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Recorder, Salt Lake County, UT  
METRO NATIONAL TITLE  
BY: eCASH, DEPUTY - EF 52 P.

PREPARED BY AND WHEN  
RECORDED MAIL TO:  
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Charlotte, North Carolina 28202

Utah(Salt Lake County)  
Parcel ID No: 08-26-426-008; 08-26-427-001; 08-26-426-002;  
08-26-426-003 through 007; 08-24-476-002

**AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT,  
Fixture Filing, AND ASSIGNMENT OF LEASES AND RENTS**

Dated and effective as of November 9, 2012

made by

**GRANITE CONSTRUCTION COMPANY, a California corporation**  
Trustor

to

**METRO NATIONAL TITLE**  
Trustee

for the benefit of

**BANK OF AMERICA, N.A., as Collateral Agent**  
Collateral Agent

THIS INSTRUMENT COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES  
RELATED TO THE REAL ESTATE DESCRIBED HEREIN AND IS TO BE RECORDED IN  
THE DEED RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FIXTURE  
FILINGS FOR THE COUNTY OF SALT LAKE, UTAH. REFER TO PAGE TWO OF THIS  
INSTRUMENT FOR ADDITIONAL INFORMATION CONCERNING THE DEBTOR AND  
SECURED PARTY.

Utah (Salt Lake County)  
Project #30001  
W. Warm Springs Road/1000 Street, Salt Lake City, Utah

THIS INSTRUMENT IS A DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES AND RENTS OF BOTH REAL AND PERSONAL PROPERTY, INCLUDING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN, AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST OF REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE NAMES OF THE TRUSTOR (DEBTOR) AND THE TRUSTEE AND COLLATERAL AGENT (SECURED PARTY), THE MAILING ADDRESS OF THE TRUSTOR (DEBTOR), THE MAILING ADDRESS OF THE TRUSTEE AND COLLATERAL AGENT (SECURED PARTY), AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS OF COLLATERAL, ARE SET FORTH BELOW ON PAGE 2 AND IN SECTIONS 1.1 AND 8.1 OF THIS INSTRUMENT, RESPECTIVELY. THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS AND SECURES OBLIGATIONS CONTAINING PROVISIONS FOR CHANGES IN INTEREST RATES, EXTENSIONS OF TIME FOR PAYMENT AND OTHER MODIFICATIONS IN THE TERMS OF THE OBLIGATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THIS INSTRUMENT SHALL BE DEEMED TO BE AND SHALL BE ENFORCEABLE AS A DEED OF TRUST AND AS A SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING. THIS INSTRUMENT SECURES FUTURE ADVANCES MADE PURSUANT TO THE PROVISIONS HEREOF AND THE CREDIT AGREEMENT, INTERCREDITOR AGREEMENT AND NOTES AGREEMENTS REFERRED TO BELOW. THE ADDRESS AT WHICH COMMUNICATIONS TO THE SECURED CREDITORS MAY BE MAILED OR DELIVERED IS: C/O BANK OF AMERICA, N.A., AS COLLATERAL AGENT, 1455 MARKET STREET, MAIL CODE: CA5-701-05-19, SAN FRANCISCO, CALIFORNIA 94103, ATTENTION: BRIDGETT MANDUK, AGENCY MANAGEMENT.

**AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT,  
Fixture Filing, and Assignment of Leases and Rents  
(Utah)**

A POWER OF SALE HAS BEEN GRANTED IN THIS DEED OF TRUST. A POWER OF SALE MAY ALLOW THE COLLATERAL AGENT, UPON THE OCCURRENCE OF A DEFAULT BY THE TRUSTOR UNDER THIS DEED OF TRUST, TO CAUSE THE MORTGAGED PROPERTY TO BE SOLD BY THE TRUSTEE PURSUANT TO A NON-JUDICIAL FORECLOSURE SALE WITHOUT THE COMMENCEMENT OF ANY JUDICIAL ACTION OR OTHER COURT PROCEEDING FOR THE FORECLOSURE OF THIS DEED OF TRUST.

