

EXECUTION VERSION

PREPARED BY AND UPON  
RECORDATION RETURN TO:

XR1 MORTGAGE LENDER, L.L.C.  
c/o Walton Street Capital, L.L.C.  
900 N. Michigan Avenue, Suite 1900  
Chicago, Illinois 60611  
Attention: General Counsel

13086407  
9/30/2019 12:23:00 PM \$40.00  
Book - 10838 Pg - 3157-3189  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
INGEO SYSTEMS  
BY: eCASH, DEPUTY - EF 33 P.

Tax Parcel No. 07-26-426-001-0000

*(Attention County Clerk: This instrument covers goods that are or will be fixtures on the real property described herein. It is to be recorded as a real estate mortgage and indexed as both a real estate mortgage and a fixture financing statement under Division 9 ("Division 9") of the Utah Uniform Commercial Code as in effect from time to time (the "UT UCC"). The mailing address of the Trustor (Debtor) and the Beneficiary (Secured Party) are set forth in the first paragraph, below.)*

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING:**

CGGL XR INTERNATIONAL LLC,  
a Delaware limited liability company,  
as trustor

(Borrower)

to

FIRST AMERICAN TITLE INSURANCE COMPANY,  
as trustee

(Trustee)

for the benefit of

XR1 MORTGAGE LENDER, L.L.C.,  
a Delaware limited liability company,  
as beneficiary

(Lender)

Dated: As of September 27, 2019

Location: 5656 West John Cannon Drive  
Salt Lake City, Utah 84116

When Recorded Return To: \_\_\_\_\_  
First American Title Insurance Company  
National Commercial Services  
18500 Von Karman Avenue, Suite 600  
Irvine, CA 92612  
File No: NCS 944071-SA1

APN: 07-26-426-001-0000

4123-9313-7950.3

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this “**Security Instrument**”) is made as of this 27th day of September, 2019, by CGGL XR INTERNATIONAL LLC, a Delaware limited liability company, having its principal place of business at c/o Greenlaw Partners, LLC, 18301 Von Karman Avenue, Suite 250, Irvine, California 92612, as trustor (“**Borrower**”), to FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee (“**Trustee**”), for the benefit of XR1 MORTGAGE LENDER, L.L.C., a Delaware limited liability company, having its principal place of business at c/o Walton Street Capital, L.L.C., 900 N. Michigan Avenue, Suite 1900, Chicago, Illinois 60611 (together with its successors and/or assigns, “**Lender**”).

**W I T N E S S E T H:**

WHEREAS, this Security Instrument is given to secure a loan (the “**Loan**”) in the maximum principal sum of up to TWENTY-SEVEN MILLION ONE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$27,157,500.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”);

WHEREAS, to induce Lender to make the Loan to Borrower, Borrower desires to further secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of Borrower’s obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined);

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Borrower in favor of Lender and delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Assignment of Leases**”), including, without limitation, 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, the Assignment of Leases and all other documents evidencing or securing the Debt or executed or delivered in connection therewith, are hereinafter referred to collectively as the “**Loan Documents**”); and

WHEREAS, Borrower and Lender intend these recitals to be a material part of this Security Instrument.

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

## ARTICLE I

### GRANTS OF SECURITY

Section 1.1 The Property. Borrower does hereby irrevocably grant, pledge, assign, warrant, transfer and convey to Trustee, and its successors in trust for the benefit and security of Lender and its successors and assigns, all of Borrower's right, title and interest in the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) Land. The real property described on Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower 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 amendment, modification, supplement or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, 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, 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 Land and/or the Improvements and the reversions 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 Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto (collectively, the "**Easements**");

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or

affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to (i) any tenants under Leases (as hereinafter defined); (ii) any property manager; or (iii) any leased equipment, except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and/or the Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “**Fixtures**” shall not include any property which tenants are entitled to remove pursuant to Leases or fixtures owned by utility companies, except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles (to the extent assignable), contract rights (to the extent assignable), accounts, accounts receivable, franchises (to the extent assignable), licenses (to the extent assignable), certificates and permits (to the extent assignable), and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code, as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as

the same may be amended from time to time (the “**Bankruptcy Code**”) (individually, a “**Lease**”, collectively, the “**Leases**”) and all income, rents and right, title and interest of Borrower, its successors and assigns in and under the Leases, including, without limitation, any guaranties of the lessees’ obligations thereunder, cash or securities deposited under the Leases to secure the performance by the lessees of their obligations under the Leases, and all rents, additional rents, early termination fees and payments and other termination fees and payments, revenues, issues and profits (including, without limitation, and all cash or securities deposited to secure the performance by the lessees of their obligations under the Leases), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of all of the other obligations due and owing by Borrower to Lender pursuant to the terms of the Loan Documents;

