

119152-DTF  
00-0021-0103

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WOJV HEBER, LLC  
(Grantor)

to

COTTONWOOD TITLE INSURANCE AGENCY, INC.  
(Trustee)

for the benefit of

CAPITAL ONE, NATIONAL ASSOCIATION  
(Beneficiary)

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

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Dated as of December 20, 2019

Property Location: 551 East 1200 South, Heber City, Utah 84032

Tax Serial Number: 00-0021-0103

**DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:**

Holland & Knight LLP  
1180 West Peachtree Street NW, Suite 1800  
Atlanta, Georgia 30309  
Attention: John A. Decker, Esq.

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**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 executed as of December 20, 2019, by WOJV HEBER, LLC, a Delaware limited liability company whose organizational number is 7695095 (“**Grantor**”) and whose address is 1751 Pinnacle Drive, 5<sup>th</sup> Floor, Tyson’s, VA 22102, Attention: Jeff Erhardt, to COTTONWOOD TITLE INSURANCE AGENCY, INC., as trustee (“**Trustee**”), whose address for notice hereunder is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of CAPITAL ONE, NATIONAL ASSOCIATION, in its capacity as administrative agent (in such capacity, “**Administrative Agent**” or “**Beneficiary**”) for the Lenders under the Loan Agreement described below, as beneficiary, whose address is 77 W. Wacker Drive, 10th Floor, Chicago, Illinois 60601, Attention: Jeffrey M. Muchmore (Reference: Windsor).

**AGREEMENT:**

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Administrative Agent agree as follows:

**Section 1.1 Definitions.** As used herein, the following terms shall have the following meanings:

“**Administrative Agent**” has the meaning specified in the introductory paragraph hereof.

“**Borrowers**” means the Affiliates (as defined in the Loan Agreement) of Grantor that are from time to time signatory to the Loan Agreement as “Borrower.”

“**Beneficiary**” has the meaning specified in the introductory paragraph hereof.

“**Future Advances**” has the meaning specified in Section 2.2.

“**Grantor**” has the meaning specified in the introductory paragraph hereof.

“**Indebtedness**”: means all payment obligations of Grantor and the other Borrowers to Administrative Agent or to any Secured Party (as defined in the Loan Agreement) under the Loan Agreement or any of the other Loan Documents, including, without limitation, (a) the Loan (including any future advance of the proceeds thereof in accordance with the terms and conditions of the Loan Agreement), (b) any and all interest accruing under the Loan Agreement or the other Loan Documents, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, (c) any Prepayment Premium or Libor Breakage Amount (as defined in the Loan Agreement) payable under the Loan Agreement and all payment obligations arising under any Secured Hedge Agreement (as defined in the Loan Agreement), (d) the Future Advances, and (e) any funds advanced by Lenders or Administrative Agent to protect the security or priority of this Security Instrument.

**“Lenders”** means the Persons defined as “Lenders” under the Loan Agreement.

**“Loan”** means the loan, in the principal amount of up to THIRTY-FOUR MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$34,300,000.00), made to Grantor and the other Borrowers by the Lenders, as evidenced by the Loan Agreement and the Note and secured by the other Loan Documents.

**“Loan Agreement”** means that certain Loan Agreement dated as of even date herewith, between Grantor and the other Borrowers, as borrowers, Administrative Agent and the other Lenders named therein, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

**“Loan Documents”**: means, collectively, (a) the Loan Agreement, (b) the Note, (c) this Security Instrument, (d) all documents included within the definition of “Loan Documents” in the Loan Agreement, (e) all other documents now or hereafter executed and delivered by Grantor and the other Borrowers to evidence or secure the payment of all or any portion of the Indebtedness or the performance of all or any portion of the Obligations or otherwise executed and delivered in connection with the Note or this Security Instrument, and (f) all modifications, restatements, extensions, renewals and replacements of the foregoing; provided however, in no event shall the term “Loan Documents” include the Environmental Indemnity Agreement or any Recourse Guaranty Agreement (as such terms are defined in the Loan Agreement).

**“Note”**: means, individually and collectively, (a) each Promissory Note, dated as of even date herewith, executed by Grantor and the other Borrowers, payable to the order of a Lender, which collectively evidence the Loan, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time, (b) each other note from time to time made by Grantor and/or the other Borrowers, which evidences all or a portion of the Loan, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time, and (c) each other promissory note made by Grantor and/or the other Borrowers that recites that it is secured by this Security Instrument.