**THIS AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES AND RENTS** (hereinafter referred to as this "Deed of Trust" and sometimes herein referred to as "this instrument"), is entered into as of the 9 day of November, 2012, made by GRANITE CONSTRUCTION COMPANY, a California corporation, the grantor and trustor hereunder (herein called "Trustor"), whose address for all purposes hereunder is c/o Granite Construction Incorporated, 585 West Beach Street, Watsonville, California 95076, Attn: Jigisha Desai, Treasurer; to METRO NATIONAL TITLE, whose address for all purposes hereunder is 345 E. Broadway, Salt Lake City, Utah 84111; for the benefit of BANK OF AMERICA, N.A., a national banking association, acting in its capacity as collateral agent for each of the Secured Creditors (as defined in the Intercreditor Agreement referenced below), and the beneficiary hereunder (herein called "Collateral Agent", which term shall include each of its successors and assigns), whose address for all purposes hereunder is Mail Code: CA-5-701-05-19, 1455 Market Street, San Francisco, California 94103, Attention: Agency Management. Collateral Agent shall hold the interests and exercise the rights granted hereunder in trust as Collateral Agent for the benefit of and as security for the Secured Creditors, as more fully provided in the Intercreditor Agreement. This Deed of Trust secures the Secured Obligations (as defined below in Section 1.1) and any modifications, extensions and renewals of the Secured Obligations, it being the intention of the parties hereto that this Deed of Trust shall be deemed an open and continuing lien instrument to secure all such Secured Obligations now existing or hereafter arising regardless of the extinguishment and payment of any one or more obligations owed to the Secured Creditors. This Deed of Trust secures future advances made by the Secured Creditors to the Trustor or to any other Loan Party under the Credit Agreement, the Intercreditor Agreement, the other Loan Documents, the other Notes Documents and hereunder, and each future advance, whether or not evidenced by a note, and each note or other instrument evidencing the same, shall be secured hereby. All provisions of this Deed of Trust shall apply to each future advance and re-advance as well as to all other Secured Obligations secured hereby, whether or not evidenced by a note, and all such advances and re-advances and other Secured Obligations, and any modifications, extensions and renewals of the Secured Obligations shall have the same lien priority as if made on the date this Deed of Trust is recorded.

This Deed of Trust secures the Secured Obligations, and any modifications, extensions and renewals of the Secured Obligations, which shall be construed in all cases to consist of, among other obligations, the covenants of the Trustor or any other Loan Party set forth in, and

the amounts advanced to or for the account, use or benefit of the Trustor or any other Loan Party from time to time pursuant to the Loan Documents (as defined below) and the Notes Documents (as defined below), the aggregate amount of the Secured Obligations (as defined below) actually outstanding at any particular time being subject to fluctuations up or down due to further advances and re-advances of loan proceeds and/or future repayments of such loan proceeds from time to time over the term of such Secured Obligations and/or changes in the rate of interest charged in respect of Secured Obligations bearing interest at a floating rate (all of which advances, re-advances and repayments are hereby declared to be contemplated by the Trustor and the Collateral Agent at the time this Deed of Trust is executed).

Trustor executed and delivered to Bank Agent, on behalf of the Existing Lenders, a Deed of Trust, Security Agreement, Fixture Filing, and Assignment of Leases and Rents (the "Existing Deed of Trust") dated as of September 30, 2011 encumbering the Mortgaged Property, which Existing Deed of Trust was recorded on September 30, 2011 in Book 9954, Page 5509 of the real property records of Salt Lake County, Utah, pursuant to which Trustor granted to Bank Agent a security interest in the Mortgaged Property as required under that certain Credit Agreement dated as of June 22, 2010 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement"), among the Borrowers, Bank of America, N.A., as administrative agent, swing line lender and L/C issuer, and the lenders from time to time party thereto) to secure extensions of credit made or maintained under the Existing Credit Agreement and certain Secured Cash Management Agreements, Secured Hedge Agreements and Secured Card Related Products Agreements (each as defined in the Existing Credit Agreement).