(i) Condemnation Awards. All Awards 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 such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in Taxes or Other Charges charged against the Property;

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

(m) Rights. The right, in the name and on behalf of Borrower, 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 Lender in the Property;

(n) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, franchise agreements, permits, licenses, including all licenses, permits, approvals and consents which are required for the sale and service of alcoholic beverages on the Property, heretofore or hereafter obtained from applicable state and local authorities, plans, specifications and other documents, now or hereafter entered into, respecting or pertaining to the design and engineering, use, occupation, construction, management or operation of the Improvements and/or the Land and any part thereof, respecting any business or activity conducted in the Improvements and/or on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, and any and all warranties related or pertaining to the design, engineering, construction or operation of the Improvements, Land and any Personal Property, and

all rights, title and interest of Borrower therein and thereto, including without limitation those certain warranties from Tom Stuart Construction, Inc.; Eaton Corporation; Hubbell Lighting (Indoor Lighting Limited Warranty); Hubbell Lighting (Outdoor Lighting Limited Warranty); Industrial Door Specialists, Inc.; Potter Electric Signal Company, LLC; Firestone Building Products Company, LLC; Redd Roofing Company Inc. (Workmanship Warranty); Salmon Electrical Contractors, Inc.; The Safety Team, LLC; and WireTech, LLC, including, with respect to all of the foregoing, without limitation, the right, upon the occurrence and during the continuance of any Event of Default hereunder, to receive and collect any sums payable to Borrower thereunder or to enforce the other rights and remedies of Borrower thereunder;

(o) Trademarks. To the extent assignable, Borrower's interest in all trade names, 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;

(p) Accounts/Intangibles. All accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Agreement and the Loan Documents), 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 extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all receivables, customer obligations, 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 Borrower or any operator or manager of the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, 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 and all other deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof (collectively called the "**Intangibles**");

(q) Proceeds. All products and proceeds of any of the foregoing; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Sections (a) through (q) above.

AND, without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a first priority 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 and the Fixtures are part and parcel of the Land (the Land, the Improvements, the Easements and the Fixtures being collectively referred to herein as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, the Assignment of Leases and Section 7.2(h) of this Security Instrument, Lender grants to Borrower a revocable license (which shall be automatically revoked during the continuance of an Event of Default) to collect, receive, use and enjoy the Rents; provided, however, in the event Lender shall have accepted (in writing) Borrower’s cure of, or waived (in writing) any outstanding Event of Default, such license shall be automatically reinstated and Trustor shall again, subject to this Security Instrument and other Loan Documents, deal with, and enjoy the rights of the lessor under, the Leases. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is a real property mortgage, a “security agreement,” a “financing statement” and a “fixture filing” 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 Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, 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 “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand (except as required by applicable law or as specifically provided in the Loan Documents), 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 Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land, if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including, without limitation, reasonable, actual attorneys’ fees and costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the

Collateral following an Event of Default or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the repayment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on the first page hereof and the address of Lender (secured party) is as set forth on the first page hereof. Borrower and Lender agree that the foregoing is intended to grant in favor of Lender a first priority continuing lien and security interest in all of the Borrower's assets. The Borrower authorizes the Lender and its counsel to file Uniform Commercial Code financing statements in form and substance satisfactory to the Lender describing the collateral as all assets of the Borrower.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, 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 Borrower as the Debtor and Lender as the Secured Party) filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Clearing Account, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Documents.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to Trustee for the use and benefit of Lender and its successors and assigns, forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee for the benefit of Lender against every Person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Borrower for the purposes and uses herein set forth;

WITH POWER OF SALE (to the extent permitted by applicable law), to secure the payment to Lender its indebtedness secured hereby and performance of the Other Obligations (defined herein) at the time and in the manner provided for in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations (hereafter defined) as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; PROVIDED, HOWEVER, THAT BORROWER'S OBLIGATION TO INDEMNIFY AND



HOLD HARMLESS LENDER PURSUANT TO THE PROVISIONS HEREOF SHALL SURVIVE ANY SUCH PAYMENT OR RELEASE.

