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Gary W. Ott  
Recorder, Salt Lake County, UT  
SECURITY TITLE INS AGENCY  
BY: eCASH, DEPUTY - EF 61 P.

RECORDING REQUESTED  
BY, AND WHEN RECORDED  
MAIL TO:

GOLDMAN SACHS BANK  
USA  
c/o Greenberg Traurig, LLP  
445 Hamilton Avenue, 9<sup>th</sup> Floor  
White Plains, New York 10601  
Attention: Kenneth P. Addeo,  
Esq.

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Space Above This Line For Recorder's Use

Tax Parcel No. 16-06-179-004

**BUILDING LOAN DEED OF TRUST, SECURITY AGREEMENT  
AND FIXTURE FILING**

Granted By

**MORTON TPIII LLC**  
(Organizational I.D. #5849270)  
As Grantor

To

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

As Trustee, for the benefit of

**GOLDMAN SACHS BANK USA**

as Beneficiary

Property Location: 245 South 200 East, Salt Lake City, Utah 84111

April 4, 2017

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THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* § 70A-9a -3 3343(8). THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY GRANTOR/TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN AGREEMENT (AS HEREINAFTER DEFINED).

WHP 556611946v9

**Ent 12508637 BK 10544 PG 4663**

**BUILDING LOAN DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING** (this "**Security Instrument**"), made as of April 4, 2017 by **MORTON TPIII LLC**, a Delaware limited liability company, having an office at c/o David Enslow, 1816 11<sup>th</sup> Avenue, Unit C, Seattle, Washington 98122 (together with its successors and permitted assigns, "**Grantor**"), to **COMMONWEALTH LAND TITLE INSURANCE COMPANY**, having an address at c/o Security Title Insurance Agency of Utah, Inc., 376 East 400 South, #304, Salt Lake City, Utah 84111 ("**Trustee**"), as trustee, for the benefit of **GOLDMAN SACHS BANK USA**, a New York Chartered Bank, having an address at 200 West Street, New York, New York 10282 (together with its successors and assigns, "**Beneficiary**").

**WITNESSETH:**

WHEREAS, this Security Instrument is given to secure a building loan (the "**Loan**") in the maximum principal amount of **TWENTY-ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$21,200,000.00)** pursuant to that certain Building Loan Agreement dated as of the date hereof by and among Grantor and Beneficiary and others (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), with respect to the Loan, and evidenced by that certain Building Loan Note dated as of the date hereof made by Grantor to Beneficiary in the principal amount of **TWENTY-ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$21,200,000.00)** (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Note**"); and

WHEREAS, Grantor desires to secure the payment and performance of the Obligations (as such term is defined in the Loan Agreement); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment and performance of the Obligations are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, that certain Building Loan Assignment of Rents of even date herewith made by Grantor in favor of Beneficiary (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**") and all other documents evidencing or securing the Obligations or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "**Loan Documents**") provided however, for purposes of this Security Instrument, the term "**Loan Documents**" shall not include the Environmental Indemnity (as such term is defined in the Loan Agreement); it being expressly agreed that notwithstanding any provisions of this Security Instrument or any other Loan Document to the contrary, the obligations of any party under the Environmental Indemnity shall not be deemed secured by this Security Instrument unless Beneficiary declares in writing that such obligations are to be secured hereby.

NOW THEREFORE, in consideration of the making of the Loan by Beneficiary and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## ARTICLE 1 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Grantor**" shall mean "each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Beneficiary**" shall mean "Beneficiary and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of the Obligations secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder

As used in this Security Instrument:

(a) "**Access Laws**" shall mean, the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, in each case as amended from time to time.

(b) "**Acord Certificates**" has the meaning given to that term in Section 4.3 of this Security Instrument.

(c) "**Affiliate**" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. Such term shall include each Loan Party unless otherwise specified or if the context may otherwise require.

(d) "**Affiliated Manager**" shall mean any property manager which is an Affiliate of, or in which Grantor, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

(e) "**Arbitration Notice**" has the meaning given to that term in Section 9.2 (ii) of this Security Instrument.

(f) "**Assignment of Leases**" has the meaning given to that term in the Preamble of this Security Instrument, as amended, restated, supplemented or otherwise modified from time to time.

(g) "**Award**" has the meaning given to that given to that term in Section 9.1 (c) of this Security Instrument.

(h) "**Bankruptcy Code**" means 11 U.S.C. §101 et seq., as the same may be amended from time to time.

(i) “**Beneficiary**” has the meaning given to that term in the Preamble of this Security Instrument.

(j) “**Beneficiary Approved Settlement Amount**” has the meaning given to that term in Section 9.2 (ii) of this Security Instrument.

(k) “**Casualty**” has the meaning given to that term in Section 9.1 (a) of this Security Instrument.

(l) “**Condemnation**” has the meaning given to that term in Section 9.1 (a) of this Security Instrument.

(m) “**Creditors’ Rights Laws**” has the meaning given to that term in Section 8.1. (j) of this Security Instrument.

(n) “**Current Policies**” has the meaning given to that term in Section 4.3 of this Security Instrument.

(o) “**Flood Insurance Acts**” means the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended.

(p) “**FMV**” means the fair market value of the Real Property as set forth in the appraisal relied upon by Beneficiary as of the date hereof or any subsequent Qualifying Appraisal.

(q) “**Full Replacement Cost**” means the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or a Qualifying Appraisal paid for by Grantor.

(r) “**Grantor**” has the meaning given to that term in the Preamble of this Security Instrument.

(s) “**Improvements**” means all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, including the Project Improvements.

(t) “**Indemnified Parties**” means Beneficiary and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries,

participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Beneficiary's assets and business).

(u) "**Insurance Premiums**" has the meaning given to that term in Section 4.3 of this Security Instrument.

(v) "**Insurance Proceeds**" has the meaning given to that term in Section 2.1(h) of this Security Instrument.

(w) "**Intangibles**" shall mean all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property, all accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established with respect to the Property pursuant to this Security Instrument), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to the extent assignable), approvals, actions, choses, suits, proofs of claims in bankruptcy, claims and causes of action (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor or any operator or manager of the commercial space located in the Improvements or acquired from others, license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon.

(x) "**Labor and Material Costs**" has the meaning given to that term in Section 4.6 (a) of this Security Instrument.

(y) "**Land**" means the real property described in Exhibit A attached hereto and made a part hereof.

(z) "**Lease Guaranties**" has the meaning given to that term in Section 2.1(f) of this Security Instrument.

(aa) "**Leases**" has the meaning given to that term in Section 2.1(f) of this Security Instrument.

(bb) "**Licenses**" has the meaning set forth in Section 12.1(b) herein.

(cc) “**Lien**” shall mean any deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security interest of any kind or nature whatsoever (including, without limitation, any such encumbrance arising out of or pursuant to any security agreement, conditional sale or other title retention agreement, any financing or similar statement or notice filed under any recording or notice statute, and any capital lease having substantially the same effect as any of the foregoing).

(dd) “**Loan**” has the meaning given to that term in the Preamble of this Security Instrument.

(ee) “**Loan Agreement**” has the meaning given to that term in the Preamble of this Security Instrument, as amended, restated, supplemented or otherwise modified from time to time.

(ff) “**Loan Documents**” has the meaning given to that term in the Preamble of this Security Instrument.

(gg) “**Losses**” means any and all claims, suits, liabilities (including, without limitation, strict liabilities and any impairment of Beneficiary’s security for the Loan), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement of whatever kind or nature, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys’ fees and other costs of defense).

(hh) “**Management Agreement**” shall mean the development management agreement entered into by and between Grantor and Manager, pursuant to which the Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement executed in accordance with the terms and provisions of this Security Instrument.

(ii) “**Manager**” shall mean Timberlane Partners III LLC or such other entity selected as the manager of the Property in accordance with the terms of this Security Instrument.

(jj) “**Material Adverse Effect**” shall have the meaning assigned to it in the Loan Agreement.

(kk) “**Moody’s**” shall mean Moody’s Investors Service, Inc.

(ll) “**Note**” has the meaning given to that term in the Preamble of this Security Instrument, as amended, restated, supplemented or otherwise modified from time to time.

(mm) “**Other Charges**” means all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

(nn) “**Permitted Encumbrances**” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens,

encumbrances and other matters expressly set forth on Schedule A or Schedule B of the Title Insurance Policy relating to the Property or any part thereof, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet delinquent, and (d) such other title and survey exceptions as Beneficiary has approved or may approve in writing in Beneficiary's sole discretion; provided that, none of which items (a) through (d), individually or in the aggregate, materially interferes with the value, current use or operation of the Property or the security intended to be provided by this Security Instrument or with the current ability of the Property to generate net cash flow sufficient to service the Loan or Grantor's ability to pay and perform the Obligations under the Loan Documents when they become due.

(oo) "**Permitted Transfer**" has the meaning given to that term in Section 7.1(b) of this Security Instrument.

(pp) "**Personal Property**" has the meaning given to that term in Section 2.1(e) of this Security Instrument.

(qq) "**Principal**" shall mean, as applicable, if Grantor is a partnership, its general partner(s), if Mortgagor is a limited liability company, its managing member(s).

(rr) "**Policies**" has the meaning given to that term in Section 4.3 of this Security Instrument.

(ss) "**Prohibited Person**" shall mean any Person:

(i) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**");

(ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) with whom Beneficiary is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(iv) who commits, threatens or conspires to commit or supports "**terrorism**" as defined in the Executive Order;

(v) that is named as a "**pecially designated national and blocked person**" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or

(vi) who is an Affiliate of or affiliated with a Person listed above.

(tt) “**Property**” has the meaning given to that term in Section 2.1 of this Security Instrument.

(uu) “**Property Operating Agreement**” shall mean each reciprocal easement agreement, access agreement and any other covenants, restrictions or agreements of record relating to the construction, operation or use of the Property.

(vv) “**Qualified Manager**” shall mean a Person approved by Beneficiary in writing.

(ww) “**Qualifying Appraisal**” means an appraisal report of the Real Property prepared by an appraiser licensed in the State in which the Land is located and who has at least five (5) years’ experience in appraising Land similar to the Real Property in the county in which the Land is located, which satisfies the criteria for appraisals that may be relied upon by national banks under applicable Federal laws, rules and regulations, which contains both an “as-is” and a “stabilized value” estimate, and which is otherwise reasonably satisfactory to Beneficiary.

(xx) “**Real Property**” means, collectively, the Land and the Improvements.

(yy) “**Replacement Management Agreement**” shall mean, collectively, (a) a management agreement with a Qualified Manager or another Person reasonably acceptable to Beneficiary and in form and substance reasonably acceptable to Beneficiary and (b) a conditional assignment and subordination of management agreement in form and substance reasonably acceptable to Beneficiary, executed and delivered to Beneficiary by Grantor and such Qualified Manager at Grantor’s expense.

(zz) “**Rent Roll**” has the meaning given to that term in Section 12.1(k) of this Security Instrument.

(aaa) “**Rents**” has the meaning assigned to it in Section 2.1(f) of this Security Instrument.

(bbb) “**Repair Work**” has the meaning given to that term in Section 9.2 (a)(iv) of this Security Instrument.

(ccc) “**Restricted Party**” shall mean Grantor, Principal, any Guarantor, or any Affiliated Manager or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of, Grantor, Principal, any Guarantor, any Affiliated Manager or any non-member manager.