**“Obligations”**: means all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor or the other Borrowers to Administrative Agent or the other Secured Parties as set forth in the Loan Documents, including, without limitation, the obligations under any Secured Hedge Agreements, and all other “Obligations” (as defined in the Loan Agreement) of Grantor and/or the other Borrowers to Administrative Agent and/or to Lenders.

**“Permitted Encumbrances”**: means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Security Instrument, as more particularly set forth on Exhibit B, attached hereto.

**“Secured Obligations”** means the prompt payment of the Indebtedness and prompt performance and observance of all Obligations, whether now existing or hereafter arising or incurred, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

**“Secured Property”**: means all right, title and interest of Grantor in the following: (a) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Grantor (the **“Land”**), (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**), (c) all materials, supplies, equipment, apparatus and other items of personal property now existing or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (d) all goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as are presently or hereafter defined in the UCC, whether now existing or hereafter acquired by Grantor, and wherever located, including, without limitation, any and all Fixtures, goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper or other personal property now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Secured Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims, whether arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Secured Property or otherwise and all accounts arising from the operation of the Secured Property (exclusive of any of the foregoing owned by tenants of space in the Improvements who are not Affiliates of Grantor) (collectively, the **“Personalty”**), (e) the Funds and all other reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Secured Property; (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the **“Plans”**), (g) all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Secured Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Grantor of any petition of relief under 11 U.S.C. § 101 *et seq.*, as same may be amended from time to time (the **“Bankruptcy Code”**)) and all related security and other deposits (collectively, the **“Leases”**) and all of Grantor’s claims and rights (the **“Bankruptcy Claims”**) to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, (h) all of the rents, revenues, liquidated damages payable upon default under the Leases, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Secured

Property whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (the “**Rents**”), (i) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Secured Property (the “**Property Agreements**”), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all insurance policies (regardless of whether required by Administrative Agent), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor, (l) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Secured Property, (m) all goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Secured Property, (n) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty, and (o) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof; provided, however, that the following are expressly excluded: all tradenames, trademarks, service marks, logos, and copyrights relating to or used in connection with the operation of the Secured Property. As used in this Security Instrument, the term “**Secured Property**” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

“**State**”: means the State of Utah.

“**Trustee**” has the meaning specified in the introductory paragraph hereof.

“**UCC**”: means the Uniform Commercial Code of the State in effect from time to time or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

**Section 1.2 Other Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

## **ARTICLE II**

### **GRANT; OBLIGATIONS SECURED; FUTURE ADVANCES**

**Section 2.1 Grant.** To secure the full and timely payment and timely performance of the Secured Obligations, Grantor hereby irrevocably and unconditionally GIVES, GRANTS, BARGAINS, SELLS, PLEDGES, ASSIGNS, HYPOTHECATES, WARRANTS, TRANSFERS and CONVEYS to Trustee, for the benefit of Administrative Agent, its successors-in-title and assigns, WITH POWER OF SALE a security interest in the Secured Property; TO HAVE AND TO HOLD the Secured Property, and all parts, rights members, monies and appurtenances thereof, to the use, to Trustee for the benefit of Administrative Agent, its successors and assigns IN TRUST, WITH POWER OF SALE forever subject to the terms, covenants and conditions of this Security Instrument, and Grantor does hereby bind itself, its successors and assigns to

WARRANT AND FOREVER DEFEND the title to the Secured Property unto Trustee and Administrative Agent, and their respective successors, substitutes and assigns, subject to the Permitted Encumbrances.

**Section 2.2 Future Advances.** This Security Instrument secures future advances, whether obligatory or optional (the “**Future Advances**”), made from to time by Administrative Agent or the Secured Parties under the Loan Agreement to or for the benefit of Grantor, which Future Advances shall be secured by this Security Instrument.

### **ARTICLE III WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Administrative Agent as follows:

**Section 3.1 Title to Secured Property and Lien of this Instrument.** Grantor owns the Secured Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Security Instrument creates a valid, enforceable first priority lien and security interest against the Secured Property, subject to Permitted Encumbrances. Grantor warrants that (a) it has good, marketable and insurable title to the Secured Property, subject only to the Permitted Encumbrances, and (b) it has the full power, authority and right to execute, deliver and perform its obligations under this Security Instrument. This Security Instrument creates a valid and enforceable first priority lien upon those portions of the Secured Property that are real property and a valid and enforceable first priority security interest in the Personalty subject, in each case, only to the Permitted Encumbrances.