## ARTICLE II

### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt, which by its definition (as set forth in the Loan Agreement) includes, but is not limited to, the obligations of Borrower to pay to Lender the principal and interest owing pursuant to the terms and condition of the Note.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the “**Other Obligations**”):

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

(d) all other and any additional debts, obligations and liabilities of every kind and character of Borrower, whether now or hereafter existing, in favor of Lender, in connection with the Property or the Loan, regardless of whether such debts, obligations and liabilities be direct or indirect, primary, secondary, joint, several, joint and several, fixed or contingent, unsecured or secured by additional or different securities, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums under the Loan Documents.

Borrower agrees that all advances made by Lender from time to time under any of the Loan Documents, and all other portions of the Obligations herein referred to, shall be secured by this Security Instrument with priority as if all of the same had been advanced, had arisen or become owing or performable on the date of this Security Instrument. No reduction of the outstanding principal balance under the Note shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Security Instrument shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligations without loss of priority until the Obligations are fully paid, performed and satisfied, all agreements and obligations, if any, of Lender for further advances have been terminated and this Security Instrument has been released of record by Lender.

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations may sometimes be referred to collectively herein as the "**Obligations**."

### ARTICLE III

#### BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

Section 3.2 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.

### ARTICLE IV

#### OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, 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 Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations.

(a) Notwithstanding the provisions of Sections 1.1(h) and (n) or Section 1.2 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender 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 Policy, Lender 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 Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that (a) in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (b) such reliance existed on the part of Lender prior to the date hereof; (c) the warranties and representations are a material inducement to Lender in making the Loan; and (d) Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## ARTICLE V

### FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Borrower 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 to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Except as otherwise expressly provided in the Loan Agreement with respect to Excluded Taxes, Borrower 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 other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any 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 other 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.

Section 5.2 Further Acts, etc. Borrower will, at the sole cost and expense of Borrower (but without subjecting Borrower to any additional liability), and without expense to Lender, do, execute, acknowledge and deliver all further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for assuring, conveying, assigning, transferring, and confirming unto Lender 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 Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, within ten (10) Business Days' written notice to Borrower from Lender, will execute and deliver, and in the event Borrower shall fail to so execute and deliver within such

ten- (10)-Business Day period, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence the security interest of Lender in the Property. In (i) such case as is set forth in the immediately preceding sentence, or (ii) upon the occurrence and during the continuance of an Event of Default, in either such case Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2; provided, however, neither such grant nor the exercise of Lender's rights and remedies shall subject Borrower to any additional liability.

Section 5.3 Changes in Tax, Debt, 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 Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax (upon receipt of written notice thereof from Lender if the tax is charged to Lender), with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable (and any failure to repay the Debt by the end of such one hundred twenty- (120)-day period shall be an Event of Default; provided that any repayment of the Debt shall not be subject to any prepayment fee, premium or penalty in connection with any payment under this Section 5.3(a)).

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, then Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable; provided that any repayment of the Debt shall not be subject to any prepayment fee, premium or penalty in connection with any payment under this Section 5.3(b)).

(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 shall impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Severing of Deed of Trust. Subject to the terms of the Loan Agreement, this Security Instrument and the Note may, at any time (whether prior to or after any sale, participation or Securitization of all or any portion of the Loan) until the same shall be fully paid and satisfied, at the sole election of Lender, be severed into two (2) or more notes and two (2) or more security instruments in such denominations as Lender shall determine in its sole discretion,

each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver to Lender 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 substantially similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender 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, Borrower will 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 in the same form as such lost, stolen, destroyed or mutilated document.

## ARTICLE VI

### DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower 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 Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the payment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Sale/Encumbrance. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

## ARTICLE VII

### RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Events of Default. The occurrence of an "Event of Default" under the Loan Agreement shall be an "Event of Default" under this Security Instrument.

Section 7.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, 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 Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby or by any other Loan Document to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee, if any, provided for in the Note shall then be immediately due and payable;

(b) cause the Trustee to institute proceedings, judicial or otherwise, for the complete foreclosure of 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 as Lender shall elect in its sole and absolute discretion;

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

(d) cause the Trustee to sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower 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, all as may be required or permitted by law, and, without limiting the foregoing:

(i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) which is property that can be severed from the Land covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Land. Where the Property consists of Land, Personal Property, Equipment or Fixtures, whether or not such Personal Property, Equipment or Fixtures is located on or within the Land, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Land, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Lender shall be entitled to elect to proceed against any or all of the Land, the Personal Property, the Equipment and the Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall, to the fullest extent permitted by applicable law, be exercisable with respect to all or any of the Land, the Personal Property, the Equipment and the Fixtures covered hereby, as designated by Lender, and Trustee, upon the direction of Lender, is hereby authorized and empowered to conduct any such sale of any Land, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to the Land;

(iii) Should Lender elect to sell any portion of the Property which is Land or which is Personal Property, Equipment or Fixtures that Lender has elected under applicable law to sell together with the Land in accordance with the laws governing a sale of the Land, Lender shall give notice to Trustee of the occurrence of an Event of Default, if any, and its election to sell such Property and Trustee shall thereafter give such notice as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Lender at the time and place specified in the notice of sale, Trustee shall sell such Land or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by causing Trustee to make public announcement thereof at the time and place noticed for any such sale;

(iv) If the Property consists of several lots, parcels, condominium units or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels, condominium units or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels, condominium units or items through a single sale, or through two (2) or more successive sales, or in any other manner Lender designates. Any Person, including Borrower, Trustee or Lender, may purchase the Property at any sale hereunder. Should Lender desire that more than one (1) sale or other disposition of the Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Lender elects to cause Trustee to dispose of the Property through more than one (1) sale, except as otherwise provided by applicable law, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made; and

(v) upon any such foreclosure sale, Lender may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and to the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Lender under the obligations secured by this Security Instrument, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon;

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

(f) obtain a judgment on the Note as is necessary for the enforcement of this Security Instrument or the other Loan Documents;

(g) 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 Debt and without regard to the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof, it being agreed that Lender shall be entitled to appointment of such receiver, trustee, liquidator or conservator as a matter of right;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked, and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property, (ii) complete any construction on the Property in such manner and form as Lender deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower 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 Borrower to pay monthly in advance to Lender, 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 Borrower, (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; notwithstanding the foregoing, if the triggering Event of Default is cured in accordance with the terms of the Loan Documents, the license granted to Borrower under Section 1.2 hereof shall be reinstated and control of the Property shall return to Borrower in accordance with the terms of the license;

(i) 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 Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Borrower at its sole cost and expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;



(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender 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 sole discretion:

- (i) Taxes and Other Charges;
- (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 Lender pursuant to the terms of this Security Instrument or the Loan Agreement;

(k) pursue such other remedies as Lender may have under applicable law;

and/or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole and absolute 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 7.3 Application of Proceeds. Upon the occurrence and during the continuation of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property (after deducting all costs, fees and expenses of Trustee and of this Security Instrument), and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with law.

Section 7.4 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower (except as expressly required pursuant to applicable law or the Loan Documents) and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to the rights of tenants under the Leases, Lender 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 Debt, and the actual out-of-pocket cost and expense thereof (including,

without limitation, reasonable, third-party actual attorneys' fees and expenses to the extent permitted by law) with interest as provided in this Section 7.4, shall constitute a portion of the Debt and shall be due and payable to Lender ten (10) Business Days after written demand. All such costs and expenses incurred by Lender in remedying any Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinafter provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be due and payable ten (10) Business Days after written demand by Lender therefor.

Section 7.5 Actions and Proceedings. Upon the occurrence and during the continuance of an Event of Default (or if Lender is a defendant to actions or proceedings), Lender 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, which Lender, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

Section 7.6 Recovery of Sums Required To Be Paid. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take any action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.7 Other Rights, etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower 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 (except upon repayment in full of the Debt), or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents except as expressly set forth therein.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for any 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 Lender 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 Lender's possession.

(c) Lender may resort for the payment of the Debt and the performance of the Other Obligations to any other security held by Lender in connection with the Loan in such order and manner as Lender, in its sole discretion, may elect. Lender may take action to recover

the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender 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 Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender 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 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender 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 Debt shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender 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 7.9 Violation of Laws. Subject to the terms of the Loan Agreement, if the Property is not in full material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 Right of Entry. Upon reasonable advance written notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times, provided that the exercise of the foregoing rights shall not materially interfere with the rights of tenants under the Leases or the operation of the Property.

## ARTICLE VIII

### WAIVERS

Section 8.1 Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender 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. Notwithstanding the foregoing, Borrower does not waive its right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding.

Section 8.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower 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 Borrower, 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.

