limited liability
company

By: ______________________
Name: Diego E. Rosenfeldt
Title: Secretary

STATE OF TEXAS §
COUNTY OF DALLAS §

The foregoing instrument was acknowledged before me on June 11th, 2018, by Diego E. Rosenfeldt, Secretary of BORDEN DAIRY COMPANY OF CINCINNATI, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Delana M. Jones
Notary Public, State of TEXAS

This instrument prepared by:

Roland Macher
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, NC 28202

SIGNATURE PAGE TO OIIO MORTGAGE
EXHIBIT A

LEGAL DESCRIPTION OF LAND

PARCEL 1:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being all of Lots 72, 73, 74 and 75 in McNamara and Conner Subdivision, situated in the Village of Arlington Heights, Sycamore Township, Hamilton County, Ohio having a total frontage of Two Hundred (200) feet on Elliot Street (also known as Dexter Avenue); plat thereof being found in Plat Book 8, Volume 1, Page 14, Hamilton County Recorder's Office.

PARCEL 2:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being a portion of John Street, in the Village of Arlington Heights, Hamilton County, Ohio, and being in Section Thirty-two (32), Sycamore Township, and being a portion of the right-of-way of John Street between Arlington and Dexter Avenues, and being more particularly described as follows:

Beginning at the Northeast corner of Lot 72 of McNamara and Conner's Subdivision of Longworth Place in the Village of Arlington Heights, Hamilton County, Ohio, a plat of which is recorded in Plat Book 8, Volume 1, Page 14, in the Office of the Recorder of Hamilton County, Ohio;

Thence along the Southerly right-of-way line of John Street, North 61 deg. 32' West, a distance of seventy-six and 26/100 (76.26) feet to a point;

Thence North 28 deg. 38' East, a distance of fifteen (15) feet to a point;

Thence South 61 deg. 32' East, a distance of seventy-six and no/100 (76.00) feet to a point in the Westerly right-of-way of Dexter Avenue, extended;

Thence South 28 deg. 38' West a distance of fifteen and no/100 (15.00) feet to the point of beginning.

Being the portion of John Street vacated by ordinance dated May 21, 1973 and recorded August 21, 1973 in Deed Book 3927, Page 46, of the Deed Records of Hamilton County, Ohio.

Parcel 2 more recently described as follows:

PARCEL 2:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being a portion of John Street, in the Village of Arlington Heights, Hamilton County, Ohio, and being in Section Thirty-two (32), Sycamore Township, and being a portion of the right-of-way of John Street between Arlington and Dexter Avenues, and being more particularly described as follows:

Beginning at the Northeast corner of Lot 72 of McNamara and Conner's Subdivision of Longworth Place in the Village of Arlington Heights, Hamilton County, Ohio, a plat of which is recorded in Plat Book 8, Volume 1, Page 14, in the Office of the Recorder of Hamilton County, Ohio;
Thence along the Southerly right-of-way line of John Street, North 57°43'01" West, a distance of 76.26 feet to a point;

Thence North 32°16'59" East, a distance of 15.00 feet to a point;

Thence South 57°43'01" East, a distance of 76.26 feet to a point in the Westerly right-of-way of Dexter Avenue, extended;

Thence South 32°16'59" West a distance of 15.00 feet to the point of beginning.

Being the portion of John Street vacated by ordinance dated May 21, 1973 and recorded August 21, 1973 in Deed Book 5927, Page 46, of the Deed Records of Hamilton County, Ohio.

**PARCEL 3:**
Situated in the Village of Arlington Heights, County of Hamilton and State of Ohio, in Section 32 of Sycamore Township, and Known as Lot No. Thirty-five (35) of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Page 14, of the records of Plats in the Office of the Recorder of said County, said Lot fronts fifty (50) feet on the East side of Arlington Avenue, fifty (50) feet South of John Street, and runs back in depth between parallel lines, One Hundred Twenty-five (125) feet.

**PARCEL 4:**
Situate in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being Lot No. Seventy-six (76) of McNamara and Conner's Subdivision of Longworth Place as the same is recorded in Plat Book 8, Page 14, of the Recorder's Plats of Hamilton County, Ohio.

**PARCEL 5:**
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being, numbered, and designated as Lot No. Seventy-seven (77) of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Volume 1, Page 14 of the Plat Records of said County.

**PARCEL 6:**
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being all that one certain lot or parcel of land known, numbered and designated as Lot No. Thirty-six (36) in the Subdivision of Longworth Place, made by McNamara and Conner, a plat of which is recorded in Plat Book 8, Volume 1, Page 14, of the Plat Records of said County.

**PARCEL 7:**
Situated in Village of Arlington Heights, Sycamore Township, Hamilton County, Ohio, and described as follows:

All that certain real estate being known, numbered and designated as Lot Numbers Seventy-nine (79) of McNamara and Conner's Subdivision of Longworth Place, Lockland, Ohio as recorded Plat Book 8, Volume 1, Page 14, Hamilton County, Ohio Plat Records.
Said real estate fronts fifty (50) feet on the Southwesterly side of Dexter Avenue (now Elliot Street) and extends back Southwesterly between parallel lines a depth of one hundred and twenty-five (125) feet.

PARCEL 8:
Situated in the Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being numbered and designated as Lot No. 34 upon the plat of McNamara & Connor's Subdivision of Longworth Place, as recorded in Plat Book 8, Volume 1, Page 14, of the Plat Records of said County. Said lot fronts fifty (50) feet on the East side of Arlington Avenue and runs back between parallel lines for a distance of 125 feet.

PARCEL 9:
Situated in the Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being numbered and designated as Lot Number Thirty-three (33) of McNamara and Connor's Subdivision of Longworth Place, as recorded in Plat Book 8, Volume 1, Page 14 of the Plat Records of Hamilton County, Ohio. Said lot fronts fifty (50) feet on the Easterly side of Arlington Avenue and extends back Eastwardly between parallel lines one hundred twenty-five (125) feet for depth.

PARCEL 10:
Situated in the Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being for Seventy-one (71) of the Subdivision of Longworth's Place by McNamara and Connor as the same is recorded in Plat Book 8, Volume 1, Page 14, of the Hamilton County records.

PARCEL 11:
Situated in the Village of Lockland, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being a part of Lot 37 of McNamara and Connor's Subdivision of Longworth Place in the Village of Lockland and Arlington Heights, a plat of which is recorded in Plat Book 8, Vol. 1, Page 14 of the Hamilton County, Ohio records and being more particularly described as follows:

Beginning at a point in the South line of said Lot 37 and on the North line of John Street 85 feet East of East line of Arlington Avenue;

Thence Northwardly parallel with the West line of said lot 50 feet to the North line of said lot;

Thence East on the North line of Lot 37 40 feet to the Northeast corner of said lot;

Thence Southwardly on the East line of said Lot 50 feet to the Southeast corner thereof;

Thence Westwardly along the South line of said lot and the North line of John Street 40 feet to the place of beginning.

PARCEL 12:
Situated in the City of Lockland, Village of Arlington Heights, County of Hamilton and State of Ohio:
And known as being a part of Lot #37 of McNamara and Connors Subdivision, of Longworth Place, in the City of Lockland and Village of Arlington Heights, the plat of which is recorded in Plat Book 8, Volume 1, Page 14, of the Hamilton County, Ohio, Plat Records.

Beginning at the Southwest corner of Lot #37;

Thence Northwardly with the West line of Lot #37, a distance of 50 feet;

Thence Eastwardly with the North line of Lot #37 a distance of 85 feet;

Thence Southwardly, parallel to the West line of Lot #37, a distance of 50 feet;

Thence Westwardly with the South line of Lot #37, a distance of 85 feet to the place of beginning.

PARCEL 13:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being, numbered and designated as Lot Number Sixty-nine (69) on the plat of McNamara and Connors Subdivision of Longworth Place as the same is recorded in Plat Book 8, Volume 1, Page 14 of the Recorder's Office of said County. Said lot fronts fifty (50) feet on the Westerly side of Dexter Avenue and runs back in depth one hundred twenty-five (125) feet and is located one hundred feet Northeastwardly from the corner of Dexter Avenue and John Street.

PARCEL 14:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being, numbered and designated as Lot One Hundred (100) upon the plat of McNamara and Connors Subdivision of Longworth Place in said Village as recorded in Plat Book 8, Volume 1, Page 14, of the Records of Plats in the office of the Recorder of said County and known as 761 Dexter Avenue.

PARCEL 15:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being, numbered and designated as Lot 99 upon the Plat of Subdivision of Longworth Place, as made by McNamara and Connors, and recorded in Plat Book 8, Page 14 of the plat records of said County, said lot being 50 feet front on the East side of Dexter Avenue and runs back in depth, between parallel lines, 125 feet.

PARCEL 16:
Situate in the Village of Arlington Heights, in the County of Hamilton and State of Ohio, beginning at a point on the South side of John Street 125 feet Southeast of the Southeast corner of John Street and Dexter Avenue;

Thence Southwardly 100 feet to a point;

Thence running back between parallel lines from these two points, 291.11 feet excepting rear part conveyed to The State of Ohio in Deed Book 3378, Page 744 of the Deed Records of Hamilton County, Ohio, described as follows:
Commencing at the Southeast corner of John Street and Dexter Avenue and the Northwest corner of Lot 100 of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Page 14, Hamilton County, Ohio, records;

Thence South 57 deg. 43' 01" East along the South line of John Street and the North line of Lot 100, 125 feet to the East line of said subdivision, and the Grantor's Northwest property corner;

Thence 57 deg. 43' 01" East along the Grantor's North property line 208.31 feet to the proposed Westerly right-of-way of Northbound I-75, the real point of beginning for the land herein described;

Thence continuing South 57 deg. 43' 01" East along the Grantor's North property line 82.80 feet to the Grantor's Northeast property corner;

Thence South 32 deg. 16' 59" West along the Grantor's East property line 100 feet, to the Grantor's Southeast property corner;

Thence North 57 deg. 43' 01" West along the Grantor's South property line 73.19 feet to the proposed Westerly right-of-way line of Northbound I-75;

Thence Northeastwardly along said line and along the arc of a curve to the left having a radius of 4296.00 feet a distance of 100.46 feet to the Grantor's North property line, the long chord of said arc bearing North 26 deg. 47' 18" East, 100.46 feet to said line and the point of beginning.

Containing 7,721 square feet, more or less.

PARCEL 17:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being all that certain real estate known, numbered and designated as Lots No. 97 and No. 98 of McNamara and Conner's Subdivision, as per plat thereof recorded in Plat Book 8, Volume 1, Page 14, Hamilton County Recorder's Office; each of said lots fronts 50 feet on the Southeasterly side of Dexter Avenue; extends back Southeasterly, between parallel lines, a depth of 125 feet; and lies 100 feet Southwestwardly of John Street.

PARCEL 18:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being in Section 32, Town 4, Entire Range 1, and more particularly described as follows:

Beginning at a point in the East line of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Volume 1, Page 14, Hamilton County, Ohio, records, the said point of beginning being 100 feet Southwestwardly from John Street, measured along the Easterly line of said McNamara and Conner's Subdivision, 125 feet Easterly from Dexter Avenue, measured

along the Northerly line of Lot No. 98 of said McNamara and Conner's Subdivision, and being also the Northeasterly corner of Lot No. 98 of said McNamara and Conner's Subdivision;
Thence from said point of beginning extending Southwestwardly along the Easterly line of said Lot No. 98 a distance of 50 feet to a point, the Southeasterly corner of said Lot No. 98;

Thence from said last two mentioned points extending Southeastwardly between parallel lines 50 feet apart, running at right angles to the Easterly line of McNamara and Conner's Subdivision, a distance of 291.11 feet to the Westerly line of lands now, or formerly, of William S. Burkart and William S. Burkart, Inc., a Corporation.

There is excepted from the foregoing that parcel conveyed to the State of Ohio for highway purposes recorded in Deed Book 3678, Page 675:

PARCEL 19:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being in Section 32, Town 4, Entire Range 1, and more particularly described as follows:

Beginning at a point in the East line of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Volume 1, Page 14, Hamilton County, Ohio, records, the said point of beginning being 150 feet Southwestwardly from John Street, measured along the Easterly line of said McNamara and Conner's Subdivision, and 125 feet Eastwardly from Dexter Avenue, measured along the Northerly line of Lot No. 97 of said McNamara and Conner's Subdivision, and being also the Northeasterly corner of Lot No. 97 of said McNamara and Conner's Subdivision;

Thence from said point of beginning extending Southwestwardly along the Easterly line of said Lot No. 97 a distance of 50 feet to a point, the Southeasterly corner of said Lot No. 97;

Thence from said last two mentioned points extending Southeastwardly between parallel lines 50 feet apart, running at right angles to the Easterly line of McNamara and Conner's Subdivision, a distance of 291.11 feet to the Westerly line of lands now, or formerly, of William S. Burkart and William S. Burkart, Inc., a Corporation.