**Section 3.2 First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Security Instrument and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Secured Property, Grantor shall promptly, subject to Grantor’s rights under Section 11.14 of the Loan Agreement and at its expense, (a) give Administrative Agent a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or, in Administrative Agent’s discretion, provide a bond or other security satisfactory to Administrative Agent for the payment of such claim.

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

**Section 3.4 Replacement of Fixtures and Personalty.** Grantor shall not, without the prior written consent of Administrative Agent, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Security Instrument and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Administrative Agent.

**Section 3.5 Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain or cause to be maintained all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the contemplated use of the Secured Property and will not, without the prior consent of Administrative Agent, consent to any public restriction (including any zoning ordinance and in all events, to the extent Grantor's consent is required by the governing authority) or private restriction as to the use of the Secured Property. Grantor shall comply in all material respects with all restrictive covenants, covenants, conditions and restrictions and reciprocal easements now or hereafter affecting the Secured Property, and in all material respects with all zoning ordinances and other public or private restrictions as to the use of the Secured Property.

**Section 3.6 Inspection.** Grantor shall permit Secured Parties and their agents, representatives and employees, upon reasonable prior notice to Administrative Agent, to inspect the Secured Property and conduct such environmental and engineering studies as Secured Parties may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Secured Property.

**Section 3.7 Other Covenants.** All of the covenants in (a) the Loan Agreement, (b) the Note, and (c) any of the other Loan Documents are incorporated herein by reference and are made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein and, together with covenants in this Article III, shall be covenants running with the Land.

**Section 3.8 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Subject to the terms of the Loan Agreement, Grantor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Administrative Agent and authorizes Administrative Agent to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement. The provisions of Section 3.3 of the Loan Agreement regarding the use and application of awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, are incorporated herein by reference.

(b) **Insurance Proceeds.** Subject to the terms of the Loan Agreement, Grantor assigns to Administrative Agent all proceeds of any insurance policies insuring against loss or damage to the Secured Property. Grantor authorizes Administrative Agent to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Administrative Agent, instead of to Grantor and Administrative Agent jointly. The provisions of Section 3.2 of the Loan Agreement regarding the use and application of insurance proceeds are incorporated herein by reference.

**Section 3.9 No Transfer or Encumbrance of Secured Property.** Grantor shall not permit or suffer any Transfer to occur, unless specifically permitted by Section 7.1 of the Loan Agreement or unless Administrative Agent shall consent thereto in writing.

**ARTICLE IV**  
**DEFAULT AND FORECLOSURE**

**Section 4.1 Remedies.** If an Event of Default (as defined in the Loan Agreement) exists, Administrative Agent may, at Administrative Agent's election, by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses to the fullest extent permitted by applicable law:

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

(b) **Entry on Secured Property.** With or without the appointment of a receiver or an application therefor, and at all times in accordance with applicable law, enter the Secured Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Secured Property after and during the continuance of an Event of Default and without Administrative Agent's prior written consent, Administrative Agent may invoke any legal remedies to dispossess Grantor.

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

(d) **Foreclosure and Sale.** Foreclose the lien of this Security Instrument by judicial or non-judicial proceedings in a manner permitted by applicable law. Trustee or Administrative Agent may institute proceedings for the partial or complete foreclosure of this Security Instrument. Following any such foreclosure, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Administrative Agent may be a purchaser at such sale and if Administrative Agent is the highest bidder, may credit the portion of the purchase price that would be distributed to Administrative Agent against the Indebtedness in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Secured Property for the repayment of the Indebtedness, the appointment of a receiver of the Secured Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Secured Property upon such terms as may be



approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **UCC**. Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection and preservation of the personal property, and (ii) request Grantor at its expense to assemble the personal property and make it available to Administrative Agent at a convenient place acceptable to Administrative Agent. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the personal property sent to Grantor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor.

(g) **Other**. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument, causing a judgment to be entered by confession in ejectment for possession of the Property, or causing a judgment for money to be entered against Grantor in accordance with Section 9.3 below).