Pursuant to that certain Amended and Restated Credit Agreement dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrowers, Bank of America, N.A., as administrative agent and collateral agent, the swing line lender and letter of credit issuer, and the lenders now or hereafter party thereto (the "Lenders"), the Lenders have agreed to amend and restate the Existing Credit Agreement and to continue to provide to the Borrowers a revolving credit facility with a letter of credit sublimit and swing line facility.

Certain additional extensions of credit may be made from time to time for the benefit of the Borrowers pursuant to certain Secured Cash Management Agreements, Secured Hedge Agreements and Secured Card Related Products Agreements (each as defined in the Credit Agreement).

Pursuant to that certain Note Purchase Agreement dated as of May 1, 2001 (as amended by the First Amendment thereto dated as of June 15, 2003 and the Second Amendment thereto dated as of the date hereof (the "Second Amendment to 2013 Notes Agreement") and as further amended, restated, supplemented or otherwise modified from time to time, the "2013 Notes Agreement"), among the Company and the purchasers named therein, the Company has issued and sold to certain Noteholders 6.96% Senior Notes due May 1, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the "2013 Notes"), and pursuant to that certain Note Purchase Agreement dated as of December 12, 2007 (as amended by the First Amendment thereto dated as of the date hereof (the "First Amendment to 2019 Notes

Agreement") and as further amended, restated, supplemented or otherwise modified from time to time, the "2019 Notes Agreement"), among the Company and the purchasers named therein, the Company has issued and sold to certain Noteholders 6.11% Series 2007-A Senior Notes due December 12, 2019 (together with any additional notes issued pursuant to the 2019 Notes Agreement and as each may be amended, restated, supplemented or otherwise modified from time to time, the "2019 Notes").

Pursuant to an Intercreditor and Collateral Agency Agreement dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among the Bank Agent (on behalf of the Secured Bank Creditors), the holders of the 2013 Notes, the holders of the 2019 Notes, the Collateral Agent and acknowledged by the Loan Parties, the parties thereto have agreed that the Secured Obligations shall be secured under this Deed of Trust on a pari passu basis and that the Collateral Agent shall act on behalf of the Secured Creditors regarding the Collateral.

It is a condition precedent to the Lenders' obligation to amend and restate the Existing Credit Agreement, to the Secured Bank Creditors' obligations to make and maintain such extensions of credit, to the obligation of the holders of the 2013 Notes to enter into the Second Amendment to the 2013 Notes Agreement and to the obligation of the holders of the 2019 Notes to enter into the First Amendment to the 2019 Notes Agreement that the Trustor shall have executed and delivered this Deed of Trust to the Collateral Agent.

It is a condition precedent, among others, to the effectiveness of the Credit Agreement, the Second Amendment to 2013 Notes Agreement and the First Amendment to 2019 Notes Agreement that Trustor amend and restate the Existing Deed of Trust so that, from and after the date hereof, this Deed of Trust shall supersede and replace the Existing Deed of Trust in its entirety, and shall secure all of the Secured Obligations (as defined hereinbelow).

#### **WITNESSETH:**

#### **ARTICLE I**

#### **DEFINITIONS**

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

**Assignment:** The assignment and delivery to Collateral Agent as security for the payment and performance of the Secured Obligations of all of the rights, titles, interests and estates of Trustor in and to all of the following: (a) the Leases, (b) the Rents, and (c) the Fixtures.

**Bankruptcy Code:** The Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, as the same may be amended from time to time.

**Buildings:** Any and all buildings, parking structures, utility sheds, workrooms, air conditioning towers, open parking areas, and other structures or improvements, and any and all

additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

**Collateral Agent:** Bank of America, N.A., as Collateral Agent for the Secured Creditors, and its successors and assigns.