There is excepted from the foregoing that parcel conveyed to the State of Ohio for highway purposes recorded in Deed Book 3678, Page 675.

Parcels 16, 18 and 19 more recently described as follows:

PARCEL 5, 16, 18 & 19:
Situate in the Village of Arlington Heights, in the County of Hamilton and State of Ohio, beginning at a point on the South side of John Street 125 feet Southeast of the Southeast corner of John Street and Dexter Avenue;

Thence South 57°43'01" East, a distance of 208.31 feet to the Westerly right-of-way of Northbound I-75;

Thence along the Westerly right-of-way of Northbound I-75 and along a curve to the left having a radius of 4296.00 feet an arc length of 100.46 feet and chord bearing South 26°47'18" West, 100.46 feet;

Thence continuing along the Westerly right-of-way of Northbound I-75, South 32°14'42" West, 100.00 feet;

Thence North 57°43'01" West, a distance of 217.99 feet;

Thence North 32°16'59" East, a distance of 200.00 feet to the point of beginning.
PARCEL 20:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being the South 45 feet of Lot No. 103 of McNamara and Conner's Subdivision, of Longworth Place as per plat thereof recorded in Plat Book 8, Volume 1, Page 14, of the Hamilton County, Ohio Records of Plats. Said premises fronting 45 feet on the Easterly side of Dexter Avenue, and extending back between parallel lines, 125 feet to the rear line of said Lot No. 103.

PARCEL 21:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being in Section 32, Township 4, Range 1, Miami Purchase, in Sycamore Township, and being more particularly described as follows:

Beginning at a point being the most Southerly corner of Lot No. 103 of McNamara and Conner's Subdivision of Longworth Place, as per plat thereof recorded in Plat Book 8, Volume 1, Page 14, of the Hamilton County, Ohio Records; Thence from the beginning point South 64 deg. 32' East, 188.55 feet to a point in the proposed Westerly right-of-way line of Northbound I-75;

Thence North-eastwardly along the proposed Westerly right-of-way line of Northbound I-75, and along the arc of a curve to the left having a radius of 3204.05 feet a distance of 45.59 feet to a point in the Grantor's North property line (said North line being the extension Easterly of a line running parallel to the North line of said Lot No. 103 and lying 5 feet South of the North line of Lot No. 103), the long chord of said arc bearing North 23 deg. 01' 15" East, 45.59 feet to said point;

Thence North 64 deg. 32' West, along the Grantor's North line to a point in the Easterly line of Lot No. 103, said point being 5 feet South of the most Easterly corner of Lot No. 103;

Thence South 25 deg. 28' West along the Easterly line of said Lot No. 103, 45 feet to the place of beginning.

PARCEL 22:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being designated as Lot number One Hundred and One (101) of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, No. 1, Pages 14, Hamilton County, Ohio records.

PARCEL 23:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being known, numbered and designated as Lot One Hundred and Two (102) as the same appears on the plat of McNamara and Conner's Subdivision of Longworth Place, recorded in Plat Book 8, Volume 1, Page 14 of the Records of Plats in the office of the Recorder of said County.
Said lot fronts fifty (50) feet on the East side of Dexter Avenue, now known as Elliott Avenue, and runs Eastwardly in depth, between parallel lines, one hundred twenty-five (125) feet.

**PARCEL 24:**
Situated in the Village of Arlington Heights, Hamilton County, Ohio, and in Section 32, Township 4, Entire Range 1 of the Miami Purchase, and beginning at a stake in the Northeast corner of Lot Number 102 of McNamara and Conner's Subdivision of Longworth Place as recorded in Plat Book 8, Volume 1, Page 14 of the Plat Records of the Recorder of Hamilton County, Ohio;

Thence from the point of beginning South 64 deg. 32' East, two hundred ninety-one and 11/100 (291.11) feet to a stake;

Thence South 25 deg. 28' West, one hundred (100) feet to a stake;

Thence North 64 deg. 32' West, two hundred ninety-one and 11/100 (291.11) feet to a stake at the Southeast corner of Lot Number 101 of said Subdivision;

Thence North 25 deg. 24' East, one hundred (100) feet to the place of beginning.

EXCEPTING therefrom the following described real estate conveyed to the State of Ohio by deed recorded in Deed Book 3378, Page 742 of the records of the Recorder of Hamilton County, Ohio:

Commencing at the Northeast corner of Lot No. 102 of McNamara and Conner's Subdivision of Longworth Place, as recorded in Plat Book 8, Page 14, Hamilton County, Ohio, Recorder;

Thence (South 64 deg. 32' East Deed), South 57 deg. 43' 01" East Survey along the Grantor's North property line 188.55 feet to a point in the proposed Westerly right of way of Northbound I-75, the real Point of Beginning of the land hereinafter described;

Thence continuing South 57 deg. 43' 01" East along the Grantor's North property line 102.56 feet to the Grantor's Northeast property corner;

Thence South 32 deg. 16' 59" West along the Grantor's East property line 100 feet to the Grantor's Southeast property corner;

Thence North 57 deg. 43' 01" West along the Grantor's South property line 88.59 feet to a point in the proposed Westerly right of way line of Northbound I-75;

Thence Northeastwardly along said line with the arc of a curve to the left having a radius of 3204.05 feet a distance of 100.97 feet to the Grantor's North property line, the long chord of said arc bearing North 24 deg. 19' 55" East, 100.97 feet to said line and the point of beginning.

Containing 9531 square feet, more or less.
Parcels 21 and 24 more recently described as follows:

PARCELS 21 & 24

Situate in the Village of Arlington Heights, in the County of Hamilton and State of Ohio, beginning at a point on the North side of John Street 125 feet of the Northeast corner of John Street and Dexter Avenue;

Thence North 32°16'59" East, a distance of 145.00 feet;
Thence South 57°43'01" East, a distance of 181.21 feet to the Westerly right-of-way of Northbound I-75;
Thence along the Westerly right-of-way of Northbound I-75 and along a curve to the left having a radius of 3204.05 feet an arc length of 146.56 feet and chord bearing South 23°53'21" West, 146.56 feet;
Thence North 57°43'01" West, a distance of 202.52 feet to the point of beginning.

PARCEL 25:
Situate in Section 32, Town 4, Entire Range 1, Miami Purchase, Arlington Heights Township, Hamilton County, Ohio in the Village of Arlington Heights and being more particularly described as follows:

Beginning at the Northeast corner of Lot 100 of McNamara and Conner's Subdivision of Longworth Place as recorded in Plat Book 8, Page 14, Hamilton County, Ohio Records;
Thence South 57 deg. 43' 01" East 208.31 feet to a point in the Westerly right of way line of Northbound I-75;
Thence Northeastwardly in said right of way line on a curve to the left having a radius of 4296.00 feet a distance of 3.72 feet, the chord of said arc bears North 26 deg. 05' 22" East 3.72 feet;
Thence continuing in said line on a curve to the left having a radius of 3204.05 feet a distance of 46.61 feet, the chord of said arc bears North 25 deg. 39' 05" East 46.61 feet;
Thence North 57 deg. 43' 01" West 202.52 feet to a point in the Southeast corner of Lot 101 of said Subdivision;
Thence South 32 deg. 16' 59" West 50 feet to the place of beginning.

PARCEL 26:
Situated in the Township of Sycamore, Village of Arlington Heights, County of Hamilton and State of Ohio:

And known as being in Section 32, Town 4, Entire Range 1, and being that part of John Street between Dexter Avenue (also known as Elliott Avenue) and Arlington Avenue, as shown on the plat of McNamara & Conners Subdivision of Longworth Place as recorded in Plat Book 8, Page 14 of the Hamilton County Recorder's Office, and being more particularly described as follows:

Beginning at a found stone as shown on said plat of McNamara & Conners Subdivision of Longworth Place;
Thence with the East line of Dexter Avenue, North 32 deg. 16' 59" East, 50.00 feet;
Thence with the West line of Dexter Avenue, South 32 deg. 16' 59" West, 35.00 feet to the intersection of said line with the North line of that part of John Street previously vacated by Ordinance 12-1973, as recorded in Deed
Book 3927, Page 46, Hamilton County Recorder’s Office;

Thence with said line, North 57 deg. 43’ 01” West, 76.26 feet to the intersection of said line with the West line of that part of John Street previously vacated;

Thence with said line, South 32 deg. 16’ 59” West, 15.00 feet to the intersection of said line with the South line of John Street;

Thence with said line, North 57 deg. 43’ 01” West, 173.74 feet to the intersection of said South line with the East line of Arlington Avenue;

Thence with said line, North 32 deg. 16’ 59” East, 50.00 feet to the intersection of said line with the North line of John Street;

Thence with said North line, South 57 deg. 43’ 01” East, 250.00 feet to the point of beginning.

Containing 0.261 acres of land.


PARCEL 27:

Situated in the County of Hamilton, in the State of Ohio and in the City of Cincinnati, commonly known as 438 Arlington Avenue, Cincinnati, Ohio 45215 and more particularly described as follows:

Situated in Lockland, Hamilton County, Ohio, and being all that Lot Number Thirty-eight (38), in the Subdivision of Longworth-Place, Hamilton County, Ohio, a plat of which subdivision is recorded in Plat Book 8, Page 14, of the Plat Records of Hamilton County, Ohio.

Address: 415 John Street, Cincinnati, OH

Parcel ID Numbers:

PPN 601-0002-0079
PPN 601-0002-0080
PPN 601-0002-0081, 82, 87 thru 92, 323 cons.
PPN 601-0002-0083, 86, 264 cons.
PPN 601-0002-0084
PPN 601-0002-0094
PPN 601-0002-0158, 159, 172, 255 cons.
PPN 601-0002-0160, 161, 171 cons.
PPN 601-0002-0162
PPN 601-0002-0163
PPN 601-0002-0164
PPN 601-0002-0168
PPN 601-0002-0169
PPN 601-0002-0170
PPN 601-0002-0334
DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF
RENTS AND LEASES, FINANCING STATEMENT AND
FIXTURE FILING

BY

BORDEN DAIRY COMPANY OF TEXAS, LLC db/a Milk Products, LLC,
as Grantor,

TO

LAWYERS TITLE REALTY SERVICES, INC.,
as Trustee

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Beneficiary,

Relating to Premises located at:
71 Strandtman Cove, Austin, Texas (Travis County)

DATED: As of August 7, 2018
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSfers AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

THIS SECURITY INSTRUMENT COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE REAL ESTATE DESCRIBED HEREIN, IS TO SERVE AS A FIXTURE FILING UNDER SECTION 9.502 OF THE TEXAS BUSINESS AND COMMERCE CODE AND IS TO BE RECORDED IN THE DEED RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OR OF FIXTURE FILINGS.

This instrument was prepared by and after recording should be returned to:

Jessica L. Standera, Esq.
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, North Carolina 28202

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FINANCING STATEMENT AND FIXTURE FILING

BY

BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC,
as Grantor,

TO

LAWYERS TITLE REALTY SERVICES, INC.,
as Trustee

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Beneficiary,

Relating to Premises located at:
71 Strandtmann Cove, Austin, Texas (Travis County)

DATED: As of August 7, 2018
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this "Deed of Trust") is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company ("Grantor"), whose address for notice hereunder is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to LAWYERS TITLE REALTY SERVICES, INC., a Virginia corporation ("Trustee"), whose address for notice hereunder is 1620 L Street, NW, 4th Floor, Washington, DC 20036-5605, Attention: Michael Segal, for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent (in such capacity, together with its successors and assigns in such capacity, "Beneficiary") for the Secured Parties (as defined in the Credit Agreement described below), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not herein defined, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Grantor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Beneficiary, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) "Trust Property": All estate, right, title, interest, claim and demand whatsoever which Grantor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Grantor (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, appliances, equipment (as such term is defined in the UCC), apparatus and other items of personal property and fixtures now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations,
as each such term is presently or hereafter defined in the UCC, and all other personal property of any
kind or character, including such items of personal property as defined in the UCC, now owned or
hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with,
 arising from or otherwise related to the Land and Improvements or which may be used in or relating
to the planning, development, financing or operation of the Trust Property, including, without
limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts,
contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel
paper, payment intangibles, documents, trade names, licenses and franchise agreements, or any one
or all of them, rights of Grantor under leases of Fixtures or other personal property or equipment,
inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of
credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities,
boards, corporations, providers of utility services, public or private, including specifically, but
without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment
fees and development costs, and commercial tort claims arising from the development, construction,
use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Trust Property
(the “Personalty”), (5) all reserves, escrows or impounds required under the Credit Agreement or
the other Loan Documents and all deposit accounts (including accounts holding security deposits)
maintained by Grantor with respect to the Trust Property, (6) all plans, specifications, shop drawings
and other technical descriptions prepared for construction, repair or alteration of the Improvements,
and all amendments and modifications thereof (the “Plans”), (7) all leases, subleases, licenses,
concessions, occupancy agreements or other agreements (written or oral, now or at any time in
effect) which grant a possessory interest in, or the right to use, all or any part of the Trust Property,
together with all related security and other deposits (the “Leases”), (8) all of the rents, revenues,
royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments
and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing,
licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise
enjoying the Trust Property, including, without limitation “Rents” and “Proceeds” as such terms are
defined in the Assignment of Rents Statute (as defined herein) (the “Rents”), (9) all other
agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility
contracts, maintenance agreements, management agreements, service contracts, permits, licenses,
certificates and entitlements in any way relating to the development, construction, use, occupancy,
operation, maintenance, enjoyment, acquisition or ownership of the Trust Property (the “Property
Agreements”), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements,
appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any,
of Grantor in and to all streets, ways, alleys, strips or gores of land adjoining the Land or any part
thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds
thereof, (12) all insurance policies (regardless of whether required by Beneficiary), unearned
premiums therefor and proceeds from such policies covering any of the above property now or
hereafter acquired by Grantor, (13) all mineral, water, oil and gas rights now or hereafter acquired
and relating to all or any part of the Trust Property, and (14) any awards, remunerations,
reimbursements, settlements or compensation heretofore made or hereafter to be made by any
governmental authority pertaining to the Land, Improvements, Fixtures or Personality. As used in
this Deed of Trust, the term “Trust Property” shall mean any interest of Grantor in all or, where the
context permits or requires, any portion of the above or any interest therein, wherever located;
provided, however, that notwithstanding any provision of this Deed of Trust to the contrary, the
Trust Property shall not include any movable personal property or movable contents owned by the Grantor and located within the Improvements which would be insurable as “contents” pursuant to Section III. Property Covered: Coverage B – Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) “UCC”: The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.
GRANT