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

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

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

**Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets**. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and

releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Secured Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except for notices expressly required under the Loan Documents, all notices of any Event of Default or of Trustee's election to exercise or Trustee's actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

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

**Section 4.7 Application of Proceeds.** After the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Secured Property, shall be applied by Administrative Agent or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the reasonable costs and expenses of taking possession of the Secured Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) receiver's fees and expenses, (ii) court costs, (iii) reasonable attorneys' and accountants' fees and expenses, (iv) costs of advertisement, (v) insurance premiums, and (vi) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Secured Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Administrative Agent under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Administrative Agent in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

**Section 4.8 No Waiver.** The exercise or non-exercise by Administrative Agent of the rights granted in this Security Instrument or the collection and application of Rents by Administrative Agent or its agent shall not be a waiver of any default by Grantor under this Security Instrument or any other Loan Document. No action or failure to act by Administrative

Agent with respect to any obligations of Grantor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Administrative Agent's rights and privileges under this Security Instrument, or discharge, release or modify any of Grantor's duties or obligations hereunder.

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

**Section 4.10 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Administrative Agent shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness and the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Administrative Agent in respect thereof, by litigation or otherwise (including, without limitation, reasonable litigation preparation costs and expenses, paraprofessional fees, secretarial overtime, depositions, electronic research, postage, travel, communications and related costs and expenses).

(c) All sums advanced and expenses incurred at any time by Administrative Agent under this Section 4.10, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

**Section 4.11 No Grantee in Possession.** Neither the enforcement of any of the remedies under this Article IV, the assignment of the Rents and Leases under Article V, the security interests under Article VI, nor any other remedies afforded to Administrative Agent under the Loan Documents, at law or in equity shall cause Administrative Agent to be deemed or construed to be a grantee in possession of the Secured Property, to obligate Administrative Agent to lease the Secured Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 4.12 Actions and Proceedings.** Administrative Agent has the right to appear in and defend any action or proceeding brought with respect to the Secured Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Administrative Agent, in Administrative Agent's discretion, decides should be brought to protect Administrative Agent's interest in the Secured Property.

**ARTICLE V**  
**ASSIGNMENT OF RENTS AND LEASES**

**Section 5.1 Absolute Assignment.** Grantor unconditionally and absolutely assigns to Administrative Agent, for the benefit of the Lenders, all of Grantor's right, title and interest in and to: (a) Leases; (b) Rents; (c) Bankruptcy Claims; and (d) any and all other rights of Grantor in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This is an absolute assignment to Administrative Agent, for the benefit of the Lenders, and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness, and such absolute assignment is presently and immediately effective. The rights of the Administrative Agent to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Administrative Agent shall, to the extent not prohibited by law, extend from the date hereof through the filing of any suit to foreclose the lien of this Security Instrument, the obtaining of any judgment foreclosing the lien of this Security Instrument, and any period allowed by law for the redemption of the premises after any foreclosure sale. Notwithstanding the foregoing, the absolute assignment contained herein shall not itself reduce the obligations of Grantor owing to Administrative Agent or the Lenders under the Loan Documents unless and until Administrative Agent actually receives (for the benefit of the Lenders) the Rents and such Rents are applied by Administrative Agent (for the account of the Lenders) to the Secured Obligations.

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

**Section 5.3 No Obligation or Liability.** Notwithstanding Administrative Agent's rights hereunder, neither Administrative Agent nor Lenders shall be obligated to perform, and

neither Administrative Agent nor the Lenders undertakes to perform, any obligation, duty or liability with respect to the Leases, Rents or Secured Property on account of this Security Instrument. Neither Administrative Agent nor Lenders shall have any responsibility on account of this Security Instrument for the control, care, maintenance or repair of the Secured Property, for any waste committed on the Secured Property, for any dangerous or defective condition of the Secured Property, or for any negligence in the management, upkeep, repair or control of the Secured Property. Neither Administrative Agent nor Lenders shall be liable for any loss sustained by Grantor resulting from Administrative Agent's or Lenders' failure to let the Secured Property after an Event of Default or from any other act or omission of Administrative Agent or Lenders in managing the Secured Property after an Event of Default. Nothing herein contained shall be construed as constituting Administrative Agent or any Lender a "grantee in possession" in the absence of the taking of actual possession of the Secured Property by Administrative Agent. In the exercise of the powers herein granted to Administrative Agent, no liability shall be asserted or enforced against Administrative Agent or Lenders, all such liability being expressly waived and released by Grantor.