(ddd) “**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

(eee) “**Security Instrument**” has the meaning given to that term in the Preamble of this Security Instrument, as amended, restated, supplemented or otherwise modified from time to time.



(fff) “**Taking**” has the meaning given to that term in Section 9.1(b) of this Security Instrument.

(ggg) “**Tax and Insurance Impound**” has the meaning given to that term in Section 4.9 of this Security Instrument.

(hhh) “**Taxes**” means all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

(iii) “**Term**” means the term of this Security Instrument.

(jjj) “**Title Insurance Policy**” shall mean a ALTA mortgagee title insurance policy in form acceptable to Beneficiary issued with respect to the Property and insuring the Lien of this Security Instrument together with such endorsements and affirmative coverages as Beneficiary may require.

(kkk) “**Transfer**” shall mean any voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer of: (a) all or any part of the Property or any estate or interest therein including, but not be limited to, (i) an installment sales agreement wherein Grantor agrees to sell the Property or any part thereof for a price to be paid in installments, (ii) an agreement by Grantor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder and its Affiliates or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Grantor’s right, title and interest in and to any Leases or any Rents; or (b) any ownership interest in (i) Grantor or (ii) any indemnitor or guarantor of the Obligations or (iii) any corporation, partnership, limited liability company, limited partnership, trust or other entity owning, directly or indirectly, any interest in Grantor or any indemnitor or guarantor of any Obligations.

(lll) “**Uniform Commercial Code**” means the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located.

(mmm) “**Uniform Commercial Code Collateral**” has the meaning given to that term in Section 2.3 of this Security Instrument.

## ARTICLE 2 - GRANTS OF SECURITY

Section 2.1. PROPERTY MORTGAGED. To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other Loan Documents (including, without limitation, any prepayment fees and environmental costs, excluding, however, any such environmental costs not permitted to be recovered pursuant to applicable law), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Grantor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the Bankruptcy Code, and (ii) the costs and expenses of enforcing any provision of any Loan Document, Grantor does hereby **GRANT, BARGAIN, SELL, CONVEY AND WARRANT** unto Trustee, in trust for the benefit of Beneficiary, **WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION**, and

its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the "**Property**"):

(a) Land. The Land;

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

(c) Improvements. The Improvements;

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

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods), furniture, software used in or to operate any of the foregoing property of every kind and nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Real Property (or any portion thereto) and all building equipment, materials and supplies of any nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Real Property (or any portion thereof) (collectively, the "**Personal Property**"), and the right, title and interest of Grantor in and to any of the Personal Property which may be subject to any security interests, as defined in the UCC, superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(f) Leases and Rents. All existing and future leases, subleases or sub-subleases, lettings, licenses, concessions or other agreements made a part thereof (whether written or oral and whether now or hereafter in effect) affecting the use, enjoyment, or occupancy of all or any part the Real Property heretofore or hereafter entered into and all extensions, amendments, modifications or other agreements relating to such leases, subleases, sub-subleases, or other agreements entered into in connection with such leases, subleases, sub-subleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, and the right, title and interest of Grantor, its successors and assigns, therein, whether before or

after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (the "**Leases**") and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder ("**Lease Guaranties**"), cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements, the Improvements, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the "**Rents**") and the right to receive and apply the Rents to the payment of the Obligations;

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

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any Policies covering the Property or any portion thereof (the "**Insurance Proceeds**"), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Insurance Proceeds and condemnation awards, into cash or liquidation claims;

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

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, franchise agreements, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof, and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of any Event of Default hereunder or if the Lender has accelerated the Loan, to receive and collect any sums payable to Grantor thereunder;

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

(n) Intangibles. The Intangibles;

(o) Proceeds. All proceeds, products, offspring, rents and profits of any of the foregoing, including, without limitation, Insurance Proceeds and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(p) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (o) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Grantor expressly grants to Beneficiary, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements are part and parcel of the Land appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

AND without further limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Grantor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Security Instrument shall automatically extend to all Rents acquired by Grantor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

Section 2.2. ASSIGNMENT OF RENTS. Grantor hereby absolutely and unconditionally assigns to Beneficiary all of Grantor's right, title and interest in and to all current and future Leases and Rents. Such assignment shall not be construed to bind Beneficiary to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary. Nevertheless, subject to the terms of the Assignment of Leases and Section 8.1(h) of this Security Instrument, Beneficiary grants to Grantor a revocable license to collect, receive, use and enjoy the Rents as they become due and payable, so long as no Event of Default shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this license without notice to or demand upon Grantor, and without regard to the adequacy of the security for the Obligations, and exercise its remedies available under *Utah Code Annotated* §§ 57-26-106 through 57-26-109. Grantor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations, for use in the payment of such sums.

Section 2.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Beneficiary, as security for the Obligations, a

security interest in the Personal Property and other property constituting the Property to the full extent that the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Uniform Commercial Code Collateral**”). If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Uniform Commercial Code Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Uniform Commercial Code Collateral. Upon request or demand of Beneficiary after the occurrence of an Event of Default, Grantor shall, at its expense, assemble the Uniform Commercial Code Collateral and make it available to Beneficiary at a convenient place (at the Land if tangible property) acceptable to Beneficiary. Grantor shall pay to Beneficiary on demand any and all costs and expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Beneficiary in protecting its interest in the Uniform Commercial Code Collateral and in enforcing its rights hereunder with respect to the Uniform Commercial Code Collateral upon the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Uniform Commercial Code Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Uniform Commercial Code Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Beneficiary to the payment of the Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper. In the event of any change in name, identity, structure or place of incorporation, organization or formation of Grantor, Grantor shall notify Beneficiary thereof and promptly after request shall file and record such UCC forms as are necessary to maintain the priority of Beneficiary’s Lien upon and security interest in the Collateral, and shall pay all fees, costs, and expenses in connection with the filing and recording thereof. If Beneficiary shall require the filing or recording of additional UCC forms or continuation statements, Grantor shall, promptly after request, file and record such UCC forms or continuation statements as Beneficiary shall deem necessary, and shall pay all fees, costs, and expenses in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Grantor’s obligations under the Loan Documents. Grantor hereby irrevocably appoints Beneficiary as its attorney in fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements naming Beneficiary, as secured party, and Grantor, as debtor, in connection with the Collateral covered by this Security Instrument. The principal place of business of Grantor (Debtor) is as set forth on page one (1) hereof and the address of Beneficiary (Secured Party) is as set forth on page one (1) hereof.

Section 2.4. FIXTURE FILING. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Real Property (or any portion thereof), described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Grantor as the Debtor and Beneficiary as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become

fixtures. The Land to which the fixtures relate is described in Exhibit A attached hereto. The record owner of the Land described in Exhibit A attached hereto is Grantor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Grantor set forth in the first paragraph of this Security Instrument, and the name of the secured party for purposes of this financing statement is the name of the Beneficiary set forth in the first paragraph of this Security Instrument. The mailing address of the Grantor/debtor is the address of the Grantor set forth in the first paragraph of this Security Instrument. The mailing address of the Beneficiary/secured party from which information concerning the security interest hereunder may be obtained is the address of the Beneficiary set forth in the first paragraph of this Security Instrument.

Section 2.5. PLEDGES OF MONIES HELD. Grantor hereby pledges to Beneficiary any and all monies now or hereafter held by Beneficiary or on behalf of Beneficiary in connection with the Loan, including, without limitation, any sums held in escrow, including, but not limited to, the Tax and Insurance Impound, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

#### **CONDITIONS TO GRANT**

TO HAVE AND TO HOLD upon the terms and conditions hereof, the above granted and described Property unto Trustee, and its successors and assigns, and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall pay to Beneficiary and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Grantor's obligation to indemnify and hold harmless Beneficiary pursuant to the provisions hereof shall survive any such payment or release.

#### **ARTICLE 3 - - OBLIGATIONS SECURED**

Section 3.1. OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 2 are given for the purpose of securing the Obligations.

#### **ARTICLE 4 - - GRANTOR COVENANTS**

Grantor covenants and agrees that:

Section 4.1. PAYMENT AND PERFORMANCE OF OBLIGATIONS. Grantor will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

Section 4.2. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 4.3. INSURANCE. Grantor, at its sole cost and expense, for the mutual benefit of Grantor and Beneficiary, shall obtain and maintain, or cause to be obtained and maintained, during the entire Term the policies of insurance described below.

(a) Broad Form or Special Causes of Loss Property Form including Business Interruption.

(i) "Special" or "Broad Form" (formerly known as "all risk") commercial property insurance (including, without limitation, coverage against riot and civil commotion, vandalism, malicious mischief, water, mold (based on a covered peril, if obtainable), fire, burglary, theft, and terrorism and acts of terrorism) on the Improvements and all other insurable portions of the Property and in each case (A) insuring against any peril now or hereafter included within the classification "Special Form Cause of Loss", (B) in an amount equal to 100% of the Full Replacement Cost but in no event more than permitted by applicable law, (C) containing an agreed amount endorsement with respect to the Improvements, Personal Property and all other insurable portions of the Property waiving all co-insurance provisions, and (D) providing that the deductible shall not exceed the sum of \$25,000.00, unless agreed to in writing by Beneficiary. If any of the policies described in this Section 4.3(a)(i) are so-called "blanket" in nature, then Grantor shall comply with the following: (1) if such policies have sub limits that are aggregated limits, Grantor must provide the listing of properties and values related to "other" assets on such blanket policy that would share in such limits, (2) if any aggregated limits are reduced at any time during the Term, Grantor shall provide immediate written notice to Beneficiary of the same, and such policies shall contain such increased aggregated limits as commercially reasonably determined by Beneficiary, and (3) no blanket policy shall contain a so-called "margin clause" or "margin clause" endorsement. Beneficiary shall be listed as "Mortgagee/Lender-Loss Payee".

(ii) Business income and extra expense insurance (A) with loss payable to Beneficiary, (B) covering losses of income and Rents derived from the Real Property and any non-insured property on or adjacent to the Land resulting from any risk or casualty required to be covered under Section 4.3(a)(i) in an amount equal to one hundred percent (100%) of the projected gross income from the Land for a period of twelve (12) months, and (C) containing an extended period of indemnity endorsement which provides that after the Repair Work is completed, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date the Repair Work is completed and ordinary course of business operations have resumed at the Real Property, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period.

The amount of such business income and extra expense insurance shall be determined by Beneficiary prior to the date hereof and at least once each year thereafter based on Beneficiary's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All Insurance Proceeds payable to Beneficiary pursuant to this Section 4.3(a)(ii) shall be held by Beneficiary and shall, as long as no Event of Default exists, be applied first to the regular monthly payments due on the Note and then to the other regular monthly payments due under the terms of this Security Instrument as the same become due and payable and the balance, if any, will be disbursed to Grantor; provided, however, that nothing herein contained shall be deemed to relieve Grantor of its obligation to pay the regular monthly payments due on the Note or make the other regular monthly payments due under the terms of this Security Instrument as the same become due and payable except to the extent such amounts are actually paid out of the proceeds of such business income insurance. Whenever an Event of Default exists, Beneficiary may apply all Insurance Proceeds payable to Beneficiary pursuant to this Section 4.3(a)(ii) to the Obligations in such order as Beneficiary may determine. The perils covered by this insurance shall be the same as those accepted on the real property, including flood and earthquake, as necessary. This coverage shall be written on the same basis as the property policy stated in Section 4.3(a)(i) above. Beneficiary to be listed as "Mortgagee/Lender-Loss Payee".