Section 2.1. Grant. To secure the full and timely payment and performance of the Obligations, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION for the benefit and security of Beneficiary and its successors and assigns (for the benefit of the Secured Parties) forever TO HAVE AND TO HOLD the Trust Property with all privileges and appurtenances thereunto belonging to Trustee and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary against the claims of all persons claiming by, through or under Grantor, subject to the Permitted Liens.

Section 2.2. Revolving Credit. A part of the Obligations secured hereby are revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations is ever reduced to a zero ($0.00) balance, the lien and security interest of this Deed of Trust shall not be released or extinguished by operation of law or implied intent of the parties. This Deed of Trust, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of Beneficiary and/or Lenders to make further advances have been terminated and this Deed of Trust has been cancelled of record.

ARTICLE 3.
WARRANTIES, REPRESENTATIONS AND COVENANTS

4
Grantor warrants, represents and covenants to Beneficiary and the other Secured Parties as follows:

Section 3.1. **Title to Trust Property and Lien of this Instrument.** Grantor owns the Trust Property free and clear of any liens, claims or interests, except the Permitted Liens, and has rights and the power to transfer each item of the Trust Property. This Deed of Trust creates valid, enforceable first priority liens and security interests against the Trust Property. Subject to the terms of the Credit Agreement, where any of the Trust Property is in the possession of a third party, Grantor will join with Beneficiary in notifying the third party of Beneficiary’s security interest and obtaining an acknowledgment from the third party that it is holding such Trust Property for the benefit of Beneficiary. Subject to the terms of the Credit Agreement, Grantor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the UCC) with respect to any Trust Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Beneficiary).

Section 3.3. **Payment and Performance.** Grantor shall pay and perform the Obligations in full when they are due and required to be paid and performed as provided in the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personality.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Grantor shall not, without the prior written consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except Permitted Liens and such as may be first approved in writing by Beneficiary. Grantor shall not incorporate into the Trust Property any item of personality, fixtures or other property that is not owned by Grantor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Trust Property and will not, without the prior consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement),
consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Trust Property except for any Permitted Liens existing as of the date hereof. Grantor shall comply in all material respects with all restrictive covenants affecting the Trust Property and all zoning ordinances and other public or private restrictions as to the use of the Trust Property.

Section 3.6. **Inspection.** Grantor shall permit Beneficiary, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Trust Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Grantor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Grantor shall not adjust, collect or compromise any claims under said policies without Beneficiary’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Beneficiary instead of to the Grantor and Beneficiary jointly, and the Grantor appoints Beneficiary as the Grantor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Beneficiary’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

Section 3.9. **Condemnation.** The Grantor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Trust Property, shall notify Beneficiary of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Grantor and shall be received and collected directly by the Grantor. If an Event of Default exists, Beneficiary may participate in any such proceedings and the Grantor shall deliver to Beneficiary all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Beneficiary, and any such Award shall be applied, at Beneficiary’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

**ARTICLE 4.**
**DEFAULT AND FORECLOSURE**
Section 4.1. Remedies. If an Event of Default exists, Beneficiary may, at Beneficiary’s election, and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Trust Property.** Enter the Trust Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Trust Property following the occurrence and during the continuance of an Event of Default and without Beneficiary’s prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Trust Property.** Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary or Trustee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure under Power of Sale.** Any foreclosure under power of sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust. Without limitation of the foregoing, pursuant to Section 51.002 of the Texas Property Code, upon the occurrence of an Event of Default, the Trustee, or his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Beneficiary to sell the Trust Property or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Trust Property is situated, at public venue to the highest bidder for cash, pursuant to the Texas Property Code, Section 51.002 et seq., as currently amended, between the hours of 10 o’clock a.m. and 4 o’clock p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust. Any sale made by the Trustee hereunder may be as an entirety or in such parcels as Beneficiary may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by the Trustee of less than the whole of the Trust Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Trust Property shall be sold; and, if
the proceeds of such sale of less than the whole of the Trust Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Trust Property just as though no sale had been made; provided, however, that neither Grantor nor any Guarantor shall ever have any right to require the sale of less than the whole of the Trust Property but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Trust Property. After each sale, the Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by the Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Trust Property has been duly sold and all Obligations have been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by the Trustee or any successor or substitute appointed hereunder as to nonpayment of the indebtedness secured hereby, or as to the occurrence of any default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to the request of sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of the Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Beneficiary or by such Trustee, or substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee, or his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of the Trustee, or his successor or substitute. If any provision of this Deed of Trust shall grant to Beneficiary any rights or remedies upon default of Grantor which are more limited than the rights or remedies that would otherwise be vested in Beneficiary under the Applicable Law in the absence of said provision, Beneficiary shall be vested with the rights and remedies granted under the Applicable Law. In the event a foreclosure hereunder is commenced by Trustee in accordance with Section 4.1(d) hereof, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Obligations and for a foreclosure of the liens and security interests hereof, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Trust Property or any part thereof in accordance with the provisions of this Deed of Trust.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and to the extent permitted by law, obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such
appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Deed of Trust).

Section 4.2. **Separate Sales.** The Trust Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Credit Agreement or the other Loan Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or any Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Trust Property. For payment of the Obligations, Beneficiary and the other Secured Parties may resort to any other security in such order and manner as Beneficiary and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, right or equity of redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement and the other Loan Documents, all notices of any Event of Default or Trustee's or Beneficiary's election to exercise or their actual exercise of any right, remedy or recourse
provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Beneficiary and the other Secured Parties, or any one or more of them, shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary and the other Secured Parties shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement or the other Loan Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement unless otherwise required by applicable laws.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Trust Property. All occupants of the Trust Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Trust Property other than the statutory action of forcible detainer in any court having jurisdiction over the Trust Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary or the other Secured Parties under this Section 4.9, or otherwise under this Deed of Trust, the Credit Agreement or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Post-Default Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary and the other Secured Parties in respect thereof, by litigation or otherwise.
Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary and the other Secured Parties, or any one or more of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Beneficiary or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or any Secured Party to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5.**

**ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Grantor hereby absolutely and unconditionally assigns to Beneficiary and Trustee Grantor’s right, title and interest in and to all current and future Leases and Rents. It is the intention of Beneficiary and Grantor that this conveyance be presently, unconditionally and immediately effective as security for the payment and performance of the Obligations. This assignment of Rents is a presently effective and continuing security interest in and to the Rents pursuant to Chapter 64 of Subtitle B, Title 5 of the Texas Property Code (the “Assignment of Rents Statute”).

Section 5.2. **Rights of Beneficiary.** Subject to the provisions of Section 5.5 below, Beneficiary shall have the right, power and authority to do any or all of the following: (a) notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Trust Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Trust Property; (e) lease all or any part of the Trust Property; and (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor’s rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary’s request, Grantor shall deliver a copy of this Deed of Trust to each tenant under a Lease and to each manager and managing agent or operator of the Trust Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Trust Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Deed of Trust and to turn over to Beneficiary on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Beneficiary’s rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Trust Property on account of this Deed of Trust. Except as otherwise expressly provided in the Credit Agreement, Beneficiary shall have no responsibility on account of this Deed of Trust for the control, care, maintenance or repair of the Trust Property, for any waste committed on the Trust Property, for any dangerous or defective

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condition of the Trust Property, or for any negligence in the management, upkeep, repair or control of the Trust Property.

Section 5.4. **Right to Apply Rents.** Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Revocable License.** Notwithstanding the absolute assignment of the Rents and Leases granted pursuant to this Deed of Trust and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Beneficiary grants to Grantor a revocable license to collect and receive the Rents, to retain, use and enjoy such Rents, and to administer and enforce the Leases as landlord thereunder. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Beneficiary, without notice to or demand upon Grantor, and Beneficiary immediately shall be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Trust Property. Prior to such revocation, Grantor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement.

Section 5.6. **Appointment.** Grantor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Grantor, and Grantor ratifies and confirms any and all acts done or omitted to be done by Beneficiary, its agents, servants, employees or attorneys in, to or about the Trust Property.

Section 5.7. **Liability of Beneficiary.** Beneficiary shall not in any way be liable to Grantor for any action or inaction of Beneficiary, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis.*

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations secured hereby remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

**ARTICLE 6. SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Deed of Trust constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Grantor grants to Trustee and Beneficiary (on behalf of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Trust Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect
to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements sent to Grantor at least ten (10) business days prior to any action under the UCC shall constitute reasonable notice to Grantor.

Section 6.2. **Financing Statements.** Grantor hereby irrevocably authorizes Beneficiary at any time and from time to time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Trust Property, without the signature of Grantor where permitted by law. Grantor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary’s prior written consent, subject to Grantor’s rights under Section 9-509(d)(2) of the UCC. Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. The Grantor hereby authorizes the filing of a financing statement in the office of the state in which Grantor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Grantor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

**ARTICLE 7.**

**CONCERNING THE TRUSTEE**

Section 7.1. **Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. GRANTOR SHALL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY, DEFEND AND SAVE TRUSTEE HARMLESS AGAINST, ALL LIABILITY AND REASONABLE EXPENSES WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES. GRANTOR’S OBLIGATIONS UNDER THIS SECTION 7.1 SHALL NOT BE REDUCED OR IMPAIRED BY PRINCIPLES OF COMPARATIVE OR CONTRIBUTORY NEGLIGENCE.
Section 7.2. **Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

Section 7.3. **Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

Section 7.4. **Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

ARTICLE 8.

MISCELLANEOUS

Section 8.1. **Notices.** Any notice required or permitted to be given under this Deed of Trust shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement. Notwithstanding the foregoing, (i) service of a notice required by Texas Property Code Section 51.002 (as said section now exists or may be hereinafter amended or succeeded), shall be considered complete when the requirements of that statute are met, and (ii) service of notices given in accordance with the requirements of the Assignment of Rents Statute shall be deemed sufficient when the requirements of that statute are met.

Section 8.2. **Covenants Running with the Land.** All obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Trust Property. As used herein, “Grantor” shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Trust Property). All persons or entities who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 8.3. **Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within
ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Grantor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) neither Beneficiary nor any Secured Party shall be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 8.4. **Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 8.5. **No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement or the other Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.6. **Subrogation.** To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Trust Property, then Beneficiary (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Trust Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary (on behalf of the Secured Parties).

Section 8.7. **Credit Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

Section 8.8. **Release.** Upon payment and performance in full of the Obligations, Beneficiary, at Grantor’s expense, shall record a release of the liens and security interests created by this Deed of Trust. In addition, the Credit Agreement provides for certain partial releases upon satisfaction of all conditions therefor set forth in the Credit Agreement.

Section 8.9. **Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary and the Secured Parties, or any one or more of them, or any rights or remedies of Beneficiary and the Secured Parties, or any one or more of them. Grantor further waives any and all rights of homestead, dower, elective or distributive share and redemption from
foreclosure and from sale under any order or decree of foreclosure of the lien created by this Deed of Trust, for itself and on behalf of: (i) any trust estate of which the Land is a part; (ii) all beneficially interested persons; (iii) each and every person acquiring any interest in the Trust Property or title to the Land subsequent to the date of this Deed of Trust; and (iv) all other persons to the extent permitted by the provisions of laws of the State in which the Land are located.