**Section 5.4 Revocable License.** Notwithstanding that this assignment in this Article V is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, subject to the terms of this Section 5.4 and any Deposit Account Control Agreement, Administrative Agent grants to Grantor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license shall be automatically revoked upon the occurrence and during the continuance of any Event of Default and Administrative Agent shall immediately be entitled to receive and apply all Rents, whether or not Administrative Agent enters upon and takes control of the Secured Property; provided, however, that Administrative Agent may at any time, and from time to time, reinstate the revocable license. Prior to such revocation, Grantor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Secured Property, insurance premiums, operation and maintenance charges relating to the Secured Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Administrative Agent is hereby granted and assigned by Grantor the right, at Administrative Agent's option, upon the revocation of the license granted herein, to enter upon the Secured Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Administrative Agent, in its discretion, shall deem proper.

**Section 5.5 No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Secured Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Administrative Agent, any lessee or any third party by purchase or otherwise.

**Section 5.6 Indemnification.** Grantor shall indemnify, defend and hold harmless Administrative Agent and the Lenders from and against all liability, loss, damage, cost or expense which it may incur under this Security Instrument or under any of the Leases, including

any claim against Administrative Agent or the Lenders by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including reasonable attorneys' fees and expenses actually incurred, but excluding any claim to the extent caused by Administrative Agent's or Lenders' gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Grantor to Administrative Agent at a rate equal to the Default Rate.

### **Section 5.7 Bankruptcy.**

(a) Upon or at any time after the occurrence of an Event of Default, Administrative Agent shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

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

## **ARTICLE VI SECURITY AGREEMENT**

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

**Section 6.2 Further Assurances.** Grantor shall execute and deliver to Administrative Agent, in form and substance satisfactory to Administrative Agent, such further documents and assurances as Administrative Agent may, from time to time, reasonably consider necessary to create, perfect and preserve Administrative Agent's security interest hereunder and Administrative Agent may cause such documents and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor's state of organization is the State of Delaware and its chief executive office is located at the address set forth in the first paragraph of this Security Instrument. Grantor hereby irrevocably authorizes Administrative Agent at any time and from time to time to file, without the signature of Grantor thereon, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) describe the Secured Property as (i) "all assets of Grantor and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Secured Property falls within the scope of Article/Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required under the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor; and (c) are necessary or advisable to properly or better effectuate the transactions described in the Loan Documents, as determined by Administrative Agent in its discretion. Grantor agrees to furnish any such information to Administrative Agent promptly upon request.

**Section 6.3 No Obligation of Trustee or Administrative Agent.** The security interest herein granted shall in no event cause Trustee or Administrative Agent to be deemed or construed as a grantee in possession of the Secured Property, to obligate Trustee or Administrative Agent to lease the Secured Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 6.4 Fixture Filing.** This Security Instrument shall also constitute a "**fixture filing**" for the purposes of the UCC against all of the Secured Property which is or is to become fixtures. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral. Information concerning the security interest herein granted may be obtained at the addresses of debtor (Grantor) and secured party (Administrative Agent) as set forth in the first paragraph of this Security Instrument.

**Section 6.5 Continuing Effect Notwithstanding Termination of Security Instrument.** It is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Administrative Agent, this Security Instrument shall remain fully effective as a security agreement and fixture filing, notwithstanding that the lien on real property that is created by this Security Instrument may be extinguished or released, by foreclosure of this Security Instrument or otherwise.

**ARTICLE VII**  
**CONCERNING THE TRUSTEE**

**Section 7.1 Certain Rights.** With the approval of Administrative Agent, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties hereunder. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties. Grantor's obligations under this Section 7.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

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

**Section 7.3 Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Administrative Agent shall desire to appoint a substitute Trustee, Administrative Agent shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Administrative Agent, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action. Upon any such appointment, and after recording the same in the official records of the county in which the Land is located and this Security Instrument is recorded, all of the powers, rights and authority of Trustee shall immediately become vested in such successor.

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

**ARTICLE VIII**  
**MISCELLANEOUS**

**Section 8.1 Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Grantor, the other Borrowers and Administrative Agent with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent or charged by Administrative Agent for the



use, forbearance or detention of the money to be lent under the Loan Documents or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Indebtedness; and (b) if maturity is accelerated, by reason of an election by Administrative Agent or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, at Administrative Agent's option, shall be credited on the principal of the Indebtedness or returned to Grantor. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of New York, except that if at any time the laws of the United States of America permit Administrative Agent to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of New York (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Administrative Agent may contract for, take, reserve, charge or receive under the Loan Documents.