(iii) The policy of insurance required pursuant to Section 4.3(a)(i) above shall contain the so-called "ordinance or law coverage" endorsements: Coverage A – Coverage For Loss to the Undamaged Portion of the Building, Coverage B – Demolition Cost Coverage, and Coverage C – Increased Costs of Construction. A = Equal Building Replacement Cost, B & C each no less than ten percent (10%) of Building Replacement Cost.

(iv) If windstorm coverage is excluded from the policy required under Section 4.3(a)(i) above, Grantor must provide separate windstorm insurance in an amount equal to the lesser of one hundred percent (100%) of the Full Replacement Cost or the maximum amount permitted by law, if the Property are located in an area where Beneficiary requires such insurance. Deductibles shall not exceed \$25,000.00 without Beneficiary's prior written consent. Beneficiary shall be listed as "Mortgagee/Lender-Loss Payee".

(v) At all times during which structural construction, repairs or alterations are being made with respect to the Improvements: (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy described in Section 4.3(b), and (B) the insurance provided for in Section 4.3(a)(i) written on a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Section 4.3(a)(i), (3) including permission to occupy the Improvements, and (4) with an agreed amount endorsement waiving co-insurance provisions. The amount of such coverage must be approved in writing by Beneficiary. Notwithstanding anything



to the contrary contained herein, Beneficiary also reserves the right to review and approve all liability insurance coverage prior to commencement of any construction operations, including but not limited to any insurance coverage maintained by any contractor and/or subcontractors on any construction project involving the Improvements or nearby property. Beneficiary shall be listed as "Mortgagee/Lender-Loss Payee".

(b) Commercial General Liability; Excess/Umbrella Liability. Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property and Improvements, such insurance (A) to be on the so-called "occurrence" form containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate, together with excess and/or umbrella liability in an amount of at least \$25,000,000.00; (B) to contain a liquor liability endorsement if Grantor holds a liquor license; (C) to continue at not less than the aforesaid limit until required to be changed by Beneficiary in writing by reason of changed economic conditions making such protection inadequate; (D) to cover at least the following hazards, (1) premises and operations, (2) products and completed operations on an "if any" basis, (3) independent contractors, (4) blanket contractual liability for all written and oral contracts, (5) contractual liability covering the indemnities contained in herein to the extent the same is available, and (6) all legal liability imposed upon Grantor and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Property; and (E) to be without any deductible. If Grantor has a multi-location policy or loan, the coverage must be maintained on a "per-location basis". Beneficiary shall be listed as "Mortgagee/Additional Insured".

(c) Flood Insurance. Flood insurance will be required if any portion of the Improvements is situated in a federally designated "special flood hazard area" (for example, Zones A and V) as designated by the Federal Emergency Management Agency, or any successor thereto, as an area having special flood hazards pursuant to the Flood Insurance Acts. The minimum amount of flood insurance required is the lesser of one hundred percent (100%) of the Full Replacement Cost (plus business income interruption coverage) for those portions of the Improvements located in such special flood hazard area, the maximum limit of coverage available for the Improvements under the Flood Insurance Acts, or the maximum amount permitted by applicable law. Deductibles shall not exceed \$25,000.00 without Beneficiary's prior written consent. Beneficiary shall be listed as "Mortgagee".

(d) Sinkhole and Mine Subsidence and Earthquake. Sinkhole, mine subsidence, and earthquake insurance shall be obtained and maintained if in the opinion of a professional engineer with experience in this professional area there is a foreseeable risk of loss due to this hazard. If any of such coverage is determined by such engineer to be necessary, Grantor shall maintain coverage equal to one hundred percent (100%) of the Full Replacement Cost, but in no event more than the maximum amount permitted by applicable law, based upon the Probable Maximum Loss (PML) or Scenario Accepted Loss (SEL) assigned to the Land and the Improvements.

(e) Boiler and Machinery Coverage. Comprehensive broad form boiler and machinery insurance (without exclusion for explosion) covering all steam boilers, heating and air conditioning equipment, high pressure piping, machinery and equipment, sprinkler systems, pressure vessels, refrigeration equipment and piping, or similar apparatus now or hereafter installed in the Improvements (including “system breakdown coverage”) and insuring against loss of occupancy or use arising from any breakdown, in an amount at least equal to one hundred percent (100%) of the Full Replacement Cost or the maximum amount permitted by applicable law. Deductibles shall not exceed \$25,000.00 without Beneficiary’s prior written consent. Beneficiary shall be listed as “Mortgagee/Lender-Loss Payee”.

(f) Worker’s Compensation and Employer’s Liability. If Grantor has any employees in the state where the Land is located, workers’ compensation, subject to the statutory limits of the state in which the Land is located, and employer’s liability insurance at statutory limits per accident and per disease per employee, and at statutory limits for disease aggregate in respect of any work or operations on or about the Real Property, or in connection with the Real Property or its operation (if applicable) or construction services related to the Real Property.

(g) Miscellaneous. Such other insurance on the Property, Improvements or arising out of the operations on or at the Property, or on any replacement or substitutions thereof or additions thereto as may from time to time be reasonably required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against by reasonably prudent Beneficiaries in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All policies of insurance (the “**Policies**”) required pursuant to this Section 4.3 shall (i) be issued by companies approved by Beneficiary and licensed and/or authorized, as applicable, to do business in the state in which the Property is located, with a claims paying ability rating of “A” (or its equivalent) or better by S&P or Moody’s, (ii) with respect to the Policies described above, name Beneficiary and its successors and/or assigns as their interest may appear as the Beneficiary or mortgagee, Lender Loss Payee and Additional Insured, as applicable, (iii) contain a non-contributory standard mortgagee clause and a lender’s loss payable endorsement, or their equivalents, naming Beneficiary as the Person to which all payments made by such insurance company shall be paid, (iv) contain a waiver of subrogation against Beneficiary, (v) be maintained throughout the Term without cost to Beneficiary, (vi) be assigned to Beneficiary, (vii) contain such provisions as Beneficiary deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that Beneficiary shall not be liable for the payment of any of the Insurance Premiums, that neither Grantor, Beneficiary nor any other party shall be a co-insurer under said Policies, that no act or negligence of Grantor, or anyone acting for Grantor, or of any tenant under any Lease or other occupant, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Beneficiary is concerned, and that Beneficiary shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation, and (viii) be reasonably satisfactory in form and substance to Beneficiary and shall be reasonably approved by Beneficiary as to amounts, form, risk coverage, deductibles, loss payees and insureds if any of

the same do not meet the criteria set forth in this Section 4.3, delayed or conditioned. On or prior to the date hereof, Grantor shall deliver to Beneficiary either (1) certified copies of the Policies in effect on the date hereof (the "Current Policies") or (2) ACORD Form 25, Certificate of Liability Insurance and ACORD Form 28, Evidence of Commercial Property Insurance (provided that if ACORD Form 28 is unavailable, Beneficiary will accept ACORD Form 27 so long as ACORD Form 27 provides sufficient information in Beneficiary's reasonable determination for it to evaluate the Policies) (collectively the "ACORD Certificates") with respect to the Current Policies (and each ACORD Certificate must specify the Beneficiary, loss payee and additional insured status and/or waivers of subrogation, state the amounts of all deductibles, if any, set forth notice requirements for cancellation, material change, or non-renewal of insurance and be accompanied by copies of all required endorsements), provided that Grantor shall deliver to Beneficiary copies of the Current Policies not more than thirty (30) days after the date hereof or upon actual issuance of the Current Policies. As soon as available and in any event prior to the expiration of the Policies, Grantor shall deliver to Beneficiary (at: **Goldman Sachs Bank USA, ISAOA, ATTN.: Insurance Operations, 6011 Connection Drive, Irving, TX 75039-2607**) either the original policies (or copies of the same certified by the issuers thereof) issued in renewal of each of the expiring Policies or ACORD Certificates with respect thereto, provided that Grantor shall deliver to Beneficiary the original policies (or copies of the same certified by the issuers thereof) issued in renewal of the expired Policies after the expiration of the subject Policies or upon actual issuance of the renewal policies. Subject to Section 4.9 below, Grantor shall pay the premiums for such Policies (collectively the "Insurance Premiums") as the same become due and payable and shall furnish to Beneficiary evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Beneficiary (provided, however, that Grantor is not required to furnish such receipts for payment of Insurance Premiums if no Event of Default exists and Grantor has previously deposited with Beneficiary sufficient funds to pay all such Insurance Premiums from the Tax and Insurance Impound). If Grantor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Beneficiary may, but shall not be obligated to, purchase such Policy and pay the Insurance Premiums therefor, and Grantor agrees to reimburse Beneficiary for the cost of such Insurance Premiums promptly upon written demand therefor. Grantor covenants and agrees to promptly forward to Beneficiary a copy of each written notice received by Grantor of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies. Within thirty (30) days after written request by Beneficiary, Grantor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Beneficiary, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

Section 4.4. MAINTENANCE AND USE OF PROPERTY; ZONING. Grantor shall cause the Property to be maintained in a good and safe condition and repair. Except in connection with Grantor's development and construction of the Improvements in accordance with the Loan Agreement and this Security Instrument, the Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Beneficiary. Subject to the terms of Article 9, Grantor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any

structure at any time in the process of construction or repair on the Land. Grantor shall not initiate, seek, make, join in, acquiesce in, or consent to any change or variance in any private restrictive covenant, land use or zoning law or zoning classification or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof without Beneficiary's prior written consent which consent shall not be unreasonably withheld. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Grantor will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Beneficiary. Grantor shall not (i) change the use of the Property (except with respect to the construction of the Improvements), in accordance with the Plans and Specifications and Government Approvals, (ii) take any action that might invalidate any insurance carried on the Property or (iii) take any steps to convert the Property to a condominium or cooperative form of ownership.

Section 4.5. WASTE. Grantor shall not permit, commit or suffer any waste of the Property, (it being acknowledged that construction of the Improvements in accordance with the Plans and Specifications and Governmental Approvals shall not constitute waste), make any change in the use of the Property that will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 4.6. PAYMENT FOR LABOR AND MATERIALS.

(a) Subject to Section 4.6(c) below, Grantor shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

(b) Subject to Section 4.6(c) below, Grantor will promptly pay when due, or cause to be paid when due, all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Encumbrances.

(c) Notwithstanding Section 4.6(a) and Section 4.6(b), after prior written notice to Beneficiary, Grantor, at its own expense, shall have the right to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application in whole or in part of any Lien and/or Labor and Material Costs, provided that (i) no Event of Default has occurred and is then continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure

debt affecting the Property, (iii) such proceeding shall suspend the enforcement of the Lien or the collection of the Labor and Material Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, canceled or lost as a result of such contest, and (vi) Grantor shall have furnished the security as may be required pursuant to the proceeding, or as may otherwise be reasonably requested by Beneficiary to insure the payment of any contested Lien or Labor and Material Costs, together with all interest and penalties thereon.