Section 8.10. **Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Deed of Trust as "Grantor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.11. **Governing Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

Section 8.12. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.13. **Counterparts.** This Deed of Trust may be executed in counterparts, all of which counterparts together shall constitute one and the same instrument (and original signature pages and notary pages from each counterpart may be assembled into one original document to be recorded).

Section 8.14. **Entire Agreement.** This Deed of Trust, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Beneficiary, the other Secured Parties and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Deed of Trust, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.15. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.16. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

**ARTICLE 9. STATE SPECIFIC PROVISIONS**
Section 9.1. **State Specific Provisions.** In the event of any material inconsistencies between this Article 9 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Article 9 shall control and be binding.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any provision of Texas law regarding foreclosure (the "Texas Foreclosure Law"), the provisions of the Texas Foreclosure Law shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with Texas Foreclosure Law.

(b) **Rights and Remedies of Sureties.** Grantor waives any right or remedy that Grantor may have or be able to assert pursuant to Chapter 43 of the Texas Civil Practice and Remedies Code pertaining to the rights and remedies of sureties. No waiver made by Grantor in this Deed of Trust or in any of the other terms and provisions of the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Beneficiary or any judgment holder of the Obligations of the right to seek a deficiency judgment against Grantor or any other person or entity who may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Beneficiary, and for its and its successors and assigns.

(c) **No Homestead; Purpose of Loan.** The Trust Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State of Texas. Grantor hereby disclaims and renounces each and every claim to all or any portion of the Trust Property as a homestead. The Loan is solely for the purpose of carrying on or acquiring a business of Grantor and is not for personal, family, household or agricultural purposes.

(d) **Chapter 346.** Grantor and Beneficiary hereby agree that the provisions of Chapter 346 of the Texas Finance Code, as amended from time to time (regulating certain revolving credit lines and revolving tri-party accounts), shall not apply to the Loan, the Credit Agreement, this Deed of Trust or the other Loan Documents.

(e) **Deficiency.**

(i) In the event an interest in any of the Trust Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows: notwithstanding the provisions of Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Trust Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this Paragraph constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Trust Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further
recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Trust Property for purposes of calculating deficiencies owed by Grantor, any guarantor and others against whom recovery of a deficiency is sought.

(ii) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact’s determination of the fair market value of the Trust Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Trust Property shall be valued in an “as is” condition as of the date of the foreclosure sale, without any assumption or expectation that the Trust Property will be repaired or improved in any manner before a resale of the Trust Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Trust Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Trust Property, including, without limitation, brokerage commissions, title insurance, a survey of the Trust Property, tax prorations, attorney’s fees, and marketing costs; (iv) the gross fair market value of the Trust Property shall be further discounted to account for any estimated holding costs associated with maintaining the Trust Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Trust Property must be given by persons having at least five (5) years’ experience in appraising property similar to the Trust Property and who have conducted and prepared a complete written appraisal of the Trust Property taking into consideration the factors set forth above.

(f) Insurance. THE FOLLOWING IS THE REQUIRED TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTOR IS REQUIRED TO: (I) KEEP THE TRUST PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT BENEFICIARY SPECIFIES; (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) GRANTOR IS REQUIRED TO DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT SUCH GRANTOR’S EXPENSE AND SUCH AMOUNTS SHALL BE ADDED TO THE “OBLIGATIONS”.
IN WITNESS WHEREOF, Grantor has duly signed and delivered this Deed of Trust as of the date first above written.

GRANTOR:

BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company

By: 

Name: Diego E. Rosenfeldt
Title: Secretary

ACKNOWLEDGMENT

STATE OF    TEXAS     
COUNTY OF   DALLAS    

This instrument was acknowledged before me on June 11th, 2018, by Diego E. Rosenfeldt, as the Secretary of BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Delana M. Jones
Official Signature of Notary

Delana M. Jones
Insert name of Notary, printed or typed

My Commission Expires: April 18, 2020

SIGNATURE PAGE TO TEXAS DEED OF TRUST
EXHIBIT A
LEGAL DESCRIPTION OF LAND

Tract 1:

BEING 9.481 acres of land known as Lots 5, 6, 7, and 8, BRIDGEVIEW BUSINESS AND INDUSTRIAL PLAZA, a Subdivision in Travis County, Texas, according to the Plat recorded in Volume 77, Page 361 of the Plat Records of Travis County, Texas, and Lots 3 and 4, BRIDGEVIEW BUSINESS AND INDUSTRIAL PLAZA, Section Two, a Subdivision in Travis County, Texas, according to the Plat recorded in Volume 86, Page 1636 of the Plat Records of Travis County, Texas. Said 9.481 acres being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod set of the most WNW corner of said Lot 6, being the intersection of the East right-of-way line of Strandman Cove (an 80 foot wide right-of-way), with the South right-of-way line of Levander Loop (a variable width right-of-way);

THENCE along the North boundary line of said Lots 6 and 7 and the South right-of-way line of said Levander Loop as follows:

1. Northeasterly 20.69 feet, along a curve to the right having a radius of 15.00 feet, a central angle of 79 degrees 02 minutes 16 seconds, and a chord bearing North 61 degrees 35 minutes 00 seconds East 19.09 feet, to a 1/2 inch iron rod found at the end of said curve;

2. South 78 degrees 55 minutes 00 seconds East 82.00 feet to a 5/8 inch iron rod found at the beginning of a curve to the right;

3. Southeasterly 665.08 feet, along said curve to the right having a radius of 1091.83 feet, a central angle of 34 degrees 54 minutes 05 seconds, and a chord bearing South 61 degrees 27 minutes 05 seconds East 664.65 feet, to a 1/2 inch iron rod set at the end of said curve, and the beginning of another curve to the right;

4. Southeasterly 78.57 feet, along said curve to the right having a radius of 1102.09 feet, a central angle of 04 degrees 05 minutes 04 seconds, and a chord bearing South 41 degrees 58 minutes 00 seconds East 78.55 feet, to a 5/8 inch iron rod found at the end of said curve, and the beginning of another curve to the right;

5. Southwesterly 24.90 feet, along said curve to the right having a radius of 15.00 feet, a central angle of 95 degrees 07 minutes 22 seconds, and a chord bearing South 07 degrees 37 minutes 00 seconds West 22.14 feet, to a 5/8 inch iron rod found at the end of said curve, and the intersection of the Northwest right-of-way line of Julieanna Cove (a 80 foot wide right-of-way);

THENCE along the Northwest right-of-way line of said Julieanna Cove, being the Southeast boundary line of said Lot 7, 8, and 4 as follows:

1. South 55 degrees 10 minutes 00 seconds West 38.38 feet, to a 5/8 inch iron rod found at the beginning of a curve to the right;

2. Southwesterly 26.43 feet, along said curve to the right having a radius of 30.00 feet, a central angle of 50 degrees 28 minutes 13 seconds and a chord bearing South 80 degrees 24 minutes 00 seconds West 25.58 feet to a 5/8 inch iron rod found at the end of said curve, and the beginning of a curve to the left;
3. Southwesterly 232.00 feet, along said curve to the left having a radius of 80.00 feet, a central angle of 166 degrees 09 minutes 41 seconds, and a chord bearing South 22 degrees 33 minutes 57 seconds West 158.83 feet, to a 5/8 inch iron rod found at the Northeast corner of said Lot 4;

THENCE South 36 degrees 05 minutes 00 seconds West 215.74 feet, along the Southeast boundary line of said Lot 4, to a 1/2 inch iron rod set at the South corner of said Lot 4;

THENCE North 67 degrees 54 minutes 01 seconds West 744.07 left along the Southwest boundary line of said Lot 4 and also the Southwest boundary line of said Lot 3, to a 1/2 inch iron rod set at the Southwest corner of said Lot 3;

THENCE North 11 degrees 00 minutes 00 seconds East 189.89 feet, along the West boundary line of said Lot 3 to an "X" cut in concrete at the Northwest corner of said Lot 3 lying in the East right-of-way line of aforesaid Strandtman Cove.

THENCE along the East right-of-way line of said Strandtman Cove, in the West boundary line of said Lots 3, 5, and 6 as follows.

1. Northeasterly 102.69 feet along a curve to the left having a radius of 80.00 feet, a central angle of 73 degrees 32 minutes 43 seconds, and a chord bearing North 58 degrees 51 minutes 34 seconds East 95.78 feet to a 5/8 inch iron rod found at the end of said curve;

2. North 22 degrees 05 minutes 00 seconds East 249.64 feet, to THE PLACE OF BEGINNING, containing 9,481 acres (413,108 square feet) of land.

Tract 2:

BEING 11.896 acres of land comprised of all of Lots 2, 5, and 6, BRIDGEVIEW BUSINESS AND INDUSTRIAL PLAZA, SECTION TWO, a subdivision in Travis County, Texas, according to the plat recorded in Volume 86, Page 163B-163D of the Plat Records of Travis County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod found at the most Northerly Northeast corner of said Lot 2, and said POINT OF BEGINNING, also lying in the South right-of-way line of Strandtman Cove;

THENCE SOUTHEASTERLY 78.16 feet, along the most Northerly boundary line of said Lot 2, and the South right-of-way line of said Strandtman Cove (a public right-of-way), with a curve to the left, having a radius of 80.00 feet, a central angle of 55° 56' 41", and a chord bearing S 66° 22' 53" E 75.09 feet, to an "X" cut in concrete set at the most Northerly Northeast corner of said Lot 2, and the Northwest corner of Lot 3 of said Bridgeview Business and Industrial Plaza, Section Two;

THENCE S 11° 00' 00" W 189.89 feet, along the most Westerly East boundary line of said Lot 2, and the West boundary line of said Lot 3, to a ½" iron rod set at the Southwest corner of said Lot 3;
THENCE S 67° 54' 00" E 744.07 feet, along the Northeast boundary line of said Lot 2, and the Southwest boundary line of said Lot 3, and the most Southerly Northwest boundary line of aforesaid Lot 5, and the Southwest boundary line of Lot 4 of the Bridgeview Business and Industrial Plaza, Section Two, to a ½" iron rod set at the South corner of said Lot 4;

THENCE N 36° 05' 00" E 215.74 feet, along the Southeast boundary line of said Lot 4, and the Northwest boundary line of said Lot 5, to a 5/8" iron rod found at the most Northerly Northwest corner of said Lot 5, and the East corner of said Lot 4, said iron rod also lying in the South right-of-way line of said Julieanna Cove (a public right-of-way);

THENCE along the Southeast right-of-way line of said Julieanna Cove (public right-of-way), and the North boundary line of Lots 5 and 6 of said Bridgeview Business and Industrial Plaza, Section Two, as follows:

1. NORTHEASTERLY 160.00 feet, along a curve to the left, having a radius of 80.00, a central angle of 114° 36' 30", and a chord bearing N 62° 02' 28" E 134.64 feet, to a 5/8" iron rod found at the end of said curve, and the beginning of a curve to the right;

2. NORTHEASTERLY 26.35 feet, along said curve to the right, having a radius of 30.00 feet, a central angle of 50° 19' 36", and a chord bearing N 30° 00' 57" E 25.51 feet, to a ½" iron rod found at the end of said curve;

3. N 55° 07' 21" E 42.67 feet, to a 5/8" iron rod found at the beginning of a curve to the right;

4. SOUTHEASTERLY 23.72 feet, along said curve to the right, having a radius of 15.00 feet, a central angle of 90° 36' 13", and a chord bearing S 79° 24' 00" E 21.32 feet, to a 5/8" iron rod found at the end of said curve and the intersection of the Southwest right-of-way of Levander Loop (a variable width public right-of-way);

THENCE along the Southwest right-of-way line of said Levander Loop (public right-of-way) and the Northeast boundary line of said Lot 6, Bridgeview Business and Industrial Plaza, Section Two, as follows:

1. SOUTHEASTERLY 531.14 feet, along a curve to the right, having 1102.09 feet, a central angle of 27° 36' 47", and a chord bearing S 20° 24' 54" E 528.02 feet, to a Texas Department of Transportation right-of-way monument found at the end of said curve;

2. S 05° 46' 38" E 60.15 feet, to a 5/8" iron rod found at the Southeast corner of said Lot 6;

THENCE along the South boundary line of said Lot 6, as follows:

1. S 82° 14' 54" W 118.71 feet, to a ½" iron rod set;

2. N 33° 30' 00" W 120.00 feet, to a ½" iron rod set;

3. N 83° 25' 39" W 70.02 feet, to a ½" iron rod found at the Southwest corner of said Lot 6, and the Southeast corner of aforesaid Lot 5, Bridgeview Business and Industrial Plaza, Section Two;

THENCE S 78° 36' 13" W 330.39 feet, along the South boundary line of said Lot 5, to a ½" iron rod found;

THENCE N 69° 36' 41" W 372.39 feet, along the Southwest boundary line of said Lot 5, to a ½" iron rod found at the West corner of said Lot 5, and the South corner of aforesaid Lot 2, Bridgeview Business and Industrial Plaza, Section Two;

THENCE along the Southwest boundary line of said Lot 2, as follows:

1. N 69° 02' 23" W 409.54 feet, to a ½" iron rod set;
2. N 71° 43' 34" W 231.63 feet, to a ½" iron rod set;

3. N 60° 28' 30" W 214.41 feet to a ½" iron rod found at the West corner of said Lot 2;

THENCE N 59° 15' 19" E 573.68 feet, along the Northwest boundary line of said Lot 2, to THE POINT OF BEGINNING, containing 11.896 acres (618,213 square feet) of land.