**Section 8.2 Notices.** Any notice required or permitted to be given under this Security Instrument shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

**Section 8.3 Covenants Running with the Land.** All Obligations contained in this Security Instrument are intended by Grantor, Administrative Agent and Trustee to be, and shall be construed as, covenants running with the Secured Property. As used herein, "**Grantor**" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Secured Property (without in any way implying that Administrative Agent has or will consent to any such conveyance or transfer of the Secured Property). All persons or entities who may have or acquire an interest in the Secured Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Administrative Agent.

**Section 8.4 Attorney-in-Fact.** Grantor hereby irrevocably appoints Administrative Agent and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Administrative Agent deems appropriate to protect Administrative Agent's interest, if Grantor shall fail to do so within ten (10) days after written request by Administrative Agent, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property

Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Administrative Agent's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder; however: (i) neither Administrative Agent nor any other Secured Party shall under any circumstances be obligated to perform any obligation of Grantor; (ii) any sums advanced by Administrative Agent in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Administrative Agent as such attorney-in-fact shall only be accountable for such funds as are actually received by Administrative Agent; and (iv) neither Administrative Agent nor any other Secured Party shall be liable to Grantor or any other person or entity for any failure to take any action which Administrative Agent is empowered to take under this Section.

**Section 8.5 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Administrative Agent and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Administrative Agent, assign any rights, duties or obligations hereunder.

**Section 8.6 No Waiver.** Any failure by Trustee or Administrative Agent to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Trustee or Administrative Agent shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 8.7 Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Secured Property, then Administrative Agent shall be subrogated to all of the rights, liens and interests existing against the Secured Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Administrative Agent.

**Section 8.8 Loan Agreement.** If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern.

**Section 8.9 Release or Reconveyance.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Administrative Agent shall release the liens and security interests created by this Security Instrument and reconvey the Secured Property to Grantor, as applicable. Any reconveyance, whether full or partial, may be made to Grantor or the current owner of the Secured Property, if applicable.

**Section 8.10 Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the indebtedness secured hereby, or any agreement between Grantor and any Secured Party or any rights or remedies of Administrative Agent.

**Section 8.11 Limitation on Liability.** Grantor's liability hereunder is subject to the limitation on the personal liability of Grantor contained in the provisions of Article XII of the Loan Agreement.

**Section 8.12 Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Security Instrument as "**Grantor**," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 8.13 Governing Law.** This Security Instrument shall be governed by and construed in accordance with the internal laws of the State of New York except that the provisions of the laws of the jurisdiction in which the Land is located shall be applicable to the creation, perfection and enforcement of the lien created by this Security Instrument. The invalidity, illegality or unenforceability of any provision of this Security Instrument shall not affect or impair the validity, legality or enforceability of the remainder of this Security Instrument, and, to this end, the provisions of this Security Instrument are declared to be severable.

**Section 8.14 VENUE.** GRANTOR AND BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, ADMINISTRATIVE AGENT (FOR ITSELF AND THE LENDERS) HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE BOROUGH OF MANHATTAN, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS, PROVIDED THAT ANY ACTION RELATED TO THE CREATION, PERFECTION, OR ENFORCEMENT OF THE LIEN CREATED BY THIS SECURITY INSTRUMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY IN WHICH THE LAND IS LOCATED. GRANTOR AND BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, ADMINISTRATIVE AGENT (FOR ITSELF AND THE LENDERS) EXPRESSLY SUBMIT AND CONSENT TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*.

**Section 8.15 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 8.16 Entire Agreement.** This Security Instrument and the other Loan Documents and the Environmental Indemnity Agreement embody the entire agreement and understanding between Administrative Agent and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents and the Environmental Indemnity Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 8.17 Counterparts.** This Security Instrument may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

**Section 8.18 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Administrative Agent, 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 8.19 Inapplicable Provisions.** If any term, covenant or condition of this Security Instrument is held to be invalid, illegal or unenforceable in any respect, this Security Instrument shall be construed without such provision.

**Section 8.20 Exhibits; Recitals.** The information set forth on the cover and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Security Instrument with the same effect as if set forth in the body hereof.

**Section 8.21 Variable Rate Interest.** Grantor and, by its acceptance hereof, Administrative Agent, acknowledge and agree that the rate of interest charged on the principal amount of the Loan may vary from time to time as more particularly set forth in the Note, the Loan Agreement and the other Loan Documents.