Section 4.7. PERFORMANCE OF OTHER AGREEMENTS. Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 4.8. TAXES AND OTHER CHARGES. Subject to the terms of this Section 4.8, Grantor shall pay or cause to be paid all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the same becoming delinquent; provided, however, that Grantor shall not be obligated to pay any Taxes or Other Charges to the applicable taxing authority at any time when Grantor is required to make (and is actually making) payments into the Tax and Insurance Impound pursuant to Section 4.9. Upon Beneficiary's written request therefor, Grantor shall promptly furnish to Beneficiary receipts, or other evidence for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent. Except for Liens that are being contested in accordance with the provisions of this Section 4.8, Grantor shall not suffer and shall promptly cause to be paid and discharged any Lien or Other Charge whatsoever which may be or become a Lien or charge against the Property prior to the delinquency of such charges, and shall promptly pay for all utility services provided to the Property. Notwithstanding the foregoing, after prior written notice to Beneficiary (unless Grantor shall have paid the amount of such contested Taxes or Other Charges under protest, in which event no notice to Beneficiary shall be required), Grantor, at its own expense, shall have the right to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and is then continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable laws; (iii) the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost as a result of such contest; (iv) Grantor shall promptly, following final determination of such contest, pay the final amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property or Grantor shall have paid the amount of the Taxes or Other Charges under protest; and (vi) Grantor shall furnish such security as may be required pursuant to the proceeding, or as may be reasonably requested by Beneficiary, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

Beneficiary may apply such security or part thereof held by Beneficiary at any time when, in the reasonable judgment of Beneficiary, the amount of such Taxes or Other Charges is finally established or the Property (or part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of this Security Instrument being primed by any related Lien, in each case as a result of such contest by Grantor.

Section 4.9. TAX AND INSURANCE IMPOUND. During the continuance of an Event of Default, (A) Grantor shall pay to Beneficiary on demand, for deposit into the Tax and Insurance Impound, an amount equal to (i) the product of (x) one-twelfth of the aggregate Taxes that Beneficiary reasonably estimates will be due to the applicable taxing authorities over the next ensuing twelve (12) months, multiplied by (y) the number of months elapsed from and including the first month for which such Taxes have been assessed and paid to and including the month in which the applicable Event of Default occurred, plus (ii) the product of (I) one-twelfth of the aggregate Insurance Premiums that Beneficiary reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof within the next ensuing twelve (12) months, multiplied by (II) the number of months elapsed from and including the first month in which the currently effective Policies became effective to and including the month in which the applicable Event of Default occurred, and (B) thereafter, Grantor shall pay to Beneficiary on the tenth (10<sup>th</sup>) day of each calendar month an amount equal to (a) one-twelfth of the Taxes that Beneficiary reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Beneficiary sufficient funds to pay all such Taxes at least thirty (30) days prior to the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment and (b) one-twelfth of the Insurance Premiums that Beneficiary reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Beneficiary sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the fund into which said amounts provided in clauses (A) and (B) above shall be deposited is called the "**Tax and Insurance Impound**"). During the continuance of an Event of Default, the monthly payment into the Tax and Insurance Impound, if any, and the monthly payment payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Grantor to Beneficiary. During any time when Grantor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, Grantor agrees to notify Beneficiary promptly following any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Beneficiary or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. Grantor hereby pledges to Beneficiary and grants to Beneficiary a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Obligations. Provided that there are sufficient amounts on deposit in the Tax and Insurance Impound and no Event of Default then exists, Beneficiary will apply amounts on deposit in the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Grantor pursuant hereto. In making any payment relating to the Tax and Insurance Impound, Beneficiary may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amounts on deposit in the

Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums, then Beneficiary may at its election either return any excess to Grantor or credit such excess against future payments to be made to the Tax and Insurance Impound. In allocating such excess, Beneficiary may deal with the person shown on the records of Beneficiary to be the owner of the Property. If, at any time when Grantor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, Beneficiary determines in its reasonable discretion that the amounts on deposit in the Tax and Insurance Impound are not or will not be sufficient to pay the Taxes and Insurance Premiums prior to the same becoming delinquent, then Beneficiary shall notify Grantor of such determination and Grantor shall increase its monthly payments to Beneficiary by the amount that Beneficiary reasonably estimates is necessary to make up the deficiency at least thirty (30) days prior to (x) the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment of the Taxes and/or (y) the date any of the Policies would expire, as the case may be. Whenever an Event of Default exists, Beneficiary may apply any sums then present in the Tax and Insurance Impound to the payment of the Obligations in any order in its sole discretion. Until expended or applied as above provided, all amounts in the Tax and Insurance Impound shall constitute additional security for the Obligations. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Beneficiary. Unless otherwise required by applicable law, Grantor shall not receive interest or other earnings on the Tax and Insurance Impound, which shall be held in Beneficiary's name at a financial institution selected by Beneficiary in its sole discretion. Following the repayment in full of the Obligations, any funds remaining on deposit in the Tax and Insurance Impound will promptly be disbursed to Grantor. During any time when Grantor is required to make payments into the Tax and Insurance Impound pursuant to this Section 4.9, (A) if Beneficiary so elects at any time, then Grantor shall provide, at Grantor's reasonable expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Beneficiary or (B) if Beneficiary does not so elect, then Grantor shall reimburse Beneficiary for the reasonable cost of making annual tax searches throughout the Term.

Section 4.10. Change of Structure. Other than in connection with any Permitted Transfer, Grantor shall not change Grantor's corporate, partnership or other structure without first obtaining the prior written consent of Beneficiary which consent shall not be unreasonably withheld. Grantor shall promptly notify Beneficiary in writing of any change in its organizational identification number. Grantor shall execute and deliver to Beneficiary, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of Beneficiary, Grantor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

Section 4.11. Access. Subject to the rights of tenants under the Leases, Grantor shall permit agents, representatives and employees of Beneficiary to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 4.12. Property Operating Agreements.

(a) Grantor shall deliver to Beneficiary, upon request, estoppel certificates from each party under each Property Operating Agreement, provided that such certificates may be in the form required under the applicable Property Operating Agreement.

(b) Grantor shall (a) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under each Property Operating Agreement to which it is a party, and do all things necessary to preserve and to keep unimpaired its rights thereunder, (b) promptly notify Beneficiary in writing of the giving of any notice of any default by any party under any Property Operating Agreement of which it is aware and (c) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the other party under each Property Operating Agreement to which it is a party in a commercially reasonable manner.

(c) Grantor shall not, without Beneficiary's prior written consent: (a) enter into, surrender or terminate any Property Operating Agreement to which it is a party (unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable), (b) increase or consent to the increase of the amount of any charges under any Property Operating Agreement to which Grantor is a party, except as provided therein or on an arms-length basis and on commercially reasonable terms; or (c) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Property Operating Agreement to which it is a party, except on an arms'-length basis and commercially reasonable terms.

Section 4.13. Leasing Matters. Grantor shall not enter into any Lease with respect to the Property without the express written consent of Beneficiary which consent shall not be unreasonably withheld.

Section 4.14. Property Management. If at any time the Property is to be managed by a third party, such third party shall be a Qualified Manager pursuant to a Replacement Management Agreement.

Section 4.15. Accessibility.

(a) Grantor covenants and agrees that the Property shall at all times comply to the extent applicable with the requirements of all Access Laws.

(b) Notwithstanding any provisions set forth herein or in any other document regarding Beneficiary's approval of alterations of the Property, other than in connection with the development and construction of the Improvements in accordance with the Loan Documents, Grantor shall not alter the Property in any manner which would increase Grantor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Beneficiary. It shall be deemed reasonable for Beneficiary to condition any required approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Beneficiary.

(c) Grantor covenants and agrees to give prompt written notice to Beneficiary of the receipt by Grantor of any written complaints related to violation of any Access Laws and



of the commencement of any proceedings or investigations by Governmental Authorities which relate to compliance with applicable Access Laws.

Section 4.16. Recording and Intangible Tax. To the extent applicable, Grantor shall pay all State, county and municipal recording, intangible, and all other taxes imposed upon the execution and recordation of this Security Instrument.

Section 4.17. Title. Grantor shall warrant and defend the validity and priority of the Liens of this Security Instrument and the Assignment of Leases on the Property against the claims of all Persons whomsoever, subject only to Permitted Encumbrances.

Section 4.18. Estoppel Statements.

(a) After request by Beneficiary, Grantor shall within ten (10) Business Days furnish Beneficiary with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the interest rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Obligations, and (vi) that the Note, this Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Grantor shall deliver to Beneficiary upon request, tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Beneficiary.

Section 4.19. No Joint Assessment. Grantor shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real Property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute Personal Property, or any other procedure whereby the Lien of any taxes which may be levied against such Personal Property shall be assessed or levied or charged to the Property.

Section 4.20. Compliance. Grantor shall promptly comply with all Legal Requirements and immediately cure properly any violation of a Legal Requirement. Grantor shall notify Beneficiary in writing within five (5) Business Days after Grantor first receives notice of any such non-compliance.

Section 4.21. Performance of Other Agreements. Grantor shall observe and perform each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Property, including the Loan Documents.

Section 4.22. Cooperate in Legal Proceedings. Grantor shall cooperate fully with Beneficiary with respect to, and permit Beneficiary, at its option, to participate in, any proceedings before any Governmental Authority which may in any way affect the rights of Beneficiary under any Loan Document.

## ARTICLE 5 - - OBLIGATIONS AND RELIANCES

Section 5.1. RELATIONSHIP OF GRANTOR AND BENEFICIARY. The relationship between Grantor and Beneficiary is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Grantor and Beneficiary to be other than that of debtor and creditor.

Section 5.2. NO RELIANCE ON BENEFICIARY. The general partners, members, managers, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Beneficiary are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Beneficiary's expertise, business acumen or advice in connection with the Property. Grantor acknowledges that Beneficiary has examined and relied on the experience of Grantor and its general partners, members, managers, principals and (if Grantor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Grantor acknowledges that Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should Grantor default in the payment or the performance of the Obligations, Beneficiary can recover the Obligations by a sale of the Property.

Section 5.3. NO BENEFICIARY OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 2.1(f) and (k) or Section 2.2, Beneficiary is not obligated to undertake the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary.

Section 5.4. RELIANCE. Grantor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Beneficiary is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 4 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Beneficiary; that such reliance existed on the part of Beneficiary prior to the date hereof, that the warranties and representations are a material inducement to Beneficiary in making the Loan; and that Beneficiary would not be

willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth herein and in Article 4 of the Loan Agreement.

## ARTICLE 6 - - FURTHER ASSURANCES

Section 6.1. RECORDING OF SECURITY INSTRUMENT, ETC.. Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do. Grantor shall hold harmless and indemnify Beneficiary, and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Security Instrument.

Section 6.2. FURTHER ACTS, ETC.. Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the Property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Grantor, on demand from Beneficiary, will execute and deliver, and in the event Grantor shall fail to so execute and deliver within five (5) Business Days after Beneficiary's written demand, hereby authorizes Beneficiary to execute in the name of Grantor or without the signature of Grantor to the extent Beneficiary may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Grantor as authorized by applicable law, to evidence more effectively the security interest of Beneficiary in the Property. Grantor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available

to Beneficiary pursuant to this Section 6.2. To the extent not prohibited by applicable law, Grantor hereby ratifies all acts Beneficiary has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 6.3. CHANGES IN TAX, OBLIGATIONS, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Beneficiary's interest in the Property, Grantor will pay the tax, with interest and penalties thereon, if any, or at Beneficiary's option, reimburse Beneficiary for the payment of the tax, with interest and penalties thereon, if any. If Beneficiary is advised by counsel chosen by it that the payment, or reimbursement to Beneficiary (if paid by Beneficiary), of the tax by Grantor or any other Loan Party would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury then Beneficiary shall have the option by written notice of not less than sixty (60) days to declare the Obligations immediately due and payable.

(b) Grantor will not (i) claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes assessed against the Property, or any part thereof, or (ii) claim any deduction from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by written notice of not less than sixty (60) days, to declare the Obligations immediately due and payable.