NOTE: The Company is prohibited from insuring the area or quantity of the Land. Any statement in the legal description contained in Schedule A as to area or quantity of land is not a representation that such area or quantity is correct but is for informal identification purposes and does not override Item 2 of Schedule B hereof.
2. N 71° 43' 34" W 231.63 feet, to a ½" iron rod set;

3. N 60° 28' 30" W 214.41 feet to a ½" iron rod found at the West corner of said Lot 2;

THENCE N 59° 15' 19" E 573.63 feet, along the Northwest boundary line of said Lot 2, to THE POINT OF BEGINNING, containing 11.896 acres (518,213 square feet) of land.

NOTE: The Company is prohibited from insuring the area or quantity of the Land. Any statement in the legal description contained in Schedule A as to area or quantity of land is not a representation that such area or quantity is correct but is for informal identification purposes and does not override Item 2 of Schedule B hereof.
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS SECURITY INSTRUMENT COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE REAL ESTATE DESCRIBED HEREIN, IS TO SERVE AS A FIXTURE FILING UNDER SECTION 9.502 OF THE TEXAS BUSINESS AND COMMERCE CODE AND IS TO BE RECORDED IN THE DEED RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OR OF FIXTURE FILINGS.

This instrument was prepared by and after recording should be returned to:

Jessica L. Standera, Esq.
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, North Carolina 28202

AFTER RECORDING RETURN TO:
Fidelity National Title Insurance Company
Commonwealth Land Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, D.C. 20036
File No. 17-00747

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FINANCING STATEMENT AND FIXTURE FILING

BY

BORDEN DAIRY COMPANY OF TEXAS, LLC d/b/a Milk Products, LLC,
as Grantor,

TO

LAWYERS TITLE REALTY SERVICES, INC.,
as Trustee

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Beneficiary,

Relating to Premises located at:
5327 South Lamar Street, Dallas, Texas (Dallas County)

DATED: As of August 7, 2018
DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FINANCING STATEMENT AND FIXTURE FILING

BY

BORDEEN DAIRY COMPANY OF TEXAS, LLC db/a Milk Products, LLC,
as Grantor,

TO

LAWYERS TITLE REALTY SERVICES, INC.,
as Trustee

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Beneficiary,

Relating to Premises located at:
5327 South Lamar Street, Dallas, Texas (Dallas County)

DATED: As of August 7, 2018
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this “Deed of Trust”) is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company (“Grantor”), whose address for notice hereunder is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to LAWYERS TITLE REALTY SERVICES, INC., a Virginia corporation (“Trustee”), whose address for notice hereunder is 1620 L Street, NW, 4th Floor, Washington, DC 20036-5605, Attention: Michael Segal, for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent (in such capacity, together with its successors and assigns in such capacity, “Beneficiary”) for the Secured Parties (as defined in the Credit Agreement described below), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not herein defined, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) “Credit Agreement”: That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as Borrower, the other borrowers from time to time party thereto (the “Borrowers”), the guarantors from time to time party thereto (including, without limitation, Grantor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the “Lenders”) and Beneficiary, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) “Trust Property”: All estate, right, title, interest, claim and demand whatsoever which Grantor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Grantor (the “Land”), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (3) all materials, supplies, appliances, equipment (as such term is defined in the UCC), apparatus and other items of personal property and fixtures now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations,
as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Trust Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and franchise agreements, or any one or all of them, rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Trust Property (the "Personalty"), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Trust Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Trust Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Trust Property, including, without limitation "Rents" and "Proceeds" as such terms are defined in the Assignment of Rents Statute (as defined herein) (the "Rents"), (9) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Trust Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Trust Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Deed of Trust, the term "Trust Property" shall mean any interest of Grantor in all or, where the context permits or requires, any portion of the above or any interest therein, wherever located; provided, however, that notwithstanding any provision of this Deed of Trust to the contrary, the
Trust Property shall not include any movable personal property or movable contents owned by the Grantor and located within the Improvements which would be insurable as “contents” pursuant to Section III. Property Covered: Coverage B – Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) **“UCC”**: The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

**ARTICLE 2. GRANT**

Section 2.1. **Grant.** To secure the full and timely payment and performance of the Obligations, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION for the benefit and security of Beneficiary and its successors and assigns (for the benefit of the Secured Parties) forever TO HAVE AND TO HOLD the Trust Property with all privileges and appurtenances thereunto belonging to Trustee and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary against the claims of all persons claiming by, through or under Grantor, subject to the Permitted Liens.

Section 2.2. **Revolving Credit.** A part of the Obligations secured hereby are revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations is ever reduced to a zero ($0.00) balance, the lien and security interest of this Deed of Trust shall not be released or extinguished by operation of law or implied intent of the parties. This Deed of Trust, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of Beneficiary and/or Lenders to make further advances have been terminated and this Deed of Trust has been cancelled of record.

**ARTICLE 3. WARRANTIES, REPRESENTATIONS AND COVENANTS**
Grantor warrants, represents and covenants to Beneficiary and the other Secured Parties as follows:

Section 3.1. **Title to Trust Property and Lien of this Instrument.** Grantor owns the Trust Property free and clear of any liens, claims or interests, except the Permitted Liens, and has rights and the power to transfer each item of the Trust Property. This Deed of Trust creates valid, enforceable first priority liens and security interests against the Trust Property. Subject to the terms of the Credit Agreement, where any of the Trust Property is in the possession of a third party, Grantor will join with Beneficiary in notifying the third party of Beneficiary's security interest and obtaining an acknowledgment from the third party that it is holding such Trust Property for the benefit of Beneficiary. Subject to the terms of the Credit Agreement, Grantor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the UCC) with respect to any Trust Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Beneficiary).

Section 3.3. **Payment and Performance.** Grantor shall pay and perform the Obligations in full when they are due and required to be paid and performed as provided in the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personality.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Grantor shall not, without the prior written consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except Permitted Liens and such as may be first approved in writing by Beneficiary. Grantor shall not incorporate into the Trust Property any item of personality, fixtures or other property that is not owned by Grantor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Trust Property and will not, without the prior consent of Beneficiary (acting at the direction of the requisite Lenders under the Credit Agreement),
consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Trust Property except for any Permitted Liens existing as of the date hereof. Grantee shall comply in all material respects with all restrictive covenants affecting the Trust Property and all zoning ordinances and other public or private restrictions as to the use of the Trust Property.

Section 3.6. **Inspection.** Grantee shall permit Beneficiary, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Trust Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Grantee shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Grantee shall not adjust, collect or compromise any claims under said policies without Beneficiary’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Beneficiary instead of to the Grantee and Beneficiary jointly, and the Grantee appoints Beneficiary as the Grantee’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Beneficiary’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

Section 3.9. **Condemnation.** The Grantee, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Trust Property, shall notify Beneficiary of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Grantee and shall be received and collected directly by the Grantee. If an Event of Default exists, Beneficiary may participate in any such proceedings and the Grantee shall deliver to Beneficiary all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Beneficiary, and any such Award shall be applied, at Beneficiary’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Trust Property under such terms and conditions as Beneficiary may impose in its sole discretion.

**ARTICLE 4.**
**DEFAULT AND FORECLOSURE**
Section 4.1. **Remedies.** If an Event of Default exists, Beneficiary may, at Beneficiary’s election, and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Trust Property.** Enter the Trust Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Trust Property following the occurrence and during the continuance of an Event of Default and without Beneficiary’s prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Trust Property.** Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary or Trustee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure under Power of Sale.** Any foreclosure under power of sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust. Without limitation of the foregoing, pursuant to Section 51.002 of the Texas Property Code, upon the occurrence of an Event of Default, the Trustee, or his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Beneficiary to sell the Trust Property or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Trust Property is situated, at public venue to the highest bidder for cash, pursuant to the Texas Property Code, Section 51.002 et seq., as currently amended, between the hours of 10 o’clock a.m. and 4 o’clock p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust. Any sale made by the Trustee hereunder may be as an entirety or in such parcels as Beneficiary may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by the Trustee of less than the whole of the Trust Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Trust Property shall be sold; and, if

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the proceeds of such sale of less than the whole of the Trust Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Trust Property just as though no sale had been made; provided, however, that neither Grantor nor any Guarantor shall ever have any right to require the sale of less than the whole of the Trust Property but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Trust Property. After each sale, the Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by the Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Trust Property has been duly sold and all Obligations have been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by the Trustee or any successor or substitute appointed hereunder as to nonpayment of the indebtedness secured hereby, or as to the occurrence of any default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to the request of sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of the Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Beneficiary or by such Trustee, or substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee, or his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of the Trustee, or his successor or substitute. If any provision of this Deed of Trust shall grant to Beneficiary any rights or remedies upon default of Grantor which are more limited than the rights or remedies that would otherwise be vested in Beneficiary under the Applicable Law in the absence of said provision, Beneficiary shall be vested with the rights and remedies granted under the Applicable Law. In the event a foreclosure hereunder is commenced by Trustee in accordance with Section 4.1(d) hereof, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Obligations and for a foreclosure of the liens and security interests hereof, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Trust Property or any part thereof in accordance with the provisions of this Deed of Trust.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and to the extent permitted by law, obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such
appointment. Any such receiver shall have all the usual powers and duties of receivers in similar
cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such
terms as may be approved by the court, and shall apply such Rents in accordance with the provisions
of Section 4.7.

(f) Other. Exercise all other rights, remedies and recourses granted under the
Credit Agreement and the other Loan Documents or otherwise available at law or in equity
(including an action for specific performance of any covenant contained in the Credit Agreement or
the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document
either before, during or after any proceeding to enforce this Deed of Trust).

Section 4.2. Separate Sales. The Trust Property may be sold in one or more parcels and in
such manner and order as Trustee in its sole discretion, may elect; the right of sale arising out of any
Event of Default shall not be exhausted by any one or more sales.

Section 4.3. Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall
have all rights, remedies and recourses granted in the Credit Agreement and the other Loan
Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative
and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or
others obligated under the Credit Agreement or the other Loan Documents, or against the Trust
Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be
exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them
shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and
(d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or any Secured Party in
the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan
Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. Release of and Resort to Collateral. Beneficiary may release, regardless of
consideration and without the necessity for any notice to or consent by the holder of any subordinate
lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way
imparing, affecting, subordinating or releasing the lien or security interests created in or evidenced
by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and
security interest in and to the Trust Property. For payment of the Obligations, Beneficiary and the
other Secured Parties may resort to any other security in such order and manner as Beneficiary and
the other Secured Parties may elect.

Section 4.5. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest
extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all
benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or
judicial decision exempting the Trust Property from attachment, levy or sale on execution or
providing for any appraisement, valuation, stay of execution, exemption from civil process, right or
equity of redemption or extension of time for payment, (b) except as otherwise expressly set forth in
the Credit Agreement and the other Loan Documents, all notices of any Event of Default or Trustee’s
or Beneficiary’s election to exercise or their actual exercise of any right, remedy or recourse

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provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Beneficiary and the other Secured Parties, or any one or more of them, shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary and the other Secured Parties shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement or the other Loan Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement unless otherwise required by applicable laws.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Trust Property. All occupants of the Trust Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Trust Property other than the statutory action of forcible detainer in any court having jurisdiction over the Trust Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary or the other Secured Parties under this Section 4.9, or otherwise under this Deed of Trust, the Credit Agreement or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Post-Default Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys’ fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary and the other Secured Parties in respect thereof, by litigation or otherwise.
Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary and the other Secured Parties, or any one or more of them, under the Credit Agreement or the other Loan Documents, at law or in equity shall cause Beneficiary or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or any Secured Party to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5.**

**ASSIGNMENT OF RENTS AND LEASES**

Section 5.1. **Assignment.** Grantor hereby absolutely and unconditionally assigns to Beneficiary and Trustee Grantor’s right, title and interest in and to all current and future Leases and Rents. It is the intention of Beneficiary and Grantor that this conveyance be presently, unconditionally and immediately effective as security for the payment and performance of the Obligations. This assignment of Rents is a presently effective and continuing security interest in and to the Rents pursuant to Chapter 64 of Subtitle B, Title 5 of the Texas Property Code (the “Assignment of Rents Statute”).