**Section 8.22 Suretyship Waivers.**

(a) Grantor agrees that its obligations hereunder are absolute and unconditional, irrespective of, and unaffected by:

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Security Instrument, any other Loan Document or any other agreement, document or instrument to which Grantor is or may become a party, provided that Grantor has executed the applicable document or instrument;

(ii) the absence of any action to enforce this Security Instrument or any other Loan Document or the waiver or consent by Administrative Agent with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect its Lien against, any security for the Indebtedness or any action, or the absence of any action, by Administrative Agent in respect thereof (including the release of any such security);

(iv) the insolvency of Grantor or any other Borrowers;

(v) the election of remedies by Administrative Agent; or

(vi) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor;

it being agreed by Grantor that its obligations under this Section 8.22 shall not be discharged until the payment and performance, in full, of the Indebtedness has occurred.

(b) Grantor hereby expressly and irrevocably subordinates to payment of the Indebtedness any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Indebtedness is indefeasibly paid in full in cash. Grantor acknowledges and agrees that this subordination is intended to benefit Administrative Agent and shall not limit or otherwise affect Grantor's liability hereunder or the enforceability of this Section 8.22, and that Administrative Agent and its successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 8.22.

(c) Grantor expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel Administrative Agent to marshal assets or to proceed in respect of the Indebtedness against any other Borrowers, any other party or against any security for the payment of the Indebtedness and performance of the other Obligations before proceeding against, or as a condition to proceeding against, Grantor. It is agreed among Grantor and Administrative Agent that the foregoing waivers are of the essence of the transaction contemplated by this Security Instrument and that, but for the provisions of this Section 8.22 and such waivers, Lenders would decline to make the Loan to Grantor and Borrowers.

**Section 8.23 Multisite Real Estate Transaction.** Grantor acknowledges that this Security Instrument is one of a number of mortgages, deeds to secure debt, deeds of trust and other security documents ("**Other Security Instruments**") that secure the Indebtedness and the other Obligations. Grantor agrees that the lien of this Security Instrument shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Administrative Agent, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Administrative Agent of any security for or guarantees of the Indebtedness or the other Obligations, or by any failure, neglect or omission on the part of Administrative Agent to realize upon or protect Indebtedness and any other Obligation or any collateral security therefor including the Other Security Instruments. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of the Indebtedness or any of the other Obligations or of any of the collateral security therefor, including the Other Security Instruments or of any guarantee thereof, and, to the fullest extent permitted by applicable law, Administrative Agent may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Instruments without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Administrative Agent's rights and remedies under any or all of the Other Security Instruments shall not in any manner impair the indebtedness hereby secured or the lien of this Security Instrument and any exercise of the rights or remedies of Administrative Agent hereunder shall not impair the lien of any of the Other Security Instruments or any of Administrative Agent's rights and remedies thereunder. To the fullest extent permitted by applicable law, Grantor specifically consents and agrees the Administrative Agent may exercise its rights and remedies

hereunder and under the Other Security Instruments separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

**ARTICLE IX**  
**SPECIAL STATE PROVISIONS**

**Section 9.1 State Specific Provisions.** In the event of any material inconsistencies between the terms and provisions of this Article IX and any of the other terms and provisions of this Security Instrument, or to the extent that any of the provisions set forth elsewhere in this Security Instrument are determined by a court of competent jurisdiction to be invalid, illegal or unenforceable pursuant to Utah laws in any respect, this Security Instrument shall be construed without such provisions to the fullest extent permitted by applicable Utah laws and the terms and provisions of this Article IX shall control and be binding. To the extent the laws of the State of Utah limit (i) the availability of the exercise of any of the remedies set forth herein, including, without limitation, remedies such as a power of sale and taking possession of the property, or (ii) the enforcement of waivers and indemnities made by Grantor, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Security Instrument to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waiver or indemnities at the time of the execution and delivery of this Security Instrument.

**Section 9.2 Remedies of Beneficiary.** Upon the occurrence and during the continuance of an Event of Default, in addition to the other rights and remedies provided for elsewhere in this Security Instrument and the other Loan Documents, and to the extent permitted by applicable law, the following provisions apply:

(a) After the lapse of such time as may be required by Utah Code Annotated § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice sale having been given as then required by Utah Code Annotated §§ 57-1-24.3, 57-1-25 and 57-1-26 other applicable law, Trustee, without demand on Grantor, shall sell the Secured Property on the date and at the time and place designated in the notice of sale, in such order as Administrative Agent may determine (but subject to Grantor's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the Secured Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of time, date and place shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed in accordance with Utah Code Annotated § 57-1-28, conveying the Secured Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

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, Administrative Agent may bid for and acquire the Secured 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, Administrative Agent shall make settlement for the purchase price by crediting the Obligations of Grantor secured by this Security Instrument such credit bid amount. Administrative Agent, upon so acquiring the Secured Property, shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

(b) Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property, and Administrative Agent shall be entitled to recover in such proceeding all costs and expenses incident thereto.