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

Section 6.4. SPLITTING OF DEED OF TRUST. This Security Instrument and the Note shall, at any time until the Obligations shall be indefeasibly paid in full and satisfied, at the sole election of Beneficiary, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Grantor, upon written request of Beneficiary, shall promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Beneficiary and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Beneficiary.

Section 6.5. REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Beneficiary as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Grantor shall issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or

mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 7 - - DUE ON SALE/ENCUMBRANCE

### Section 7.1. NO TRANSFER.

(a) Except to the extent otherwise set forth in this Section 7 (including with respect to Permitted Transfers), Grantor shall not permit or suffer any Transfer to occur unless Beneficiary shall consent thereto in writing.

(b) Notwithstanding anything to the contrary contained in Section 7.1(a), the following Transfers (each, a "**Permitted Transfer**") shall be permitted hereunder without the consent of Beneficiary, provided that no Event of Default is then continuing:

- (i) Permitted Encumbrances; and
- (ii) Leases entered into pursuant to the terms hereof.

(c) Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Transfer in violation of this Section 7.1. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous Transfer. Notwithstanding anything to the contrary contained in this Section 7.1, (a) no transfer (whether or not such transfer shall constitute a Transfer) shall be made to any Prohibited Person, (b) in the event of any transfer (whether or not such transfer shall constitute a Transfer), results in any Person and its Affiliates owning in excess of ten percent (10%) of the ownership interest in a Restricted Party, Grantor shall provide to Beneficiary, not less than thirty (30) days prior to such transfer, the name and identity of each proposed transferee, together with the names of its controlling principals, the social security number or employee identification number of such transferee and controlling principals, and such transferee's and controlling principal's home address or principal place of business, and home or business telephone number.

Section 7.2. BENEFICIARY'S RIGHTS. Without obligating Beneficiary to grant any consent under Section 7.1 hereof, which Beneficiary may grant or withhold in its sole discretion, Beneficiary reserves the right to condition the consent required hereunder upon (a) a modification of the terms hereof and of the Loan Agreement, the Note or the other Loan Documents; (b) an assumption of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of the Loan Agreement; (c) payment of all of Beneficiary's expenses incurred in connection with such Transfer; (d) the proposed transferee's continued compliance with the representations and covenants set forth in the Loan Agreement, as modified to reflect the proposed transferee's organizational structure; (e) the proposed transferee's ability to satisfy Beneficiary's then-current underwriting standards; or (f) such other conditions as Beneficiary shall determine in its reasonable discretion to be in the interest of Beneficiary, including, without limitation, the creditworthiness, reputation and qualifications of the transferee with respect to the Loan and the Property. Beneficiary shall not be required to demonstrate any actual impairment of its security

or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Transfer in violation of Section 7.1 hereof. The restrictions set forth in this Article 7 shall apply to every Transfer, other than any Permitted Transfer, regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous Transfer. Any Transfer made in contravention of this Section 7.2 shall be null and void and of no force and effect. Grantor agrees to bear and shall pay or reimburse Beneficiary on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary in connection with the review, approval and documentation of any Permitted Transfer. If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, if required hereunder, and otherwise in accordance with the terms and provisions of the Loan Agreement, then Beneficiary, in its sole and absolute discretion, may declare the Obligations to be immediately due and payable.

#### **ARTICLE 8 - - RIGHTS AND REMEDIES UPON DEFAULT**

Section 8.1. REMEDIES. Subject to the provisions of Article 16 below, upon the occurrence and during the continuance of any Event of Default, Grantor agrees that Beneficiary may take such action, without notice (except as may be required by applicable law) or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property to the extent permitted by applicable law, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

- (a) declare the Obligations to be immediately due and payable;
- (b) foreclose this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner non-judicially, pursuant to the power of sale conferred by deed this Security Instrument after having given notice of such sale in accordance with such statutes, or judicially, as permitted by applicable law;
- (c) cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and/or sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine (but subject to Grantor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Grantor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee

shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee. Any person, including Grantor, Trustee or Beneficiary, may purchase at the trustee's sale to the extent permitted by then applicable law. Beneficiary shall have the benefit of any law permitting credit bids. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

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

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

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

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

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

(i) to the fullest extent permitted by applicable law, the license granted to Grantor under Section 2.2 hereof shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel,

enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees;

(j) either with or without taking possession of the Property, demand, sue for, settle, compromise, collect, and give acquittances for all Rents, issues, income and profits of and from the Property and pursue all remedies for enforcement of the Leases and all the landlord's rights therein and thereunder;

(k) proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under any applicable existing or future law relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors ("**Creditors' Rights Laws**") and applicable law **(IF THERE SHALL BE FILED BY OR AGAINST GRANTOR A PETITION UNDER CREDITORS' RIGHTS LAWS, AND GRANTOR, AS LESSOR UNDER ANY LEASE, SHALL DETERMINE TO REJECT SUCH LEASE PURSUANT TO ANY APPLICABLE PROVISION OF ANY CREDITORS RIGHTS LAW, THEN GRANTOR SHALL GIVE BENEFICIARY NOT LESS THAN TEN (10) DAYS' PRIOR NOTICE OF THE DATE ON WHICH GRANTOR SHALL APPLY TO THE BANKRUPTCY COURT FOR AUTHORITY TO REJECT THE LEASE. BENEFICIARY SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO SERVE UPON GRANTOR WITHIN SUCH TEN-DAY PERIOD A NOTICE STATING THAT (I) BENEFICIARY DEMANDS THAT GRANTOR ASSUME AND ASSIGN THE LEASE TO BENEFICIARY PURSUANT TO ANY APPLICABLE PROVISION OF ANY CREDITORS RIGHTS LAW, AND (II) BENEFICIARY COVENANTS TO CURE OR PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE UNDER THE LEASE. IF BENEFICIARY SERVES UPON GRANTOR THE NOTICE DESCRIBED IN THE PRECEDING SENTENCE, GRANTOR SHALL NOT SEEK TO REJECT THE LEASE AND SHALL COMPLY WITH THE DEMAND PROVIDED FOR IN CLAUSE (I) OF THE PRECEDING SENTENCE WITHIN THIRTY (30) DAYS AFTER THE NOTICE SHALL HAVE BEEN GIVEN, SUBJECT TO THE PERFORMANCE BY BENEFICIARY OF THE COVENANT PROVIDED FOR IN CLAUSE (II) OF THE PRECEDING SENTENCE);**

(l) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the



foregoing: (i) the right to take possession of the Personal Property, or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Grantor at its expense to assemble the Personal Property and make it available to Beneficiary at a convenient place acceptable to Beneficiary (at the Real Property if tangible property). Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall constitute commercially reasonable notice to Grantor (unless a longer notice period is required by applicable law and such period cannot be waived);

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

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Beneficiary pursuant to the terms of this Security Instrument; or

(n) require Grantor to pay monthly in advance to Beneficiary or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Grantor, and require Grantor to vacate and surrender possession of the Property to Beneficiary or to such receiver, and, in default thereof, evict Grantor by summary proceedings or otherwise; or

(o) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Grantor relating to the Property; or

(p) apply the undisbursed balance of any deposit together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Beneficiary shall deem to be appropriate in its discretion.

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

Section 8.2. APPLICATION OF PROCEEDS.

(a) Beneficiary and Trustee shall apply the proceeds of the sale as follows: *First*: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and reasonable attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed; *Second*: To payment of the Obligations secured by the Deed of Trust; and, *Third*: The balance, if any, to the person or persons legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Sections 2.2 and 8.1, in the following manner: first, to pay the portion of the Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

Section 8.3. RIGHT TO CURE DEFAULTS; NO CURE OR WAIVER.

(a) Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor, and without releasing Grantor from any obligation hereunder, make the payment or do the act that is the subject of such Event of Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Obligations and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

(b) Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to the Obligations, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless the Obligations then due has been paid and all obligations secured by this Security Instrument performed and Grantor has cured all other defaults), or impair the status of the security, or

prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the Lien of this Security Instrument.

Section 8.4. ACTIONS AND PROCEEDINGS. Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its discretion, decides should be brought to protect its interest in the Property. Beneficiary shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

Section 8.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

Section 8.6. EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable prior notice, Beneficiary, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Grantor which reflect upon its financial condition, at the Property or at any office regularly maintained by Grantor where the books and records are located. Beneficiary and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior notice, Beneficiary, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 8.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 8.7. OTHER RIGHTS, ETC..

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

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to

the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

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

Section 8.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Beneficiary may release any portion of the Property for such consideration as Beneficiary may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

Section 8.9. VIOLATION OF LAWS. If the Property is not in material compliance with Legal Requirements, Beneficiary may impose additional requirements upon Grantor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 8.10. RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, to the fullest extent permitted by applicable law, Beneficiary and other Indemnified Parties are entitled to enforce the obligations of Grantor and any guarantor and/or indemnitor with respect to the Loan without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Beneficiary commences a foreclosure action against the Property, Beneficiary is entitled to pursue a deficiency judgment with respect to such obligations against Grantor and any guarantor and/or indemnitor with respect to the Loan. A separate action or actions may be brought and prosecuted against Grantor pursuant to the terms of this Security Instrument, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Beneficiary shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 8.11. RIGHT OF ENTRY. In addition to any other rights or remedies granted under this Security Instrument, Beneficiary and its agents, shall have the right to enter and inspect the Property at any reasonable time during the term of this Security Instrument. The cost

of such inspections or audits shall be borne by Grantor should Beneficiary determine that an Event of Default shall have occurred and shall be continuing, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Beneficiary. The cost of such inspections, if not paid for by Grantor following demand, may be added to the principal balance of the sums due under the Note and this Security Instrument and shall bear interest thereafter until paid at the Default Rate.

## ARTICLE 9 -- CASUALTY AND CONDEMNATION

### Section 9.1. Casualty and Condemnation.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**") or if Grantor shall have knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding that would affect any portion of the Real Property (or any portion thereof) (a "**Condemnation**"), Grantor shall give prompt written notice thereof to Beneficiary and, with respect to a Condemnation, shall deliver to Beneficiary copies of any and all papers served in connection with such Condemnation.

(b) Beneficiary may participate in any proceedings for any taking by any public or quasi-public authority accomplished through a Condemnation or any transfer made in lieu of or in anticipation of a Condemnation (which transfer in lieu and Condemnation are collectively referred to as a "**Taking**") to the extent permitted by law. Upon Beneficiary's written request, Grantor shall deliver to Beneficiary all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Grantor shall not consent or agree to a Taking without the prior written consent of Beneficiary in each instance, which consent shall not be unreasonably withheld, conditioned or delayed in the case of a Taking of an insubstantial portion of the Land.

(c) Subject to the terms of Section 9.2, all Insurance Proceeds and all awards or payments payable on account of a Taking ("**Award**"), and all causes of action, claims, compensation, awards and recoveries for any other damage, injury, or loss or diminution in value of the Real Property, are hereby assigned, transferred and set over to and shall be paid to Beneficiary. Grantor agrees to execute and deliver from time to time such further instruments as may be reasonably requested by Beneficiary to confirm the foregoing assignment to Beneficiary. Grantor hereby irrevocably constitutes and appoints Beneficiary as the attorney-in-fact of Grantor (which power of attorney shall be irrevocable so long as any of the Obligations is outstanding, shall be deemed coupled with an interest, and shall survive the voluntary or involuntary dissolution of Grantor), with full power of substitution, subject to the terms of Section 9.2, to settle for, collect and receive all Insurance Proceeds and any Award and any other awards, damages, Insurance Proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor; provided that Beneficiary shall not exercise such power of attorney except either when an Event of Default exists or when Grantor has failed to take any of the actions described in this sentence after a reasonable period of time has passed following receipt of written notice from Beneficiary of its intent to use such power to take the action.