Section 5.2. **Rights of Beneficiary.** Subject to the provisions of Section 5.5 below, Beneficiary shall have the right, power and authority to do any or all of the following: (a) notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Trust Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Trust Property; (e) lease all or any part of the Trust Property; and (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor’s rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary’s request, Grantor shall deliver a copy of this Deed of Trust to each tenant under a Lease and to each manager and managing agent or operator of the Trust Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Trust Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Deed of Trust and to turn over to Beneficiary on demand all Rents which it receives.

Section 5.3. **No Obligation.** Notwithstanding Beneficiary’s rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Trust Property on account of this Deed of Trust. Except as otherwise expressly provided in the Credit Agreement, Beneficiary shall have no responsibility on account of this Deed of Trust for the control, care, maintenance or repair of the Trust Property, for any waste committed on the Trust Property, for any dangerous or defective

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condition of the Trust Property, or for any negligence in the management, upkeep, repair or control of the Trust Property.

Section 5.4. **Right to Apply Rents.** Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Revocable License.** Notwithstanding the absolute assignment of the Rents and Leases granted pursuant to this Deed of Trust and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Beneficiary grants to Grantor a revocable license to collect and receive the Rents, to retain, use and enjoy such Rents, and to administer and enforce the Leases as landlord thereunder. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Beneficiary, without notice to or demand upon Grantor, and Beneficiary immediately shall be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Trust Property. Prior to such revocation, Grantor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement.

Section 5.6. **Appointment.** Grantor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Grantor, and Grantor ratifies and confirms any and all acts done or omitted to be done by Beneficiary, its agents, servants, employees or attorneys in, to or about the Trust Property.

Section 5.7. **Liability of Beneficiary.** Beneficiary shall not in any way be liable to Grantor for any action or inaction of Beneficiary, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis.*

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations secured hereby remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

**ARTICLE 6.**

**SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Deed of Trust constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Grantor grants to Trustee and Beneficiary (on behalf of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Trust Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect
to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements sent to Grantor at least ten (10) business days prior to any action under the UCC shall constitute reasonable notice to Grantor.

Section 6.2. **Financing Statements.** Grantor hereby irrevocably authorizes Beneficiary at any time and from time to time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Trust Property, without the signature of Grantor where permitted by law. Grantor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary’s prior written consent, subject to Grantor’s rights under Section 9-509(d)(2) of the UCC. Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. The Grantor hereby authorizes the filing of a financing statement in the office of the state in which Grantor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Grantor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

**ARTICLE 7.**

**CONCERNING THE TRUSTEE**

Section 7.1. **Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. GRANTOR SHALL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY, DEFEND AND SAVE TRUSTEE HARMLESS AGAINST, ALL LIABILITY AND REASONABLE EXPENSES WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES. GRANTOR’S OBLIGATIONS UNDER THIS SECTION 7.1 SHALL NOT BE REDUCED OR IMPAIRED BY PRINCIPLES OF COMPARATIVE OR CONTRIBUTORY NEGLIGENCE.
Section 7.2. Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

Section 7.3. Successor Trustees. If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

Section 7.4. Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

ARTICLE 8.
MISCELLANEOUS

Section 8.1. Notices. Any notice required or permitted to be given under this Deed of Trust shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement. Notwithstanding the foregoing, (i) service of a notice required by Texas Property Code Section 51.002 (as said section now exists or may be hereinafter amended or succeeded), shall be considered complete when the requirements of that statute are met, and (ii) service of notices given in accordance with the requirements of the Assignment of Rents Statute shall be deemed sufficient when the requirements of that statute are met.

Section 8.2. Covenants Running with the Land. All obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Trust Property. As used herein, “Grantor” shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Trust Property). All persons or entities who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 8.3. Attorney-in-Fact. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary’s interest, if Grantor shall fail to do so within
ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Grantor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) neither Beneficiary nor any Secured Party shall be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 8.4. **Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 8.5. **No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement or the other Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.6. **Subrogation.** To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Trust Property, then Beneficiary (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Trust Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary (on behalf of the Secured Parties).

Section 8.7. **Credit Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

Section 8.8. **Release.** Upon payment and performance in full of the Obligations, Beneficiary, at Grantor’s expense, shall record a release of the liens and security interests created by this Deed of Trust. In addition, the Credit Agreement provides for certain partial releases upon satisfaction of all conditions therefor set forth in the Credit Agreement.

Section 8.9. **Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary and the Secured Parties, or any one or more of them, or any rights or remedies of Beneficiary and the Secured Parties, or any one or more of them. Grantor further waives any and all rights of homestead, dower, elective or distributive share and redemption from
foreclosure and from sale under any order or decree of foreclosure of the lien created by this Deed of Trust, for itself and on behalf of: (i) any trust estate of which the Land is a part; (ii) all beneficially interested persons; (iii) each and every person acquiring any interest in the Trust Property or title to the Land subsequent to the date of this Deed of Trust; and (iv) all other persons to the extent permitted by the provisions of laws of the State in which the Land are located.

Section 8.10. **Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Deed of Trust as “Grantor,” the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.11. **Governing Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

Section 8.12. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.13. **Counterparts.** This Deed of Trust may be executed in counterparts, all of which counterparts together shall constitute one and the same instrument (and original signature pages and notary pages from each counterpart may be assembled into one original document to be recorded).

Section 8.14. **Entire Agreement.** This Deed of Trust, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Beneficiary, the other Secured Parties and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Deed of Trust, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.15. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.16. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

ARTICLE 9.

STATE SPECIFIC PROVISIONS
Section 9.1. **State Specific Provisions.** In the event of any material inconsistencies between this Article 9 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Article 9 shall control and be binding.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any provision of Texas law regarding foreclosure (the "Texas Foreclosure Law"), the provisions of the Texas Foreclosure Law shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with Texas Foreclosure Law.

(b) **Rights and Remedies of Sureties.** Grantor waives any right or remedy that Grantor may have or be able to assert pursuant to Chapter 43 of the Texas Civil Practice and Remedies Code pertaining to the rights and remedies of sureties. No waiver made by Grantor in this Deed of Trust or in any of the other terms and provisions of the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Beneficiary or any judgment holder of the Obligations of the right to seek a deficiency judgment against Grantor or any other person or entity who may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Beneficiary, and for its and its successors and assigns.

(c) **No Homestead; Purpose of Loan.** The Trust Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State of Texas. Grantor hereby disclaims and renounces each and every claim to all or any portion of the Trust Property as a homestead. The Loan is solely for the purpose of carrying on or acquiring a business of Grantor and is not for personal, family, household or agricultural purposes.

(d) **Chapter 346.** Grantor and Beneficiary hereby agree that the provisions of Chapter 346 of the Texas Finance Code, as amended from time to time (regulating certain revolving credit lines and revolving tri-party accounts), shall not apply to the Loan, the Credit Agreement, this Deed of Trust or the other Loan Documents.

(e) **Deficiency.**

(i) In the event an interest in any of the Trust Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows: notwithstanding the provisions of Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Trust Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this Paragraph constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Trust Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further
recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Trust Property for purposes of calculating deficiencies owed by Grantor, any guarantor and others against whom recovery of a deficiency is sought.

(ii) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact’s determination of the fair market value of the Trust Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Trust Property shall be valued in an “as is” condition as of the date of the foreclosure sale, without any assumption or expectation that the Trust Property will be repaired or improved in any manner before a resale of the Trust Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Trust Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Trust Property, including, without limitation, brokerage commissions, title insurance, a survey of the Trust Property, tax prorations, attorney’s fees, and marketing costs; (iv) the gross fair market value of the Trust Property shall be further discounted to account for any estimated holding costs associated with maintaining the Trust Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Trust Property must be given by persons having at least five (5) years’ experience in appraising property similar to the Trust Property and who have conducted and prepared a complete written appraisal of the Trust Property taking into consideration the factors set forth above.

(f) Insurance. THE FOLLOWING IS THE REQUIRED TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTOR IS REQUIRED TO: (I) KEEP THE TRUST PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT BENEFICIARY SPECIFIES; (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) GRANTOR IS REQUIRED TO DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT SUCH GRANTOR’S EXPENSE AND SUCH AMOUNTS SHALL BE ADDED TO THE “OBLIGATIONS".
IN WITNESS WHEREOF, Grantor has duly signed and delivered this Deed of Trust as of the date first above written.

GRANTOR:

BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company

By: ____________________________
Name: Diego E. Rosenfeldt
Title: Secretary

ACKNOWLEDGMENT

STATE OF: TEXAS

COUNTY OF: DALLAS

This instrument was acknowledged before me on June 11th, 2018, by Diego E. Rosenfeldt, as the Secretary of BORDEN DAIRY COMPANY OF TEXAS, LLC f/k/a Milk Products, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Delana M. Jones
Official Signature of Notary

My Commission Expires: April 18, 2020

SIGNATURE PAGE TO TEXAS DEED OF TRUST
EXHIBIT A

LEGAL DESCRIPTION OF LAND

DESCRIPTION of a 14.859 acre tract of land located in Block 6832, Official Numbers of the City of Dallas, Texas and being out of the J. M. Crockett Survey, Abstract No. 353, Dallas County, Texas; said tract being all of a tract of land described in Special Warranty Deed to Milk Products, LLC, recorded in Volume 97175, Page 5255 of the Deed Records of Dallas County, Texas; said 14.859 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron pipe found in the west right-of-way line of South Lamar Street (a variable width right-of-way); said point being North 05 degrees, 10 minutes, 48 seconds West, a distance of 865.64 feet from the intersection of the said west line of South Lamar Street with the north right-of-way line of the T.&N.O. Railroad (a 115-foot wide right-of-way); said point being the northernmost corner of a tract of land described in Deed to Joseph T. Matassa Family, L.P. recorded in Volume 2005138, Page 3353 of said Deed Records;

THENCE, South 45 degrees, 08 minutes, 29 seconds West, departing the said west line of South Lamar Street and along the northwest line of said Matassa Family tract, at a distance of 250 feet passing the westernmost corner of said Matassa Family tract and a northern corner of a tract of land described in Warranty Deed to Jerry Don Selman recorded in Volume 99223, Page 223 of said Deed Records, in all a distance of 293.66 feet to a 3/8-inch iron rod found for corner; said point being the easternmost corner of the remainder of a tract of land described in Warranty Deed with Vendor's Lien to Don Selman recorded in Volume 99181, Page 2826 of said Deed Records;

THENCE, North 44 degrees, 57 minutes, 19 seconds West, along a northeast line of the second referenced Selman tract, a distance of 20.00 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

THENCE, South 45 degrees, 08 minutes, 29 seconds West, continuing along a northwest line of the second referenced Selman tract, a distance of 38.70 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

THENCE, North 44 degrees, 57 minutes, 13 seconds West, continuing along a northeast line of the second referenced Selman tract, a distance of 169.21 feet to a "+" cut in concrete found for corner, said point being the northermost corner of the second referenced Selman tract;

THENCE, South 45 degrees, 04 minutes, 09 seconds West, along a northwest line of the second referenced Selman tract, at a distance of 169.15 feet passing a northern corner of the first referenced Selman tract, then along a northwest line of the first referenced Selman tract, in all a distance of 461.25 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found in the northeast right-of-way line of said T.&N.O. Railroad (300 feet wide at this point);

THENCE, North 41 degrees, 18 minutes, 46 seconds West, along the said northeast line of T.&N.O. Railroad, a distance of 508.91 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner; said point being the southernmost corner of a tract of land described Paul W. and wife, Sendra E. Parker by Warranty Deed recorded in Volume 95005, Page 6129 of the Deed Records of Dallas County, Texas;

THENCE, North 45 degrees, 05 minutes, 43 seconds East, along the southeast line of said Parker tract, a distance of 1181.98 feet to a 1/2-inch iron pipe found in the said west line of South Lamar Street; said point being on a non-tangent curve to the right;
THENCE, in a southerly direction, along the said west line of South Lamar Street and said curve to the right, having a central angle of 28 degrees, 22 minutes, 56 seconds, a chord bearing and distance of South 19 degrees, 10 minutes, 02 seconds East, 552.04 feet, an arc distance of 567.82 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found at the end of said curve;

THENCE, South 05 degrees, 00 minutes, 56 seconds East, continuing along the said west line of South Lamar Street, a distance of 2.80 feet to an angle point (point not set);

THENCE, South 05 degrees, 10 minutes, 48 seconds East, continuing along the said west line of South Lamar Street, a distance of 272.69 feet to the POINT OF BEGINNING;

CONTAINING, 647,257 square feet or 14.859 acres of land, more or less.
THENCE, in a southerly direction, along the said west line of South Lamar Street and said curve to the right, having a central angle of 26 degrees, 22 minutes, 53 seconds, a chord bearing and distance of South 19 degrees, 10 minutes, 02 seconds East, 562.04 feet, an arc distance of 567.62 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found at the end of said curve;

THENCE, South 05 degrees, 00 minutes, 58 seconds East, continuing along the said west line of South Lamar Street, a distance of 2.80 feet to an angle point (point not set);

THENCE, South 05 degrees, 10 minutes, 48 seconds East, continuing along the said west line of South Lamar Street, a distance of 272.69 feet to the POINT OF BEGINNING;

CONTAINING, 847,257 square feet or 14.859 acres of land, more or less.
This instrument was prepared by and after recording should be returned to:

Jessica L. Standera, Esq.
King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, North Carolina 28202

AFTER RECORDING RETURN TO:
Fidelity National Title Insurance Company
Commonwealth Land Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, D.C. 20036
File No. 17-001745

This document serves as a Fixture Filing under Section 9-502 of the South Carolina Uniform Commercial Code and is to be filed in the real property records for Charleston County.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING

BY

BORDEN DAIRY COMPANY OF SOUTH CAROLINA, LLC,
as Mortgagor,

TO

PNC BANK, NATIONAL ASSOCIATION,
as Agent and Mortgagee,

Relating to Premises in:
Charleston County, South Carolina

DATED: As of August 7, 2018
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING

This Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Mortgage") is executed as of August 7, 2018, by BORDEN DAIRY COMPANY OF SOUTH CAROLINA, LLC, a South Carolina limited liability company ("Mortgagor"), whose tax mailing address is c/o ACON Investments LLC, 1133 Connecticut Avenue, NW, Suite 700, Washington, DC 20036, Attention: Aron Schwartz, to PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Collateral Agent for the Secured Parties (as defined in the Credit Agreement defined below; and in such capacity, together with its successors and assigns in such capacity, "Mortgagee"), whose address for notice is 1600 Market Street, 31st Floor, Philadelphia, PA 19103, Attention: Jim Crumlish.

