

or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (a) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (b) may accelerate the sums secured by this Instrument and invoke those remedies provided herein; or (c) may do both.

18. APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Upon Borrower's default in any covenant or agreement of Borrower in this Instrument, and failure to cure within any applicable cure period, Lender may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and the conducting thereon of any business or businesses then being conducted by Borrower, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, such shall be appointed as provided in Paragraph 21 below. Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the cost, if any, of taking control of and managing the Property, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower, and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those revenues actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph.

If the revenues of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the same, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to the terms hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be immediately due and payable by Borrower and shall bear interest from the date of disbursement at the default rate stated under the terms of the Note, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents and revenues as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents and revenues of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

19. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by this Instrument. Furthermore, Lender shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, on or against the exercise of the rights and remedies otherwise available to Lender, and Borrower hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief. Any attorneys' fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to the terms hereof.

20. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER. If Borrower sells, exchanges, conveys, alienates, assigns, disposes of, encumbers, pledges, or transfers all or any portion of the Property (except as hereinafter provided or as permitted in the Note for individual lot sales), or if Borrower executes any agreement or contract creating any right to or any equitable interest in the title to the Property or any part thereof, or executes any agreement or contract granting a possessory right in the Property or any part thereof (including, without limiting the generality of the foregoing, outright conveyance, conveyance or alienation by land installment contract or contract for deed, alienation by lease or rental agreement with an option to purchase, and the granting of deeds of trust, mortgages, liens, and security interests subordinate to this Instrument, but excluding leases made in accordance with the Loan Documents) or if all or any part of any ownership interest in Borrower of whatever nature whatsoever is sold, exchanged, conveyed, alienated, assigned, disposed of, encumbered, pledged, or transferred, then at Lender's option the unpaid remainder of the Note and all of the sums secured by this Instrument shall be immediately and automatically due and payable in full, and Lender may invoke any remedies permitted by law and/or this Instrument. The conveyance or transfer of Borrower's

entered
S.D.