(d) If Beneficiary applies an Award to the Obligations pursuant to and in accordance with Section 9.2, Beneficiary shall be entitled to allocate out of the Award for the purpose of paying accrued unpaid interest on the Note interest at the rate or rates provided in the Note and shall not be limited to the interest paid on an Award by the condemning authority. Grantor shall use all commercially reasonable efforts to cause any Award that is payable to Grantor to be paid directly to Beneficiary, and if any such Award is nevertheless paid to Grantor, Grantor shall promptly remit such Award to Beneficiary to be held and applied in accordance with the terms of this Security Instrument. If the Real Property (or any portion thereof) is sold, through foreclosure or deed-in-lieu thereof, prior to the receipt by Beneficiary of the Award, Beneficiary shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof, to the extent sufficient to pay the unpaid portion, if any, of the Obligations.

(e) The expenses incurred by Beneficiary in the adjustment and collection of an Award shall become part of the Obligations and be secured hereby and shall be reimbursed by Grantor to Beneficiary within ten (10) days after written demand or, at Beneficiary's election, deducted by and reimbursed to Beneficiary from such Insurance Proceeds or Award, as applicable.

Section 9.2. USE OF INSURANCE PROCEEDS OR AWARD. (a) In case of loss or damages covered by any of the Policies and in case of an Award for any Taking, the following provisions shall apply:

(i) In the event of a Casualty that does not exceed five percent (5%) of the FMV, Grantor may settle and adjust any claim without the consent of Beneficiary and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Grantor is hereby authorized to collect and receive any such Insurance Proceeds.

(ii) In the event of a Casualty that exceeds five percent (5%) but does not exceed ten percent (10%) of the FMV, then and in that event Beneficiary may settle and adjust any claim, provided, however, that any final agreement with the insurance company or companies of the amount to be paid for the Casualty shall be subject to the approval of Grantor as hereinafter provided. In any such case, the Insurance Proceeds shall be due and payable solely to Beneficiary and held in escrow by Beneficiary in accordance with the terms of this Security Instrument. Grantor shall have the right to participate in the settlement discussions with the applicable insurance company or companies, or applicable authorities, and Beneficiary shall keep Grantor apprised of all material settlement offers and discussions and the results thereof. Beneficiary shall provide ten (10) Business Days advance written notice to Grantor of the terms and amount of any proposed final agreement on any such claim (such proposed final amount, the "**Beneficiary Approved Settlement Amount**"). If Grantor disapproves of Beneficiary's settlement of the claim on such terms and at such amount, Grantor must furnish written notice of such disapproval (any such notice, an "**Arbitration Notice**") to Beneficiary within ten (10) Business Days after Grantor's receipt of Beneficiary's notice, such notice of disapproval by Grantor to state Grantor's election to implement the arbitration procedure set forth in this Section 9.2. Grantor's failure to furnish notice of disapproval prior to the expiration of such ten (10)

Business Day period shall constitute and be deemed Grantor's consent and approval to Beneficiary's settlement of the applicable claim for an amount not less than the Beneficiary Approved Settlement Amount.

(iii) In the event of a Casualty that exceeds ten percent (10%) of the FMV, Beneficiary may settle and adjust any claim related thereto without the consent of Grantor and agree with the insurance company or companies on the amount to be paid on the loss, and the Insurance Proceeds shall be due and payable solely to Beneficiary and held in escrow by Beneficiary in accordance with the terms of this Security Instrument.

(iv) In the event of (A) a Taking for which the Award is equal to or less than fifteen percent (15%) of the FMV or the Taking renders fifteen percent (15%) or less of the rentable square feet of the Improvements untenable or (B) in the event of a Casualty where the loss is in an aggregate amount equal to or less than thirty percent (30%) of the FMV of the Land and Improvements or the Casualty renders thirty percent (30%) or less of the rentable square feet of the Improvements untenable, and (1) no Event of Default or an event which with notice and/or the passage of time would constitute an Event of Default exists and (2) in the reasonable judgment of Beneficiary (i) the Real Property can be restored in all material respects to the condition thereof that existed prior to the Casualty or Taking within the time period that business income interruption insurance will be payable under the coverage obtained by Grantor pursuant to Section 4.3 above and in all events not less than six (6) months prior to the stated Maturity Date, (ii)(x) as restored the FMV of and the net income (i.e., gross revenues less all customary and regular operating expenses, including debt service) from the Real Property will not be less than the FMV of and net income from the Real Property that existed immediately prior to the Casualty or Taking or (y) Leases covering in the aggregate not less than sixty-five percent (65%) of the rentable square feet of the Improvements will be in full force and effect during and upon completion of the Repair Work, (iii) all necessary government approvals will be obtained to allow the rebuilding and reoccupancy of the Improvements, and (iv) there are sufficient sums available (through Insurance Proceeds, the Award and contributions by Grantor, the full amount of which contribution shall at Beneficiary's option have been deposited with Beneficiary) for the Repair Work (including, without limitation, for any reasonable costs and expenses of Beneficiary to be incurred in administering the Repair Work) and for payment of the Obligations as it becomes due and payable during the Repair Work, then, and only then, the Insurance Proceeds or of the Award (after reimbursement of any expenses incurred by Beneficiary) shall be applied in the manner set forth below and disbursed to Grantor for the cost of restoring, repairing, replacing or rebuilding (collectively the "Repair Work") the Real Property (or any portion thereof) subject to the Casualty or Taking. Grantor hereby covenants and agrees to commence and diligently to prosecute the Repair Work; provided always, that Grantor shall pay all costs (and if required by Beneficiary, Grantor shall deposit the total thereof with Beneficiary in advance) of the Repair Work in excess of the net Insurance Proceeds or Award made available pursuant to the terms hereof.

(v) Except as otherwise provided in this Security Instrument, in the event of any Casualty or Taking Beneficiary may elect in its absolute sole discretion and without regard to the adequacy of the security for the Obligations, to the fullest extent permitted by applicable law, to (A) apply the Insurance Proceeds collected upon any Casualty or Award collected upon any Taking to the payment of the Obligations in accordance with the Note, and

the Loan Agreement with or without accelerating the Maturity Date of the Note and declaring the entire outstanding Obligations to be immediately due and payable, or (B) hold the Insurance Proceeds or Award proceeds and make them available to Grantor for the cost of the Repair Work in the manner set forth below.

(vi) In the event Grantor is either entitled to disbursements from the Insurance Proceeds or Award proceeds held by Beneficiary or Beneficiary elects to make such proceeds available to Grantor for the Repair Work, such proceeds shall be disbursed to Grantor for costs and expenses incurred by Grantor for the Repair Work following (A) the receipt by Beneficiary of a written request from Grantor for disbursement and a certification by Grantor to Beneficiary that the applicable portion of the Repair Work has been completed or will be completed with the proceeds of the subject disbursement, (B) the delivery to Beneficiary of invoices, receipts or other evidence verifying the cost of performing the applicable portion of the Repair Work, and (C) for disbursement requests in excess of \$10,000.00 with respect to any single portion of the Repair Work, or for any single portion of the Repair Work that is structural in nature, delivery to Beneficiary of (1) affidavits, conditional Lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law Liens and are furnishing or have furnished material or labor to the Real Property have been, or upon receipt of the payment described in such affidavit or conditional Lien waiver will have been, paid all amounts due for labor and materials furnished to the Real Property (or any portion thereof) through the date covered by such draw request, less any retainage, and (2) a certification from an inspecting architect or other third party reasonably acceptable to Beneficiary describing the completed portion of the Repair Work and verifying its completion and cost. Beneficiary shall not be required to make any such advances more frequently than one time in any calendar month. Beneficiary may, in any event, require that all plans and specifications for the Repair Work be submitted to and approved by Beneficiary prior to commencement of the Repair Work. In no event shall Beneficiary assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any Repair Work. With respect to disbursements to be made by Beneficiary, no payment made prior to the final completion of the Repair Work shall exceed ninety percent (90%) of the cost of the Repair Work performed from time to time (except that a contractor or subcontractor may be paid its share of any retainage upon such contractor's or subcontractor's completion of its entire portion of the Repair Work and its execution and delivery to Grantor (with copies to Beneficiary) of all applicable Lien waivers and/or Lien releases); funds other than Insurance Proceeds or the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Beneficiary, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Beneficiary by or on behalf of Grantor for that purpose, shall be at least sufficient in the reasonable judgment of Beneficiary to pay for the cost of completion of the Repair Work, free and clear of all Liens or claims for Lien. Any surplus which may remain out of the Insurance Proceeds or Award held by Beneficiary after payment of the costs of the Repair Work shall be paid to Grantor or, if an Event of Default shall have occurred and shall be continuing, shall in the sole and absolute discretion of Beneficiary, be retained by Beneficiary and applied to payment of the Obligations or paid to the party or parties legally entitled to such surplus.



(vii) If Grantor delivers an Arbitration Notice to Beneficiary, Grantor and Beneficiary shall, within five (5) Business Days after Beneficiary's receipt of any such notice, jointly designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Real Property. Not later than five (5) Business Days after such joint designation of such individual, Grantor and Beneficiary shall submit to such individual their separate determinations of the commercially reasonable settlement amount for the applicable Casualty together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The individual so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Grantor and Beneficiary by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Beneficiary shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Grantor.

(viii) In the event that Grantor and Beneficiary are unable to agree on one individual to act as arbitrator within the five (5) Business Day period following Beneficiary's receipt of the Arbitration Notice as contemplated under Section 9.2(a)(vii) above, then, in such case, the procedure set forth in this subsection (viii) shall be observed in lieu thereof. Not later than five (5) Business Days after Beneficiary's receipt of an Arbitration Notice, Grantor and Beneficiary shall each designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Real Property and notify the other party of such appointment by identifying the appointee. Not later than five (5) Business Days after both arbitrators are appointed, the two selected arbitrators shall select a third arbitrator who shall also be an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Real Property, such selection to take place within five (5) Business Days after such arbitrator's appointment. Grantor and Beneficiary shall submit to such third arbitrator their separate determinations of the commercially reasonable settlement amount together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The third arbitrator so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Grantor and Beneficiary by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Beneficiary shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Grantor.

(ix) Time shall be of the essence with respect to the performance of any and all rights and obligations under this Section 9.2. The decisions of the arbitrator(s), if any, engaged under this Section 9.2, shall be final and binding and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud or corruption. All of the

reasonable, actual costs and expenses of the arbitrator(s), if any, engaged under this Section 9.2, shall be the sole responsibility of Grantor.

(x) Notwithstanding anything to the contrary contained herein, the Insurance Proceeds or Award disbursed to Grantor in accordance with the terms and provisions of this Security Instrument shall be reduced by the reasonable costs (if any) incurred by Beneficiary in the adjustment and collection thereof and by the reasonable costs incurred by Beneficiary of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the Repair Work and reviewing the plans and specifications therefor).

(b) If Grantor undertakes the Repair Work, Grantor shall promptly and diligently, at Grantor's sole cost and expense and regardless of whether the Insurance Proceeds or Award, as applicable, shall be sufficient for the purpose, complete the Repair Work to restore the Real Property as nearly as possible to its value, condition and character immediately prior to the Casualty or Taking in accordance with the foregoing provisions.