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) "Credit Agreement": That certain Financing Agreement, dated as of July 6, 2017 (as amended, restated, joined, extended, refinanced, replaced, supplemented or otherwise modified from time to time), by and among Borden Dairy Holdings, LLC, as Parent, Borden Dairy Company, as a Borrower, the other borrowers from time to time party thereto (the "Borrowers"), the guarantors from time to time party thereto (including, without limitation, Mortgagor), the financial institutions and other entities from time to time parties as lenders thereunder (collectively, the "Lenders") and Mortgagee, as Administrative Agent and Collateral Agent, pursuant to which Lenders have made Loans to the Borrowers in the aggregate principal amount of up to $265,000,000.00, which Loans have a final maturity date of July 6, 2023.

(b) "Mortgaged Property": All estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, appliances, equipment, apparatus and other items of personal property and fixtures now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is
presently or hereafter defined in the UCC, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights; software, trademarks, goodwill, promissory notes, electronic and tangible, chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Personality”), (5) all reserves, escrows or impounds required under the Credit Agreement or the other Loan Documents and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “Plans”), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “Leases”), (8) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the “Rents”), (9) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Property Agreements”), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies (regardless of whether required by Mortgagor), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personality. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever locate; provided, however, that notwithstanding any provision of this Mortgage to the contrary, the Mortgaged Property shall not include any movable personal property or movable contents owned by the
Mortgagor and located within the Improvements which would be insurable as "contents" pursuant to Section III. Property Covered: Coverage B – Personal Property of the General Property Form, Standard Flood Insurance Policy issued by the United States Federal Emergency Agency National Flood Insurance Program.

(c) "UCC": The Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein, in the Credit Agreement or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

ARTICLE 2.

GRANT

Section 2.1. Grant. To secure the full and timely payment and the full and timely performance of the Obligations, in consideration of the aforesaid debt, and also in consideration of the further sum of THREE AND NO/100 DOLLARS ($3.00), to it in hand paid by Mortgagee, receipt whereof is hereby acknowledged, Mortgagor has granted and conveyed and by these presents DOES HEREBY GRANT, BARGAIN, SELL, CONVEY, TRANSFER AND ASSIGN MORTGAGEE (FOR THE BENEFIT OF THE SECURED PARTIES), ITS SUCCESSORS AND ASSIGNS, a security interest in all of Mortgagor's estate, right, title and interest now owned or hereafter acquired in and to the Mortgaged Property, subject to the Permitted Liens.

Section 2.2 Release. Upon payment and performance in full of the Obligations and the irrevocable termination of the Commitments under the Credit Agreement, Mortgagee, at Mortgagor's expense, shall cancel and surrender this Mortgage.

Section 2.3 Revolving Credit. This Mortgage secures revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance of the Obligations secured hereby is ever reduced to a zero ($0.00) balance, the lien, security interest and security title of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the Obligations are paid in full and satisfied, all agreements of the Mortgagee and/or the Lenders to make further advances have been terminated and this Mortgage has been cancelled of record.

ARTICLE 3.

WARRANTIES, REPRESENTATIONS AND COVENANTS
Mortgagor warrants, represents and covenants to Mortgagee and the other Secured Parties as follows:

Section 3.1. **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Liens, and has the right and the power to mortgage, grant, assign and encumber the Mortgaged Property. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Subject to the terms of the Credit Agreement, where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Subject to the terms of the Credit Agreement, Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2. **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage, the Credit Agreement and the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Mortgagee).

Section 3.3. **Payment and Performance.** Mortgagor shall pay the Obligations when due under the Credit Agreement and the other Loan Documents and shall perform the Obligations in full when they are due and required to be performed as required under the Credit Agreement and the other Loan Documents.

Section 3.4. **Replacement of Fixtures and Personality.** Except as otherwise expressly provided in Section 7.02(c) of the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage, the Credit Agreement and the other Loan Documents, and free and clear of any other lien or security interest except as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personality, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except Permitted Liens.

Section 3.5. **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, servitudes, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and
will not, without the prior consent of Mortgagee (acting at the direction of the requisite Lenders under the Credit Agreement), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property, except for any Permitted Liens existing as of the date hereof. Mortgagor shall comply in all material respects with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6. **Inspection.** Mortgagor shall permit Mortgagee, GSO and each other Secured Party, together with their respective agents, representatives and employees, to inspect the Mortgaged Property pursuant to, and subject to the terms of, Section 7.01(f) of the Credit Agreement.

Section 3.7. **Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

Section 3.8. **Rights to Insurance Proceeds.** Provided that no Event of Default exists, in the event of loss, Mortgagor shall have the exclusive right to adjust, collect and compromise all insurance claims. If an Event of Default exists, the Mortgagor shall not adjust, collect or compromise any claims under said policies without Mortgagee’s prior written consent. During the existence of an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to the Mortgagor and Mortgagee jointly, and the Mortgagor appoints Mortgagee as the Mortgagor’s attorney-in-fact to endorse any draft therefor. During the existence of an Event of Default, all insurance proceeds may, at Mortgagee’s sole option, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

Section 3.9 **Condemnation.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Provided that no Event of Default exists, any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof (an “Award”) shall be the property of the Mortgagor and shall be received and collected directly by the Mortgagor. If an Event of Default exists, Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. During the existence of an Event of Default, any Award is hereby assigned to and shall be received and collected directly by Mortgagee, and any such Award shall be applied, at Mortgagee’s option, to any part of the Obligations and in any order (notwithstanding that any of such Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose in its sole discretion.

**ARTICLE 4.**

**DEFAULT AND FORECLOSURE**

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Section 4.1. Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration and Foreclosure. Subject to the terms of the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable, and Mortgagee may foreclose this Mortgage by judicial foreclosure.

(b) Entry on Mortgaged Property. Mortgagee may, by a court appointed receiver, regardless of the adequacy of Mortgagee's security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and as set forth in Section 4.1(c). In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Property upon Mortgagor's breach of any covenant or agreement in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Any receiver so appointed shall be entitled to receive a reasonable fee for so managing the Mortgaged Property. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Mortgagee shall be entitled to the appointment of a receiver to hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as necessary or desirable), and apply all Rents and other amounts collected by the receiver in connection therewith in accordance with the provisions of Section 4.7.

(d) Foreclosure. Foreclose this Mortgage and sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, to receive the proceeds thereof and shall apply the same in the manner prescribed by applicable law. In the event of any foreclosure sale, the Mortgaged Property may be sold in one or more parcels. Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Mortgage and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Obligations or any other liabilities after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage or applicable law.

(e) Other. Exercise all other rights, remedies and recourses granted under the Credit Agreement and the other Loan Documents or otherwise available at law or in equity
(including an action for specific performance of any covenant contained in the Credit Agreement or the other Loan Documents, or a judgment on the Credit Agreement or any other Loan Document either before, during or after any proceeding to enforce this Mortgage). In lieu of or in addition to foreclosure, Mortgagor may obtain any other remedy provided in this Mortgage or available at law or equity, including the appointment of a receiver for the Mortgaged Property.

Section 4.2. **Separate Sales.** To the fullest extent permitted by law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3. **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Credit Agreement and the other Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Credit Agreement or the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or any other Secured Party in the enforcement of any rights, remedies or recourses under the Credit Agreement or the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4. **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Credit Agreement or the other Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee and the other Secured Parties may resort to any other security in such order and manner as Mortgagee and the other Secured Parties may elect.

Section 4.5. **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as otherwise expressly set forth in the Credit Agreement or the other Loan Documents, all notices of any Event of Default or of Mortgagee's election to exercise, or its actual exercise of, any right, remedy or recourse provided for under the Credit Agreement or the other Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6. **Discontinuance of Proceedings.** If Mortgagee and/or the other Secured Parties shall have proceeded to invoke any right, remedy or recourse permitted under the
Credit Agreement or the other Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee and the other Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the other Secured Parties shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the other Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the other Secured Parties thereafter to exercise any right, remedy or recourse under the Credit Agreement or the other Loan Documents for such Event of Default.

Section 4.7. **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by the receiver, if one is appointed, in accordance with the terms of the Credit Agreement.

Section 4.8. **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9. **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee and the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. With respect to all sums advanced and expenses incurred at any time by Mortgagee or the other Secured Parties under this Section 4.9, or otherwise under this Mortgage or any of the Credit Agreement or the other Loan Documents or applicable law, Mortgagor shall pay interest at the Post-Default Rate from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, and all such sums, together with interest at the Post-Default Rate, shall be Obligations secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Credit Agreement and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage, the Credit Agreement and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee and the other Secured Parties in respect thereof, by litigation or otherwise.

Section 4.10. **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee and/or the other Secured Parties, or any one of them, under the Credit Agreement or the other Loan Documents, at law or in
equity shall cause Mortgagee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any other Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5.
ASSIGNMENT OF RENTS AND LEASES

Section 5.1. Assignment. Mortgagor unconditionally and absolutely assigns (to the extent assignable) to Mortgagee (for the benefit of the Secured Parties) all of Mortgagor’s right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Mortgagee and not an assignment as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents or any other indebtedness. Notwithstanding the absolute assignment of the Leases and Rents granted pursuant to this Mortgage and the collateral assignment of, or the grant of a Lien or security interest in the Rents and Leases, so long as no Event of Default shall exist, (i) Mortgagee grants to Mortgagor the sole revocable license to collect and receive the Rents and to retain, use and enjoy such Rents; (ii) Mortgagor shall otherwise have the right to exercise all rights and enjoy all privileges afforded to Mortgagor under the Leases and (iii) Mortgagor shall be entitled to exercise all rights, remedies and covenants available under the Leases or pursuant to applicable law. Upon the occurrence and during the continuance of any Event of Default, such license to the Rents and rights under the Leases may be revoked by Mortgagee, without notice to or demand upon Mortgagor, and Mortgagee immediately shall be entitled to receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property. Prior to such revocation, Mortgagor shall apply any Rents which it receives in accordance with the terms of the Credit Agreement, as applicable.

Section 5.2. Rights of Mortgagee. Subject to the provisions of Section 5.1, and following the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor’s rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Mortgagee’s request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Mortgage and to turn over to Mortgagee on demand all Rents which it receives.
Section 5.3. **No Obligation.** Notwithstanding Mortgagee's rights hereunder, Mortgagee shall not be obligated to perform, and Mortgagee does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Mortgage. Mortgagee shall have no responsibility on account of this Mortgage for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4. **Right to Apply Rents.** Mortgagee shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with Section 4.7 hereof.

Section 5.5. **Reserved.**

Section 5.6. **Appointment.** To the fullest extent permitted by law, Mortgagor irrevocably appoints Mortgagee its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Mortgagor, and Mortgagor ratifies and confirms any and all acts done or omitted to be done by Mortgagee, its agents, servants, employees or attorneys in, to or about the Mortgaged Property.

Section 5.7. **Liability of Mortgagee.** Mortgagee shall not in any way be liable to Mortgagor for any action or inaction of Mortgagee, its employees, representatives or agents under this Article 5.