**Commitments:** The commitments by the Lenders to make the Loans as set forth in the Credit Agreement.

**Credit Agreement:** The Amended and Restated Credit Agreement dated as of October 11, 2012, among the Granite Construction Company, Granite Construction Incorporated, GILC Incorporated, the Lenders, and the Bank Agent, which agreement is incorporated by reference in this Deed of Trust and which provides for the making of the Loans as contemplated therein in an original principal amount not to exceed Two Hundred Fifty Million and No/100 Dollars (\$250,000,000.00) or so much thereby as may be previously or hereafter disbursed (as such agreement may be amended, modified, extended, renewed, restated and/or supplemented and/or amended and restated from time to time), provided, however, that references herein to sections or provisions of, schedules or exhibits to, or capitalized terms or phrases contained in, the Credit Agreement shall have the respective meanings defined or provided in the Credit Agreement as it exists on the date hereof, and as it may be amended, modified, extended, renewed, restated, supplemented and/or amended and restated from time to time.

**Default:** As defined in the Intercreditor Agreement.

**Default Rate:** As defined in the Credit Agreement or any of the applicable Notes.

**Environmental Law or Environmental Laws:** Any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials, air emissions and discharges to waste or public systems, insofar as they relate to the Mortgaged Property.

**Event of Default:** As defined in the Intercreditor Agreement.

**Exhibits:** The exhibits attached hereto and incorporated herein by this reference.

**Expenses:** All out-of-pocket costs and expenses (including reasonable fees and expenses of counsel and court costs) incurred and all advances made, by the Collateral Agent and/or Trustee, as applicable, or any trustee, co-trustee or agent of the Collateral Agent and/or Trustee pursuant to the provisions of, or in furtherance of the Collateral Agent's and/or Trustee's duties or rights under, the Loan Documents and the Notes Documents, including, without limitation, expenses of retaking, holding, preparing for sale or lease, selling and/or leasing the Mortgaged Property, but excluding any of the same specifically described in the Loan Documents and the Notes Documents as being the responsibility of the Collateral Agent.

**Financing Statement:** As defined in Section 8.5 below.

**Fixtures:** Fixtures (as defined in the UCC) now owned or the ownership of which is hereafter acquired by Trustor, and which are located on or attached to the Land.

**Governmental Authority:** Any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**Trustor:** The above-defined Trustor and any and all subsequent owners of the Mortgaged Property.

**Guarantors:** As defined in the Intercreditor Agreement.

**Hazardous Material:** means, collectively, as of any date: (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCB's); (b) any chemicals or other materials or substances which as of such date are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," "infectious wastes," "pollutants" or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which or use of which as of such date is prohibited, limited or regulated under any Environmental Law.

**Impositions:** All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property; and all other taxes, standby fees, levies, claims, charges and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the Rents or the ownership, use, occupancy or enjoyment thereof, and any interest, costs or penalties with respect to any of the foregoing.

**Land:** The real estate owned in fee by the Trustor and described in Exhibit "A" attached hereto, and all rights, titles and interests appurtenant thereto.

**Laws:** means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

**Leases:** Any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) through which Trustor directly or indirectly grants a possessory interest in and to, or the right to occupy and use, all or any portion of the Mortgaged

Property that constitutes real property together with any renewals or extensions thereof and all leases, subleases, licenses, concessions or other agreements in substitution therefor.

**Legal Requirements:** (i) Any and all Laws in any way applicable to Trustor or the Mortgaged Property, including, without limitation, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) Trustor's presently or subsequently effective Certificate of Incorporation and Bylaws or other organizational documents, any and all Leases and other contracts (written or oral) of any nature by which the Trustor or the Mortgaged Property may be bound, and (iv) any and all restrictions, reservations, conditions, easements or other covenants or agreements of record affecting the Mortgaged Property.

**Lien:** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

**Loan:** As defined in the Credit Agreement, including, without limitation, any loan made by any Lender to the Trustor under Article II of the Credit Agreement.

**Loan Documents:** As defined in the Intercreditor Agreement.

**Loan Party:** As defined in the Intercreditor Agreement, and such term shall specifically include Trustor, each Guarantor and Borrower (as defined in the Intercreditor Agreement).