(c) Any partial reduction in the Obligations resulting from Beneficiary's application of any sums received by it under this Section 9.2 shall take effect only when Beneficiary actually receives such sums and elects to apply such sums to the Obligations and, in any event, the unpaid portion of the Obligations shall remain in full force and effect and Grantor shall not be excused in the payment thereof.

#### **ARTICLE 10 - - INDEMNIFICATION**

Section 10.1. GENERAL INDEMNIFICATION. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations, and the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Beneficiary in connection with the enforcement of the provisions of this Security Instrument or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Grantor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Grantor to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to

supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 10; (k) any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Grantor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Grantor in this Security Instrument or any other Loan Document. Any amounts payable to Beneficiary by reason of the application of this Section 10.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Beneficiary until paid.

Section 10.2. INTANGIBLE TAXES. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 10.3. ERISA INDEMNIFICATION. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Beneficiary's sole discretion) that Beneficiary may incur, directly or indirectly, as a result of a default under Section 4.12 of the Loan Agreement.

Section 10.4. DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Grantor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Grantor and any Indemnified Party and Grantor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Grantor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Grantor's consent. Upon demand, Grantor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE 11 -- WAIVERS

Section 11.1. WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law,

Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 11.2. MARSHALING AND OTHER MATTERS. Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable law. The Lien of this Security Instrument shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary and, without limiting the generality of the foregoing, the Lien hereof shall not be impaired by (i) any acceptance by Beneficiary of any other security for any portion of the Obligations, (ii) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any portion of the Obligations or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Obligations or of any of the collateral security therefor; and Beneficiary may foreclose or sell by power of sale or exercise any other remedy available to Beneficiary under the other Loan Documents without first exercising or enforcing any of its remedies under this Security Instrument, and any exercise of the rights and remedies of Beneficiary hereunder shall not in any manner impair the Obligations or the Liens of any other Loan Document or any of Beneficiary's rights and remedies thereunder.

Section 11.3. WAIVER OF NOTICE. To the extent permitted by applicable law, Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provides for the giving of notice by Beneficiary to Grantor and except with respect to matters for which Beneficiary is required by applicable law to give notice, and Grantor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Beneficiary to Grantor.

Section 11.4. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

Section 11.5. SURVIVAL. The indemnifications made pursuant to Article 10 hereof and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction, release or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument, the Note or Beneficiary's interest in the Property (but, in such case, shall benefit both Indemnified

Parties and any assignee or transferee), any exercise of Beneficiary's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Grantor or by Beneficiary following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Grantor from the obligations pursuant hereto.

## ARTICLE 12 -- GRANTOR REPRESENTATIONS AND WARRANTIES

Section 12.1. Title; Priority of Liens; Permitted Encumbrances. Grantor represents and warrants to the Beneficiary that on the date hereof:

(a) Title; Priority of Liens; Permitted Encumbrances.

(i) Grantor has good, indefeasible and insurable fee simple title to the Land and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. All taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Property to Grantor have been paid. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a legal, valid and enforceable perfected first priority Lien on the Property, subject only to the Permitted Encumbrances and (b) perfected first priority security interests in and to, and perfected collateral assignments of, all personalty (including Leases), all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances. There are no mechanics' Liens, materialmen's Liens or other encumbrances affecting the Property other than the Permitted Encumbrances, and no rights exist which under law could give rise to any such claims for payment of work, labor or materials which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. The Assignment of Leases is freely assignable without the consent of Grantor and, when properly recorded in the appropriate records, will create a perfected first priority security interest in and to, and perfected collateral assignment of, all Leases and Rents, all in accordance with the terms thereof, in each case subject only to any Permitted Encumbrances.

(ii) None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by this Security Instrument and the other Loan Documents, materially and adversely affects the value or marketability of the Property, impairs the use or the operation of the Property or impairs Grantor's ability to pay the Obligations as and when required under the Loan Documents.

(b) Use of Property; Compliance; Certificate(s) of Occupancy; Licenses.

(i) Subject to the development and construction of the Improvements as contemplated in the Loan Documents, the Property is or will be used exclusively for multi-family residential purposes and other appurtenant and related uses.

(ii) Grantor and the Property and the occupancy, use and operation thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes and all covenants and restrictions. Grantor is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would have a Material Adverse Effect. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Grantor, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property and all other restrictions, covenants and conditions affecting the Property. There has not been and shall never be committed by Grantor or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Grantor's obligations under any of the Loan Documents. Grantor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

(iii) Grantor has obtained or will obtain all necessary certificates, permits, certificates of incorporation or formation, licenses and other approvals, governmental and otherwise, necessary for the legal ownership, use, occupancy and operation of the Property and the conduct of the business thereon (including, without limitation, any applicable certificates of completion and certificates of occupancy) and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are or will be in full force and effect as of the time that the same is needed, and shall not subject to revocation or suspension, forfeiture or modification during the time that the same are needed (collectively, the "Licenses"). Grantor shall keep and maintain all Licenses necessary for the operation of the Property. Upon Completion of the Improvements, the use being made of the Property will be in conformity with the certificate of occupancy issued for the Property.

(c) Physical Condition. During the construction process, as any portion of the Improvements is constructed, such portion of the Improvements and the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components then constructed, shall be, in good repair and condition, there shall exist no structural or other material defects or damages in the Property, whether latent or otherwise, and Grantor shall not have received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond. The Property is free from damage covered by fire or other casualty. All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Legal Requirements.

(d) Property Operating Agreements. Each Property Operating Agreement is or will be in full force and effect as of the time needed. With respect to Property Operating Agreements which currently exist, neither Grantor nor, to the best of Grantor's knowledge, any other party to any Property Operating Agreement, is in default thereunder, and to the best of Grantor's knowledge after due inquiry, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder.

(e) Condemnation. No Condemnation or other proceeding has been commenced or, to Grantor's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

(f) Utilities and Public Access. The Property (a) is located on or adjacent to a public road and has direct legal access to such road, or has access via an irrevocable easement or irrevocable right of way permitting ingress and egress to/from a public road, and (b) is served by or has uninhibited access rights to public or private water and sewer (or well and septic) and all required utilities, all of which are appropriate for the current use of the Property. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its respective current purposes have been completed, are physically open and are dedicated to public use and have been accepted by all Governmental Authorities.

(g) Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

(h) Assessments. There are no taxes, pending or proposed special or other governmental assessments for public improvements or other outstanding governmental charges (including, without limitation, water and sewage charges) otherwise affecting the Property.

(i) No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

(j) Flood Zone. None of the Improvements are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to this Security Instrument is in full force and effect.

(k) Leases. The Property is not subject to any Leases.

(l) Boundaries. All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements.

(m) Title Insurance Policy and Survey.

(i) The Title Insurance Policy is in full force and effect, all premiums thereon have been paid and no claims have been made thereunder and no claims have been paid thereunder. Neither Grantor, nor to Grantor's knowledge, any other holder of the Loan, has done, by act or omission, anything that would materially impair the coverage under the Title Insurance Policy. The Title Insurance Policy contain no exclusion for, or affirmatively insures (except if the Property is located in a jurisdiction where such affirmative insurance is not available in which case such exclusion may exist), (a) that the area shown on the Survey is the same as the property legally described in this Security Instrument and (b) to the extent that the Property consists of two or more adjoining parcels, such parcels are contiguous.

(n) Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity and to the best of Grantor's knowledge, there are no illegal activities or activities relating to any controlled substances at the Property.

(o) Management Agreements. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

(p) Forfeiture. Neither Grantor nor any other Person in occupancy of or involved with the operation or use of the Property has committed any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of the Obligations. Grantor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

(q) Licenses. Grantor has all applicable Licenses required to operate the present Improvements on the Property, if any, and has delivered true, correct and complete copies thereof to the Beneficiary.

(r) Survival of Representations. Grantor agrees that all of the representations and warranties of Grantor set forth in this Article 12 and elsewhere in this Security Instrument and in the other Loan Documents shall survive for so long as any amount remains owing to Beneficiary under this Security Instrument or any of the other Loan Documents by Grantor. All representations, warranties, covenants and agreements made in this Security Instrument or in the other Loan Documents by Grantor shall be deemed to have been relied upon by Beneficiary notwithstanding any investigation heretofore or hereafter made by Beneficiary or on its behalf.

#### **ARTICLE 13 - - NOTICES**

All notices or other written communications required or permitted hereunder shall be given and shall become effective in accordance with Section 8.12 of the Loan Agreement.

#### **ARTICLE 14 - - APPLICABLE LAW**

##### **Section 14.1. GOVERNING LAW.**

(a) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND ACCEPTED BY BENEFICIARY IN THE STATE OF NEW



YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS OTHER THAN SECTION 5.1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BENEFICIARY OR GRANTOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT BENEFICIARY'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND GRANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 14.2. USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor and Beneficiary are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Beneficiary shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal Obligations of Grantor to Beneficiary, and (c) if through any contingency or event, Beneficiary receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding Obligations of Grantor to Beneficiary, or if there is no such Obligations, shall immediately be returned to Grantor.

Section 14.3. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby

## ARTICLE 15 - - MISCELLANEOUS PROVISIONS

Section 15.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2. SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Grantor and Beneficiary and their respective successors and assigns forever.

Section 15.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note, this Security Instrument or the other Loan Documents shall be construed without such provision.

Section 15.4. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 15.5. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any obligations or indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Beneficiary shall be subrogated to all of the rights, claims, Liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such obligations or indebtedness and such former rights, claims, Liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in

favor of Beneficiary and are merged with the Lien and security interests created herein as cumulative security for the payment and performance of the Obligations.

Section 15.8. ENTIRE AGREEMENT. Pursuant to *Utah Code Annotated* §25-5-4, the Grantor is notified and acknowledges that the Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Grantor and Beneficiary with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Grantor and Beneficiary with respect thereto. Grantor hereby further acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.9. LIMITATION ON BENEFICIARY'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Beneficiary, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Beneficiary a "mortgagee in possession."

Section 15.10. Joint and several Liability. If the Grantor consists of more than one Person, references herein to "the Grantor" shall be read as "each such Grantor", "all Grantors", or "any or all Grantors", jointly and severally, whichever reading maximizes the Beneficiary's rights and the Grantors' obligations under this Security Instrument.

Section 15.11. Homestead. Grantor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Obligations, or any part thereof.

Section 15.12. Consents. Any consent or approval by Beneficiary in any single instance shall not be deemed or construed to be Beneficiary's consent or approval in any like matter arising at a subsequent date, and the failure of Beneficiary to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary pursuant hereto shall be narrowly construed to be applicable only to Grantor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Beneficiary a venturer or partner with Grantor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Grantor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

Section 15.13. Employee Benefit Plan. During the term of this Security Instrument, unless Beneficiary shall have previously consented in writing, (i) Grantor shall take no action that would cause it to become an “*employee benefit plan*” as defined in 29 C.F.R. Section 2510.3-101, or “*assets of a governmental plan*” subject to regulation under the state statutes, and (ii) Grantor shall not sell, assign or transfer the Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Beneficiary its written assumption of the obligations of this covenant.