Section 5.8. **Indemnification.** Section 12.16 of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis.*

Section 5.9. **No Merger of Estates.** So long as any part of the Obligations remains unpaid and undischarged and the Commitments of the Lenders have not been terminated, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

**ARTICLE 6.**

**SECURITY AGREEMENT**

Section 6.1. **Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee (for the benefit of the Secured Parties), a first and prior security interest in the Personality, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personality, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor
at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2. **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagor at any time and from time to prepare, execute and file or record in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagor, promptly upon request, with any information required by Mortgagor to complete such financing or continuation statements. If Mortgagor has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagor, and agrees that it will not do so without Mortgagor's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagor, in form and substance satisfactory to Mortgagor, such additional financing statements and such further assurances as Mortgagor may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagor's security interest hereunder and Mortgagor may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes the filing of a financing statement in the office of the state in which Mortgagor is organized, formed or incorporated, which financing statement may include a description of the collateral as all assets or property of the Mortgagor whether now owned or hereafter acquired.

Section 6.3. **Fixture Filing.** This Mortgage, upon being recorded or registered in the real estate records of the Office of the County Recorder of the county in which the Land is situated (the "Recorder's Office"), shall constitute and operate as a financing statement filed as a "fixture filing" within the meaning of Sections 9-334 and 9-502 of the UCC for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures (as that term is defined in Article 9 of the UCC) related to the Land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

**ARTICLE 7. MISCELLANEOUS**

Section 7.1. **Notices.** Any notice required or permitted to be given under this Mortgage shall be sent, deemed given and received and otherwise governed in accordance with the terms and conditions of Section 12.01 of the Credit Agreement.

Section 7.2. **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire
an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3. **Attorney-in-Fact.** To the fullest extent permitted by law, Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personality, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose and (c) during the existence of an Event of Default, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Post-Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) neither Mortgagee nor any other Secured Party shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4. **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5. **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement and the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6. **Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee (on behalf of the Secured Parties) shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee (on behalf of the Secured Parties).

Section 7.7. **Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

Section 7.8. **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations, or any agreement between
Mortgagor and Mortgagee and/or the Secured Parties or any rights or remedies of Mortgagee and/or the Secured Parties.

Section 7.9. **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.10. **Governing Law.** This Mortgage shall be governed by the laws of the State of South Carolina.

Section 7.11. **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.12. **Entire Agreement.** This Mortgage, the Credit Agreement and the other Loan Documents embody the entire agreement and understanding between Mortgagee, the Secured Parties and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage, the Credit Agreement and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.13. **Severability.** Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM THEREIN.

Section 7.15. **Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 7.16. **Future Advances; Variable Rate.**

(a) This Mortgage secures not only present indebtedness but also future advances (in accordance with S.C. Code Ann. § 29-3-50, as amended), whether such future advances are obligatory or are to be made at the option of the holders of the Obligations, or otherwise, and the Lien securing such future advances shall relate to the date of this Mortgage and have the same priority as the Lien securing loans made on the date hereof, but the indebtedness secured by this Mortgage shall not exceed at any one time the maximum principal amount of $265,000,000. The amount of the Obligations secured hereby may increase or decrease from time to time, and the rate
or rates of interest payable may vary from time to time. Interest on the Obligations will be deferred, accrued, or capitalized, but Mortgagee shall not be required to defer, accrue, or capitalize any interest except as provided in the Note or the other Obligations.

(b) This instrument is intended to secure future advances and is given wholly or partly to secure future obligations which may be incurred hereunder.

Section 7.17. **Protective Advances.** Notwithstanding anything contained herein to the contrary, in addition to any other Obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Mortgaged Property, and such advances shall bear interest thereon at the Post-Default Rate from the date of each such advance, regardless of the date on which such advance is made, until paid in full, shall be secured by this Mortgage to the fullest extent permitted by law.

Section 7.18. **Obligations to Include Judgments; Other Collateral.** The term "Obligations" shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or the holders of the Obligations and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee and/or the holders of the Obligations (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Mortgaged Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee and/or the holders of the Obligations hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Obligations are secured by the Mortgaged Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Mortgaged Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor’s contemplation that the other collateral pledged to secure the Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the holders of the Obligations may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Section 7.19. **State Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of South Carolina law regarding foreclosure (the "State Foreclosure Law"), the provisions of the State Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with State Foreclosure Law.
Section 7.20. **State Specific Provisions.** To the extent of any conflict between the provisions of this Section 7.20 and the other provisions of this Mortgage, the provisions of this Section 7.20 shall control.

(a) **No Homestead or Agricultural Use.** No portion of the Property is being used as Mortgagor’s business or residential homestead. No portion of the Property is being used for agricultural purposes.

(b) **Under Seal.** This Mortgage is intended to be and shall be construed as an instrument under seal.

(c) **Additional Waivers.** MORTGAGOR EXPRESSLY WAIVES THE FOLLOWING: ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH MORTGAGOR OR MORTGAGOR’S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATE OF SOUTH CAROLINA OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE OBLIGATIONS, OR ANY PART THEREOF. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY MORTGAGOR, AFTER MORTGAGOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF MORTGAGOR’S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. MORTGAGOR’S EXECUTION OF THIS MORTGAGE SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

[Remainder of page intentionally left blank; signatures follow]
(d) **WAIVER OF APPRAISAL RIGHTS.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUED OF THE MORTGAGED PROPERTY.**

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has duly executed and delivered this Mortgage under seal as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

**MORTGAGOR:**

BORDEN DAIRY COMPANY OF SOUTH CAROLINA, LLC, a South Carolina limited liability company

By: [Signature] (SEAL)

Name: Diego E. Rosenfeld
Title: Secretary

**ACKNOWLEDGMENT**

STATE OF [Texas] )
COUNTY OF [Davie]) ss.

The foregoing instrument was acknowledged before me this 11th day of June, 2018, by Diego E. Rosenfeld, Secretary of BORDEN DAIRY COMPANY OF SOUTH CAROLINA, LLC on behalf of the limited liability company.

Print Name: Delana M. Jones
NOTARY PUBLIC for Texas
MY COMMISSION EXPIRES: April 18, 2020

SIGNATURE PAGE TO SOUTH CAROLINA MORTGAGE
EXHIBIT A

LEGAL DESCRIPTION OF LAND

Lying, being and situate in Charleston County, South Carolina, and being more particularly described as follows:

ALL that piece, parcel or tract of land, with all buildings and improvements thereon, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, and being shown and designated as "10.58 Acres Tract A" and "0.50 Ac, Tract B" on a plat by E.M. Seabrook, Jr. Inc. dated March 27, 1996 entitled in part "PLAT OF A RESUBDIVISION OF AN 11.08 ACRE TRACT A AND A 0.62 ACRE TRACT PART OF TRACT C" and recorded at Plat Book EB, Page 69 RMC Office for Charleston County, South Carolina, and having such size, shape battings, boundings, dimensions and location as will appear by reference to said plat which is incorporated herein by reference.

TOGETHER WITH:

ALL that certain piece, parcel or tract of land lying, being and situate in the City of North Charleston, Charleston County, South Carolina, containing approximately 0.62 acres and shown as "0.62 AC." On a plat entitled "City of North Charleston, Charleston County, SC Plat of a 0.62 ac Tract Owned by First Federal of Charleston and About to Be Conveyed to Coburg Dairy, Inc." made by Lewis E. Seabrook, Civil Engineer and South Carolina Registered Land Surveyor dated November 18, 1992 with revision date of January 6, 1993 and recorded on January 19, 1993 in Plat Book CL, Page 27, in the RMC Office for Charleston County, South Carolina; said tract of land having such size, shape, dimensions, location, measurements, battings and boundings as will by reference to aid plat more fully appear.

TOGETHER WITH:

ALL right, title and interest of the Grantor herein in and to all railroad track, ties, switches and related apparatus of any kind or nature whatsoever located upon or used in connection with that area shown and designated as "50' railroad spur R/W" on a plat entitled "Chroheza Realty, 9.9Ac." and as "1.16 Ac." On a plat by Josiah M. Williams, III dated 25 July, 1983 entitled "A Plat of an 11.06 Acre Tract of Land Owned by Chroheza Realty, North Charleston, South Carolina."

TOGETHER WITH:

All right, title and interest of the Grantor herein in and to any agreements or contracts, and any claims or rights of any kind or nature whatsoever, arising out of, related to or used or usable in connection with, the said property shown as "50' railroad spur R/W" on the above referenced plat by Josiah M. Williams, III dated 25 July, 1983.

TOGETHER WITH:

All that piece, parcel or tract of land situate, lying and being in the Town of North Charleston, County of Charleston, State of South Carolina, and being shown and designated as "50' Railroad Spur R/W" on plat by Josiah M. Williams, III dated 25 July, 1983 entitled "A Plat of an 11.06 Acre Tract of Land Owned By Chroheza Realty, North Charleston, South Carolina" and recorded in Plat Book AY, Page 23, RMC Office for Charleston County, South Carolina, and having such size, shape, battings boundings, dimensions and location as will appear by reference to said plat which is incorporated herein by reference.
TOGETHER WITH:

An easement interest in the above described property having been conveyed by deed of Georgia-Pacific Investment Company to Edwards Realty Co. dated July 19, 1968 and recorded July 29, 1968 at Book T-90, Page 236 Charleston County RMC Office.

TOGETHER WITH:

ALL of that 50 foot Right of Way, together with all tracks, switching equipment, and other related railroad equipment and other related railroad equipment located thereon, situate in the County of Charleston, State of South Carolina, and being lettered "A" "B" "C" "D" "E" "F" "A" on a certain plat bearing the legend "Plat of 50 foot wide railroad spur right of way from right of way of Southern Railway Company to easterly R/W of LA Cross Road, north of Goodrich Road, Charleston County, S.C., "surveyed by Cummings & McCrady, Inc., Architects-Engineers, dated June, 1968, and recorded in the R.M.C. Office for Charleston County in Plat Book X, page 105; said 50 foot Right of Way having such size, shape, dimensions, buttoings and boundings as shown on the above mentioned plat; together with all of its right, title and interest in and to that certain unrecorded agreement between Southern Railway Company and Edward's Realty Co., dated March 5, 1969.

For Informational Purposes Only: TMS#: 472-00-00-006
For Informational Purposes Only: property address 5001 Lacross Road, North Charleston, South Carolina

THE ABOVE PIECE, PARCEL OR TRACT BEING MORE PARTICULARLY DESCRIBED BY ALTA/NSPS Land Title Survey entitled "BORDEN DAIRY", dated October 10, 2017, last revised November 21, 2017, prepared by Joseph C. Whisenant, RLS as Bock & Clark Project No. 201702862-007 as follows:

All that certain piece, parcel or tract of land situate, lying and being in the City of North Charleston, County of Charleston and the State of South Carolina, containing 11.697 acres and shown on that certain plat entitled Borden Dairy, prepared by Joseph C. Whisenant, PLS #25439 and dated October 10, 2017, last revised 21 November 2017.

BEGINNING at an iron pin found on the southern right-of-way of Lacross Road and the eastern right-of-way of Interstate 526, the Point of Beginning, thence running along the southern right-of-way of Lacross Road and bearing of South 12° 45' 49" E for a distance of 435.48 feet to an iron pin found, thence with said right-of-way along a curve to the left a chord bearing of S 18° 35' 36" E for a chord distance of 117.71 feet to an iron pin found, thence along said curve a chord bearing of S 28° 34' 16" E for a chord distance of 106.86 feet to an iron pin found, thence with said curve a chord bearing of S 36° 44' 41" E for a chord distance of 62.09 feet to a nail found, thence turning and running along said right-of-way a bearing of N 43° 04' 20" E for a distance of 5.24 feet to an iron pin found, thence with said right-of-way a bearing of S 39° 43' 39" E for a distance of 598.28 feet to an iron pin set, thence turning and running along a common line of Phoenix Lending, LLC a bearing of S 51° 14' 15" W for a distance of 634.55 feet to a monument found on the northern right-of-way of Interstate 26, thence turning and running along the northern right-of-way of Interstate 26 a bearing of N 31° 44' 15" W for a distance of 312.74 feet to an iron pin found, thence running with said right-of-way a bearing of N 27° 48' 03" W for a distance of 392.07 feet to an iron pin found, thence with said right-of-way a bearing of N 07° 41' 30" E for a distance of 170.24 feet to a monument found, thence turning and running along the eastern right-of-way of Interstate
526, along a curve to the left a chord bearing of N 26° 20' 57" E for a distance of 420.93 feet to an iron pin found, thence along said curve a chord bearing of N 03° 45' 16" E for a chord distance of 375.57 feet to an iron pin found, the Point of Beginning.

Being the same property conveyed to the mortgagor herein as follows:

Deed of Chroheza Realty Company by deed dated 8-26-83 and recorded 8-26-83 in Book U132, Page 086.


By Deed of First Federal Savings and Loan Association of Charleston dated 1-28-93 and recorded 1-29-93 in Book C223, Page 453.

Deed of Coward-Hund Construction Company Inc. dated 7-29-96 and recorded 7-29-96 in Book F272, Page 573.

Affidavit of Merger/Name Change dated 12-21-01 and recorded 7-12-02 in Book B412, Page 233.