**Material Adverse Effect:** Shall mean a "Material Adverse Effect", as defined in the Credit Agreement, a "Material Adverse Effect", as defined in the 2013 Notes Agreement or a "Material Adverse Effect", as defined in the 2019 Note Agreement.

**Mechanic's Liens:** As defined in Section 4.4 hereof.

**Mortgaged Property or Mortgaged Properties:** The Land, Buildings, Fixtures, Leases and Rents together with:

(i) all rights, privileges, tenements, licenses, hereditaments, rights-of-way, easements, utility use, air rights, appendages, division rights, and appurtenances in any way appertaining thereto, and all right, title, interest or estate of Trustor in and to any streets, ways, alleys, roadbeds, inclines, tunnels, culverts, strips or gores of land adjoining or serving the Land or any part thereof;

(ii) all betterments, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(iii) all of Trustor's right, title and interest in and to any awards, remuneration, proceeds, settlements or compensation hereafter to be made by any insurer, governmental authority or other person or entity as a result of the damage, destruction, loss, theft,

taking by eminent domain or other involuntary conversion of whatever nature (whether occurring prior to or after the date of this Deed of Trust) of any of the Land, Buildings, Fixtures, Leases, or Rents, including those for any condemnation and vacation of, or change of grade in, any streets affecting the Land or the Buildings;

(iv) any and all other security and collateral of any nature whatsoever, now or hereafter given by Trustor to secure the payment and performance of the Secured Obligations;

(v) all water and water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant) in or hereafter relating to or used in connection with the Land, including, without limitation, any surface water management permits, any consumption use permits or general permits;

(vi) any right, title, interest or estate hereafter acquired by Trustor in any of the foregoing and in and to the Land, Buildings, Fixtures, Leases and Rents. To the extent permitted by law, all of the Fixtures are to be deemed and held to be a part of and affixed to the Land;

(vii) all of Trustor's right, title and interest in and to any and all funds deposited by or on behalf of Trustor with any city, county, public body or agency, irrigation, sewer or water district or company, gas or electric company, telephone company, and any other body or agency for or in connection with the installation or service, or to secure the installation or service, of any utility pertaining to the Land, Buildings, Fixtures and all betterments, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto;

(viii) all of Trustor's right, title and interest in and to (i) all oil, gas and other minerals located in, on or under the Land, (ii) all oil, gas or mineral leases, royalty agreements and other contracts that have been or in the future are entered into with respect to the Land or with respect to any oil, gas or other minerals located in, on or under the Land ("Mineral Leases"), and (iii) all rents, profits, royalties and income at any time arising from the Mineral Leases or from the sale of oil, gas or other minerals located in, on or under the Land; and

(ix) all proceeds and products of the foregoing. As used in this Deed of Trust, the term "Mortgaged Property", including each component thereof, shall be expressly interpreted as meaning all or, where the context permits or requires, any portion of the above, and all or, where the context permits or requires, any interest of Trustor therein.

**Notes:** Each Note as defined in the Intercreditor Agreement, and any notes issued in replacement, substitution, renewal or refinance of the same.

**Other Mortgages and Deeds of Trust:** As defined in Section 10.31 hereof.

**Parcel:** A single parcel of real property identified as a unit in Exhibit "A" hereto. For purposes of legal description and real property title records, a Parcel may be comprised of more than one lot.

**Permitted Encumbrances:** Those title exceptions which specifically relate to the Mortgaged Property and are shown in Schedule B, Section II on Metro National Title Insurance Company Policy UT2040-46-24075-2-2011.72307-84607950 submitted to and approved by Collateral Agent prior to the date hereof.

**Permitted Liens:** Liens permitted to exist under Section 7.01 of the Credit Agreement, , Section 10.5 of the 2013 Notes Agreement and the Section 10.5 of the 2019 Notes Agreement and any analogous covenant under any additional Notes Documents.

**Rents:** All of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable and to become due or payable to Trustor by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying any portion or portions of the Mortgaged Property.