Section 8.3 Waiver of Notice. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

## ARTICLE IX

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

## ARTICLE X

### APPLICABLE LAW

Section 10.1 Governing Law; Jurisdiction; Service of Process. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, FORECLOSURE), THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. BORROWER (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE COUNTY WHERE THE PROPERTY IS LOCATED OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID COUNTY, (B) CONSENTS TO THE JURISDICTION OF

EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY SERVICE OF COPIES OF SUCH PROCESS TO BORROWER AT ITS ADDRESS PROVIDED HEREIN. NOTHING CONTAINED IN THIS SECURITY INSTRUMENT SHALL PREVENT LENDER FROM BRINGING AN ACTION, ENFORCING ANY AWARD OR JUDGMENT, OR EXERCISING ANY RIGHT OR REMEDY AGAINST BORROWER, OR AGAINST ANY SECURITY OR COLLATERAL FOR THE DEBT, WITHIN ANY OTHER COUNTY, STATE OR ANY OTHER FOREIGN OR DOMESTIC JURISDICTION.

Section 10.2 Usury Laws. Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Lender pursuant to the Loan Documents shall never exceed the Maximum Legal Rate or the maximum lawful amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 10.3 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 XI

### 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 "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" mean "the Note and any other evidence of indebtedness 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 Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. 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.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

Section 12.1 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 Borrower or Lender, 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 12.2 Successors and Assigns. This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and assigns forever. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents, provided that any such assignment shall not be inconsistent with Section 9.1 of the Loan Agreement. Any permitted assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument; provided, however, that successors, assigns, and transferees of Lender shall not include any bona fide third party who purchases fee title to the Property (i) through foreclosure; or (ii) from Lender or any other Person after Lender or such Person has acquired fee title to the Property through foreclosure, deed in lieu of foreclosure, or the exercise of any other remedies available to Lender hereunder, under the Note, the Loan Agreement, or any other Loan Documents. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, except as otherwise provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

Section 12.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 12.4 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 12.5 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender 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 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 Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the

performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 12.6 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby 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 Lender 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 12.7 Limitation on Lender'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 Lender, nor shall it operate to make Lender 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, except to the extent any such liabilities arise from the fraud, gross negligence, or willful misconduct of Lender or its authorized agents. Nothing herein contained shall be construed as constituting Lender as a "mortgagee in possession" unless Lender actually elects in writing to become a "mortgagee in possession."

Section 12.8 After-Acquired Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the Lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further amendment, modification, supplement, conveyance or assignment become subject to the Lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further amendments, modifications, supplements, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument.

Section 12.9 Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this instrument identical in form hereto but having attached to it one or more additional signature pages.

Section 12.10 Joint and Several Liability. If Borrower consists of more than one Person or party, the obligations and liabilities of each such person or party shall be joint and several.

Section 12.11 Powers of Trustee. The following provisions apply to Trustee:

(a) Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law, and by its acceptance hereof, Trustee covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence, illegal acts, willful misconduct and bad faith, and Trustee hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof.

(b) Trustee may resign at any time upon giving thirty (30) days' notice in writing to Borrower and to Lender.

(c) Lender may, from time to time, by written instrument executed and acknowledged by Lender, mailed to Borrower and recorded in the county in which the Real Property is located, and by otherwise complying with the provisions of applicable law of the state in which the Real Property is located, substitute a successor or successors to the person or persons then named herein or acting hereunder as Trustee.

(d) Lender, with or without cause, is authorized either in its own name or through an attorney or attorney-in-fact appointed for the purpose by written instrument duly recorded and without any formality other than a designation in writing of a successor substitute trustee, to appoint a successor or substitute trustee who shall thereupon become vested with and succeed to all the rights, title and powers given to Trustee herein named, the same as if the successor or substitute trustee had been named original Trustee herein. Such right to appoint a successor or substitute trustee shall exist as often and whenever Lender desires.

(e) Trustee, or anyone acting in its stead, shall have, in its discretion, authority to employ all proper agents and attorneys in the execution of this trust and in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Property, should any be realized. If no sale be made or if the proceeds of sale be insufficient to pay the same, then Borrower hereby undertakes and agrees to pay the reasonable costs of such services rendered to Trustee.

(f) If Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto, or the interest of Trustee or Lender under this Security Instrument, except for any action or proceeding arising out of the fraud, gross negligence, or willful misconduct of Trustee or Lender, Trustee and Lender shall be reimbursed by Borrower, promptly within ten (10) days of written demand, for all reasonable costs, charges and attorneys' fees incurred by them or any of them in any case, and the same shall become so much additional indebtedness secured hereby.