## ARTICLE 16 -- STATE-SPECIFIC PROVISIONS

Section 16.1. PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2. DETERMINATION OF FAIR MARKET VALUE. For purposes of the application of the provisions of Utah Code Ann., § 57-1-32, to the extent permitted by applicable law Grantor acknowledges, stipulates, confirms and agrees that the fair market value of the Property on the date of a sale under the power of sale granted under this Security Instrument shall be the fair market value specified in any appraisal of the Property obtained by Beneficiary at any time within six (6) months preceding such sale or at any time within eighty-nine (89) days following such sale, so long as such appraisal is completed by an MAI appraiser having reasonable experience and expertise in evaluating commercial and retail real estate.

Section 16.3. RECOURSE TO NON-REAL ESTATE SECURITY. To the extent permitted by applicable law, Grantor also hereby acknowledges, agrees and stipulates that the provisions of Utah Code Ann. § 78B-6-901 (the so-called “**One-Action Rule**”) shall not apply to abridge, inhibit, prohibit or otherwise bar Beneficiary from proceeding at any time after an Event of Default to exercise its remedies with respect to any and all non-real property Property and assets in which a lien, security interest, pledge or charge has been created in favor of Beneficiary hereunder or under the Loan Documents, including the fixtures and Personal Property, that is or is to become security for the obligations secured by this Security Instrument.

Section 16.4. REMEDIES OF BENEFICIARY. Time is of the essence hereof. Upon the occurrence and during the continuance of an Event of Default, the following provisions apply, to the extent permitted by applicable law:

(a) Acceleration. Upon the occurrence and during the continuance of an Event of Default the indebtedness secured hereby shall immediately become due and payable, and Beneficiary may execute or cause Trustee to execute a written notice of default (the “**Notice of Default**”) and election to cause the Property to be sold in satisfaction of the obligations secured hereby, and Trustee shall file the Notice of Default for record in Salt Lake County, Utah, and in each other county wherein the Property or any portion thereof is situated. Beneficiary shall also deposit with Trustee the Note and all of the other Loan Documents.

(b) Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure. After the lapse of such time as may then be required by Utah Code Ann. §57-1-24 or other applicable law following the recordation of the Notice of Default, and the Notice of Default and a notice of sale

(the "**Notice of Sale**") having been given as then required by Utah Code Ann. §57-1-25 and §57-1-26 or other applicable law, Trustee, without demand on Grantor, shall sell the Property on the date and at the time and place designated in the Notice of Sale, in such order as Beneficiary may determine (but subject to Grantor's statutory right under Utah Code Ann. §57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the Notice of Sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the Notice of Sale, notice of the time, date, and place of sale shall be given in the same manner as the original Notice of Sale as required by Utah Code Ann. §57-1-27. Trustee shall execute and deliver to the purchaser a "Trustee's Deed", in accordance with Utah Code Ann. §57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as set forth in Section 8.2 above.

Grantor agrees to surrender possession of the Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by the Grantor.

Upon any sale made under or by virtue of this Section 16.4(b), whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with Utah Code Ann. §57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Grantor secured by this Security Instrument such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of Utah Code Ann. §57-1-28, Grantor agrees that all interest at the rate set forth in the Loan Agreement and all late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary may add all interest at the rate specified in the Loan Agreement and all late charges, any prepayment premiums and similar amounts, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Security Instrument.

In the event of any amendment to the provisions of Utah Code Ann. Title 57 or other provisions of Utah Code Ann. referenced in this Security Instrument, this Security Instrument shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(c) Election to Foreclose as a Mortgage. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be fixed by the court. Grantor hereby waives all rights to the marshaling of Grantor's assets encumbered by this Security Instrument to the fullest extent permitted by law, including the Property, or any portion thereof, and all rights to require the Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Security Instrument as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the obligations secured hereby with interest at the applicable rate set forth in the Note, and third to the person so entitled. Beneficiary may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Beneficiary's bid entered at such sale shall bear interest at the rate of interest set forth in the Loan Agreement.

(d) Deficiency. Grantor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. §57-1-32 or other applicable law. Grantor agrees for purposes of Utah Code Ann. §57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a Notice of Default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Ann. §57-1-32.

(e) Obligation Secured. For purposes of Utah Code Ann. §§57-1-32 and 57-1-28, the total indebtedness secured by this Security Instrument shall include all amounts payable by Grantor hereunder, including any increased rate of interest, any defeasance or prepayment payments or other amounts or obligations, all of which shall constitute "beneficiary's lien on the trust property."

(f) One Action Rule and Deficiency Statute. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under Utah Code Ann. §§78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(g) Reinstatement. If Grantor, Grantor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a Notice of Default in accordance with Utah Code Ann. §57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. §57-1-31(2), as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

Section 16.5. TRUSTEE'S FEES AND EXPENSES. In no event shall Grantor be required to pay to Trustee any fees or compensation in excess of amounts permitted by Utah Code Ann. §57-1-21.5.

Section 16.6. MIXED COLLATERAL PERSONAL PROPERTY REMEDIES. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the Uniform Commercial Code in effect in the State of Utah, Beneficiary, upon an Event of Default, may proceed under the Uniform Commercial Code in effect in the State of Utah or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Ann. §70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. §57-1-30 or other applicable law.

Section 16.7. SUBSTITUTION OF TRUSTEE. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by Utah Code Ann. §57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Grantor, Trustee and Beneficiary hereunder, the book and page where this Security Instrument is recorded and the name and address of the new Trustee and all other information required by Utah Code Ann. §57-1-22 or any successor statute. In compliance with Utah Code Ann. §57-1-21.5, the Trustee shall not require the trustor reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

Section 16.8. FIXTURE FILINGS. This Security Instrument covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND GRANTOR IS THE "DEBTOR." GRANTOR IS THE RECORD OWNER OF THE PROPERTY.

Section 16.9. QUALIFICATION OF TITLE INSURANCE COMPANY AS TRUSTEE. Should the "Trustee" as used throughout this Security Instrument be a title insurance company or agency, such Trustee shall be qualified in the State of Utah in the following manner, consistent with the

provisions of Utah Code Ann. §57-1-21: (a) Trustee must hold a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the State of Utah, (b) Trustee must actually be doing business in the State of Utah, and (c) Trustee must maintain a bona fide office in the State of Utah. In the event of any express conflict between the provisions of this Security Instrument and the provisions of Utah Code Ann. §57-1-21 with regard to the qualifications of the Trustee, the provisions of Utah Code Ann. §57-1-21 shall apply.

Section 16.10. ACKNOWLEDGMENT OF UTAH UNIFORM ASSIGNMENT OF RENTS ACT. Grantor hereby expressly acknowledges that Grantor is bound by the terms and provisions of the Utah Uniform Assignment of Rents Act (Utah Code Ann. §57-26-101, et seq.) (the “**Rents Act**”) and that Grantor shall, in all respects fully abide by and act to accommodate and comply fully with all the provisions of such Rents Act and the rights and remedies of Beneficiary arising thereunder by reason of the assignment of rents provided in this Assignment of Leases. In this regard Grantor hereby expressly agrees and covenants that it will bring no action of any kind to assert that actions by Beneficiary to collect or receive assigned rents is contravened by any security-first, one-action or similar other security or collateral-first claim or assertion and any such action by the Grantor shall be deemed to be in bad faith and subject to immediate dismissal on motion of the Beneficiary, with the right of Beneficiary to recover all costs and attorneys’ fees incurred in connection with disposing of any such action.

**[SIGNATURE PAGE FOLLOWS]**




IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Grantor as of the day and year first above written.

**GRANTOR:**

**MORTON TPIII LLC,**  
a Delaware limited liability company

By: TIMBERLANE PARTNERS III LLC,  
a Delaware limited liability company  
Its: Manager

By: TIMBERLANE HOLDINGS LLC,  
a Washington limited liability company  
Its: Manager

By:   
Name: David Enslow  
Its: Authorized Member

By: SUMMIT AVE LLC,  
a Washington limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: John Chaffetz  
Its: Authorized Member

**[ACKNOWLEDGMENT PAGE FOLLOWS]**

NOTARY ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
:SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by John Chaffetz, the Authorized Member of Summit Ave LLC, a Manager of Timberlane Partners III LLC, the Manager of Morton TPIII LLC.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

(Seal)  
(Title) \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

NOTARY ACKNOWLEDGMENT

State of WA )  
:SS  
County of KING )

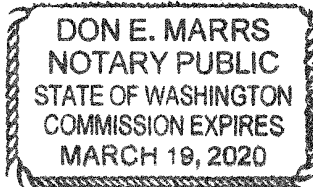
The foregoing instrument was acknowledged before me this 30 day of March, 2017, by David Enslow, the Authorized Member of Timberlane Holdings LLC, a Manager of Timberlane Partners III LLC, the Manager of Morton TPIII LLC.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

(Seal)  
(Title) Notary

My Commission expires: 3/19/20

Residing at: See cell



IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Grantor as of the day and year first above written.

**GRANTOR:**

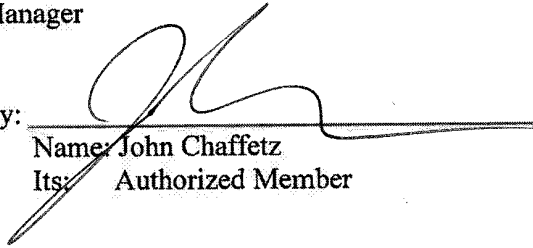
**MORTON TPIII LLC,**  
a Delaware limited liability company

By: **TIMBERLANE PARTNERS III LLC,**  
a Delaware limited liability company  
Its: **Manager**

By: **TIMBERLANE HOLDINGS LLC,**  
a Washington limited liability company  
Its: **Manager**

By: \_\_\_\_\_  
Name: **David Enslow**  
Its: **Authorized Member**

By: **SUMMIT AVE LLC,**  
a Washington limited liability company  
Its: **Manager**

By:   
Name: **John Chaffetz**  
Its: **Authorized Member**

**[ACKNOWLEDGMENT PAGE FOLLOWS]**

NOTARY ACKNOWLEDGMENT

State of CALIFORNIA )  
:SS  
County of LOS ANGELES

The foregoing instrument was acknowledged before me this 30 day of MARCH, 2017, by John Chaffetz, the Authorized Member of Summit Ave LLC, a Manager of Timberlane Partners III LLC, the Manager of Morton TPIII LLC.

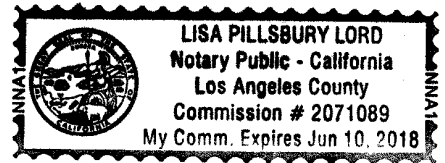
[Signature]  
(Signature of person taking acknowledgment)

(Seal)  
(Title) NOTARY PUBLIC

My Commission expires:  
06/10/2018

Residing at:  
LOS ANGELES, CA

NOTARY ACKNOWLEDGMENT



State of \_\_\_\_\_ )  
:SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by David Enslow, the Authorized Member of Timberlane Holdings LLC, a Manager of Timberlane Partners III LLC, the Manager of Morton TPIII LLC.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

(Seal)  
(Title) \_\_\_\_\_

My Commission expires:  
\_\_\_\_\_

Residing at:  
\_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The North half of Lot 3, Block 55, Plat "A", Salt Lake City Survey. Together with a 5 foot strip vacated street abutting said property on the West.

Together with a right of way, so far as the same in the appurtenant to the affects the above described land, over the following:

Beginning at a point 72 feet North from the Southwest corner of said Lot 4, said Block, and running thence North 20 feet; thence East 165 feet; thence South 92 feet; thence West 10 feet; thence North 72 feet; thence West 155 feet to the point of beginning.

(Tax Parcel No. 16-06-179-004)