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

(d) Grantor knowingly waives, to the fullest extent permitted by applicable law, if at all, the rights, protections and benefits afforded to Grantor under Utah Code Annotated §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(e) If Grantor, Grantor’s successor in interest, or any other person having a subordinate lien or encumbrance of record on the Secured Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Administrative Agent the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), whereupon Trustee shall record a notice of cancellation of the pending trustee’s sale.

**Section 9.3 Acceptance by Trustee.** Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law.

**Section 9.4 Trustee’s Fees and Expenses.** In no event shall Grantor be required to pay to Trustee any fees or compensation in excess of amounts permitted by Utah Code Annotated § 57-1-21.5.

**Section 9.5 Substitution of Trustee.** Administrative Agent, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Administrative Agent and duly acknowledged and recorded in the office of the recorder of the county or counties where the Land is situated, with a copy thereof being provided to the persons required by Utah Code Annotated § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers

and duties. Said instrument must contain the name of the original Grantor, Trustee and Administrative Agent hereunder, the book and page where this Security Instrument is recorded and the name and address of the new Trustee and all other information required by Utah Code Annotated § 57-1-22 or any successor statute. In compliance with Utah Code Annotated § 57-1-21.5, the Trustee shall not require the grantor reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

**Section 9.6 Request for Notice.** Pursuant to Utah Code Annotated § 57-1-26, Grantor requests that a copy of any notice of default and a copy of any notice of sale under this instrument be mailed to Grantor at the address set forth herein.

**Section 9.7 Integration.** PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, GRANTOR IS NOTIFIED THAT THIS SECURITY INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

**Section 9.8 Utah Uniform Assignment of Rents Act.** The provisions of Article 5 above are subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101 *et seq.* (the "Act"), and in the event of any conflict or inconsistency between the provisions of Article 5 and the provisions of the Act, the provisions of the Act shall control.

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SIGNATURE PAGE FOLLOWS





EXHIBIT A

Legal Description

551 EAST 1200 SOUTH, HEBER CITY, UTAH

BEGINNING AT A POINT WHICH IS NORTH 56.61 FEET AND EAST 23.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°00'39" WEST 333.25 FEET; THENCE EAST 375.16 FEET; THENCE SOUTH 00°01'42" EAST 346.54 FEET; THENCE SOUTH 89°43'55" WEST 357.17 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 23.61 FEET (CENTRAL ANGLE OF 90°11'19" AND CHORD OF NORTH 45°10'25" WEST 21.25 FEET); THENCE SOUTH 89°37'22" WEST 3.03 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### Permitted Encumbrances

Taxes for the year 2020 and subsequent years, not yet due and payable under Parcel No. 00-0021-0103.

The herein described Land is located within the boundaries of Heber City, Heber Valley Special Service District, Wasatch County Fire Protection Special Service District, Wasatch County Park and Recreation Special Service District No. 2, Central Utah Water Conservancy District, and is subject to any and all charges and assessments levied thereunder.

NOTE: As of the effective date of this policy, said charges and assessments are paid current.

Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

Claim, right, title or interest to water or water rights whether or not shown by the public records.

Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in that certain Declaration of Lookout at Ranch Landing Commercial Center recorded March 16, 2009 as Entry No. 345668 in Book 985 at Page 1057, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.

Correction Affidavit of Notice, dated March 25, 2009 and recorded March 25, 2009 as Entry No. 346049 in Book 986 at Page 699.

Amended September 17, 2014 as Entry No. 404560 in Book 1112 at Page 1755.

Rights of residents/tenants in possession under patient/residence agreements, with no rights to purchase and no right of first refusal.

Subject to the following matters disclosed on that certain survey prepared by Blew & Associates, having been certified under the date of December 13, 2019, as Job No. 19-6148, by Buckley D. Blew, a Professional Land Surveyor holding License No. 10175990: (affects Parcel 3)

Various utility lines and/or facilities lying outside of recorded easements