(g) At any time and from time to time, without liability therefor and without notice, upon written request of Lender and presentation of this Security Instrument for endorsement, and without affecting the personal liability of any person with respect to any of the Obligations or the effect of this Security Instrument upon the remainder of the Property, Trustee may (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement,



agreement subordinating the lien or charge hereof, or other agreement or document relating hereto or to the Property.

(h) **BORROWER SHALL INDEMNIFY TRUSTEE AGAINST ALL CLAIMS, ACTIONS, LIABILITIES, JUDGMENTS, COSTS, ATTORNEYS' FEES OR OTHER CHARGES OF WHATSOEVER KIND OR NATURE MADE AGAINST OR INCURRED BY TRUSTEE, AND ARISING OUT OF THE PERFORMANCE BY TRUSTEE OF THE DUTIES OF TRUSTEE HEREUNDER, OTHER THAN THOSE ARISING SOLELY DUE TO TRUSTEE'S FRAUD, GROSS NEGLIGENCE, ILLEGAL ACTS, OR WILLFUL MISCONDUCT, TRUSTEE'S BREACH OF THE LOAN DOCUMENTS, OR THAT FIRST ARISE AFTER A FORECLOSURE OR A DEED IN LIEU OF FORECLOSURE OF THE PROPERTY.**

### ARTICLE XIII

#### STATE-SPECIFIC PROVISIONS

Section 13.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XIII and the other terms and conditions of this Security Instrument, the terms and conditions of this Article XIII shall control and be binding.

Section 13.2 Remedies, Generally. Notwithstanding anything to the contrary contained in this Security Instrument or any of the other Loan Documents, Lender shall have the right to exercise any and all of its rights and remedies granted it hereunder, including but not limited to all remedies granted under Utah Code Title 57, Chapters 1 and 26.

Section 13.3 Power of Sale. After an Event of Default, Lender may deliver to Trustee a written declaration of an Event of Default and demand for sale which requests that Trustee record and serve a written notice of default and of election to cause the Property to be sold under the power of sale granted by this Security Instrument in the manner herein.

Trustee shall accept Lender's declaration of an Event of Default as true and as demonstrative of Borrower's default and shall record in the office of the county recorder of the county in which the Property is located and serve a written notice of default, identifying this Security Instrument by stating the name of Trustor and giving the book and page, or the recorder's entry number, where this Security Instrument is recorded and a legal description of the Property, and containing a statement that a breach of an obligation for which the Property was conveyed as security has occurred, and setting forth the nature of that breach and of Trustee's election to sell or cause to be sold the property to satisfy the obligation

Section 13.4 Rescission of Notice of Default. Lender may rescind any notice of default at any time before Trustee's sale by executing a notice of rescission and recording it. The recordation of the notice will constitute a cancellation of any prior declaration of an Event of Default and demand for sale and of any acceleration of maturity of the Debt affected by any prior declaration or notice of an Event of Default. The exercise by Lender of the right of rescission will not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Lender to execute other declarations of default and demand for sale, or notices of default and of

election to cause the Property to be sold, nor otherwise affect the Note or this Security Instrument, or any of the rights, obligations or remedies of Lender or Trustee hereunder or under applicable law.

Section 13.5 Date of Trustee's Sale. If, after the expiration of any period of time provided by applicable law, Borrower's Event of Default has not been cured and Borrower's Debt has not been reinstated in the manner required by applicable law, Trustee shall establish a date for the sale of the Property and record and serve a notice of sale in the manner required by applicable law. After providing such notice as is required by applicable law, Trustee, without demand on Borrower may at the direction of Lender, sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to Borrower's statutory right under Utah Annotated Code § 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 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 Annotated Code § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Annotated Code § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The trustee's deed may contain recitals of compliance with the requirements of Utah Code Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described in the trustee's deed, including recitals concerning any mailing, personal delivery, and publication of the notice of default; any mailing and the publication and posting of the notice of sale; and the conduct of the sale. The foregoing described recitals shall constitute prima facie evidence of compliance with Utah Code Sections 57-1-19 through 57-1-36. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

(A) FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in this Security Instrument.

(B) SECOND: To payment of the obligations secured by this Security Instrument.

(C) THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or the 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.

Upon any sale made under or by virtue of this Section 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 Lender may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with Utah Code Annotated § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by

crediting upon the Secured Obligations of Borrower secured by this Security Instrument such credit bid amount. Lender, 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 Annotated § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of this Security Instrument, and (ii) Lender may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Lender may include all such amounts in any credit which Lender may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument.

Borrower agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any trustee's sale, and Lender may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law.

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

Section 13.6 Rights and Duties. It shall be no part of the duty of Trustee to see to any recording, filing or registration of this Security Instrument or any other instrument in addition or supplemental hereto, or to give any notice thereof, or to see to the payment of or be under any duty in respect of any tax or assessment or other governmental charge which may be levied or assessed on the Property, or any part thereof, or against Trustee, or to see to the performance or observance by Borrower of any of the covenants and agreements contained herein. Trustee shall not be responsible for the execution, acknowledgment or validity of this Security Instrument or of any instrument in addition or supplemental hereto or for the sufficiency of the security purported to be created hereby, and makes no representation in respect thereof or in respect of the rights of Lender. Trustee shall have the right to advice of counsel upon any matters arising hereunder and shall be fully protected in relying as to legal matters on the advice of counsel. Trustee shall not incur any personal liability hereunder except for its own fraud, gross negligence, illegal acts, or willful misconduct and Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder and believed by Trustee in good faith to be genuine.

Section 13.7 Substitute Trustee. Trustee may resign by an instrument in writing addressed to Lender, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Lender. Lender may appoint a successor trustee at any time by filing an appointment of trustee or a substitution of trustee for record in the office of the county recorder of each county in which the trust property or a part of the trust property is located. In the event that the Debt is owned by more than one (1) person or entity, the holder or holders of not less than a majority in amount of such indebtedness shall have the right and authority to make or

otherwise provide for the appointment of a successor or substitute trustee as provided for in the preceding sentence or to remove Trustee as provided in the first sentence of this Section 13.7. Such appointment and designation by Lender, or by the holder or holders of not less than a majority of the Debt secured hereby, shall be full evidence of the right and authority to make the same and of all facts therein recited. If Lender is a corporation or association or trust and such appointment is executed in its behalf by an officer or trustee of such corporation or association or trust, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association or trust. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute trustee, and it shall thereupon succeed to and shall hold, possess and execute, all of the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but, nevertheless, upon the written request of Lender or of the successor or substitute trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute trustee all of the estate and title in the Property of the trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said trustee hereunder to said successor or substitute trustee. All references herein to "Trustee" shall be deemed to refer to Trustee (including any successor substitute appointed and designated as herein provided) from time to time acting hereunder.

Section 13.8 No Liability of Trustee. TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OR JUDGMENT OR ACT DONE BY TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING TRUSTEE'S NEGLIGENCE), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE, ILLEGAL ACTS, WILLFUL MISCONDUCT OR BAD FAITH. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by it hereunder. Trustee hereby ratifies and confirms any and all acts which the herein-named Trustee or its successor or successors, substitute or substitutes, in this trustee, shall do lawfully by virtue hereof.

Section 13.9 Reconveyance Upon Payment of Debt. In the event that Borrower shall cause to be paid the entire Debt and perform in full all of its obligations under the Loan Documents, Lender shall cause Trustee to release the Property from the lien of this Security Instrument and to reconvey (without warranty by or recourse against Trustee or Lender) the Property to Borrower (and shall execute and deliver all documents reasonably requested by Borrower (and in form and content reasonably acceptable to Lender) to evidence such release and reconveyance). Upon Trustee's receipt of Lender's request for reconveyance, Trustee shall reconvey, without warranty, the Property or that portion held. When the Property has been fully reconveyed, the last reconveyance will operate as a reassignment of all future Rents to the Person legally entitled.

Section 13.10 Financing Statement. This Security Instrument shall constitute a financing statement pursuant to UCC §9402(b), and shall be filed as a fixture filing in the Official Records of the County Recorder of the County in which the Property is located and covers goods which are or are to become fixtures on the Property. The name of the debtor is set forth in the first paragraph hereof. The mailing address of the debtor is set forth in the first paragraph hereof. The name of the secured party is the Lender's name set forth in the first paragraph hereof. The address of the secured party is the Lender's address set forth in the first paragraph hereof. This financing statement covers all of the debtor's Personal Property (whether now owned or hereafter acquired). The Personal Property includes (among other things) (i) goods which are or are to become fixtures on the Land described in Exhibit A; (ii) minerals or the like (including oil and gas) located on the Land described in Exhibit A; and (iii) all proceeds and products of the foregoing.

Section 13.11 Receiver. During the continuance of an Event of Default, Lender shall be entitled, as a matter of strict right, without notice and ex parte, and without regard to the value or occupancy of the security, or the solvency of the Borrower or of any guarantor, or the adequacy of the Property as security for the Loan, to have a receiver appointed to enter upon and take possession of the Property, collect the Rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of the jurisdiction in which the Property is located. To the extent allowed by applicable law, Borrower hereby waives any requirements on the receiver or Lender to post any surety or other bond. To the extent allowed by applicable law, Lender or the receiver may also take possession of, and for the sole purposes use, any and all Personal Property which is a part of the Property and used by Borrower in the rental or leasing thereof, or any part thereof. The actual out-of-pocket expenses (including the receiver's fees, reasonable counsel fees, costs and agent's compensation) actually incurred pursuant to the powers herein contained shall be secured by this Security Instrument. Lender shall (after payment of all costs and expenses incurred) apply such Rents (except for security deposits unless the same may be applied pursuant to the terms of the applicable lease), issues and profits received by it on the Debt in the order required by the Loan Documents. The right to enter and take possession of the Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such Rents, issues and profits actually received by Lender.

Section 13.12 Utah Real Property. This Security Instrument does not secure the obligation of any guarantor of the Loan under any guaranty or any indemnitor under any indemnity relating to the environmental condition of the Property, notwithstanding anything to the contrary contained in this Security Instrument or in any such guaranty or indemnity. The foregoing, however, shall not limit the provisions of this Security Instrument providing that this Security Instrument is given as security for the obligations of the Borrower with respect to the Loan.

Section 13.13 UTAH STATUTE OF FRAUDS – NOTICE TO BORROWER. PURSUANT TO UTAH CODE. ANN. §25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR

SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[NO FURTHER TEXT ON THIS PAGE]


IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

**BORROWER:**

**CGGL XR INTERNATIONAL LLC,**  
a Delaware limited liability company

By: Greenlaw XR Investors, LLC,  
a California limited liability company,  
its operations member

By: Greenlaw Partners, LLC,  
a California limited liability company,  
its Manager

By:   
Name: Wilbur H. Smith, III  
Title: Principal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California

COUNTY OF Orange SS.

On September 23, 2019 before me, Amanda Morton, personally appeared W. H. Smith III, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

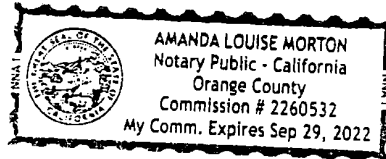
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature Amanda Morton

My commission expires

9-29-22





## EXHIBIT A

### Legal Description of the Land

#### PARCEL 1:

BEGINNING AT A POINT NORTH 00°06'10" EAST 1284.32 FEET ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°58'11" WEST 730.14 FEET TO THE EASTERLY LINE OF THE PROPERTY DESCRIBED IN SPECIAL WARRANTY DEED RECORDED JANUARY 12, 2007 AS ENTRY NO. 9971585 IN BOOK 9408 AT PAGES 4134-4137; THENCE NORTH 00°04'55" EAST 2111.84 FEET ALONG SAID EASTERLY LINE AND GENERALLY ALONG AN EXISTING BARBED WIRE FENCE; THENCE SOUTH 49°23'48" EAST 666.23 FEET; THENCE SOUTH 81°47'49" EAST 226.55 FEET TO THE WEST LINE OF SAID SECTION 25; THENCE SOUTH 00°06'02" WEST 293.67 FEET ALONG LAST SAID SECTION LINE TO THE WEST QUARTER CORNER OF SECTION 25; THENCE SOUTH 00°06'10" WEST 1351.87 FEET ALONG LAST SAID SECTION LINE TO THE POINT OF BEGINNING. (ALSO KNOWN AS LOT 1, COANS SUBDIVISION)

#### PARCEL 1A:

A NON-EXCLUSIVE EASEMENT FOR STORM DRAINAGE PURPOSES, APPURTENANT TO PARCEL 1, AS DESCRIBED IN THAT CERTAIN DRAINAGE ACCESS EASEMENT AGREEMENT RECORDED NOVEMBER 20, 2017 AS ENTRY NO. 12662571 IN BOOK 10621 AT PAGE 2875 AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DRAINAGE ACCESS EASEMENT AGREEMENT RECORDED SEPTEMBER 25, 2019 AS ENTRY NO. 13082526 IN BOOK 10835 AT PAGE 6874.