**Secured Creditors:** Shall have the meaning provided in the Intercreditor Agreement.

**Secured Obligations:** Shall have the meaning provided in the Intercreditor Agreement.

**State:** The State in which the Land is situated.

**Subsidiary:** Subsidiary of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Trustor, Borrower or any other Loan Party.

**Swap Contract:** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

**Termination Date:** Shall have the meaning provided in the Intercreditor Agreement

**Threshold Amount:** As defined in Section 4.8.

**Transfer:** As defined in Section 5.3 below.

**Trustee:** Metro National Title, its successors and assigns, and any successor Trustee hereunder.

**UCC:** The Uniform Commercial Code as adopted in the State.

**Work:** As defined in Section 4.7 hereof.

**1.2 Defined Terms:** Any capitalized term used herein but not otherwise defined herein, shall have the same respective meanings given to them in the Intercreditor Agreement as it existed on the date hereof, and as it may be amended, modified, extended, renewed, restated, supplemented and/or amended and restated from time to time.

## ARTICLE II

### GRANT

**2.1 Grant:** NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Trustor, and to secure the Trustor's and the other Loan Parties' full and faithful performance and satisfaction of the Secured Obligations, Trustor, intending to be legally bound hereby, has GIVEN, ALIENATED, REMISED, GRANTED, BARGAINED, SOLD, RELEASED, CONVEYED, ASSIGNED, TRANSFERRED, WARRANTED, AND SET OVER, and by these presents does GIVE, ALIENATE, REMISE, GRANT, BARGAIN, SELL, RELEASE, CONVEY, ASSIGN, TRANSFER, WARRANT, SET OVER AND GRANT unto Trustee, its successors and its assigns forever, in trust, for the benefit of Collateral Agent, with POWER OF SALE and right to entry for the benefit of Collateral Agent, all of Trustor's right, title and interest in, to and under the Mortgaged Property, subject only to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property and (except as otherwise set forth herein) all parts, rights, members and appurtenances thereof for the use, benefit and behoof of the Trustee and its successors and assigns in trust, for the benefit of Collateral Agent, in fee simple forever, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State, to the extent permitted by the applicable Legal Requirements of such State; and Trustor hereby absolutely and irrevocably assigns to Collateral Agent the Leases and Rents for the purposes and upon the terms and conditions herein set forth; and Trustor does hereby bind itself, its successors and assigns to FOREVER WARRANT AND DEFEND the title to the Mortgaged Property and every part thereof, subject only to the Permitted Encumbrances, unto Trustee, in trust, for the benefit of Collateral Agent, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Trustor hereby acknowledges and agrees that the security interests in the Mortgaged Property granted under the Existing Deed of Trust are hereby assigned to the Collateral Agent.

**2.2 Defeasance and Reconveyance:** If all of the monetary Secured Obligations shall have been paid in full, and all the other Secured Obligations shall have been performed and discharged in full, and all of the Commitments shall have been terminated in whole, and the Termination Date has occurred, and provided that there exists no pending or threatened unsatisfied obligation pursuant to the environmental indemnification in Section 10.04 of the Credit Agreement, Section 22.9 of the 2013 Notes Agreement or Section 22.9 of the 2019 Note Agreement, or if Trustor is then entitled to obtain a release of the Mortgaged Property pursuant to the Credit Agreement and the Notes Documents, then with respect to the Mortgaged Property, the liens, security interests, estates and rights granted by this Deed of Trust shall terminate; whereupon surrender to Trustee of this Deed of Trust for cancellation (which shall be made promptly upon request by Trustor), if required by applicable Laws, Collateral Agent shall execute a request for reconveyance and thereafter the Trustee shall reconvey, without warranty, the Mortgaged Property, or that portion thereof then held hereunder.

To the extent permitted by applicable Laws, any reconveyance delivered hereunder may describe the grantee as "the person or persons legally entitled thereto." Neither Collateral Agent (nor Trustee, if applicable) shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. Each reconveyance of Mortgaged Property or portions thereof shall also operate as a reassignment of all future rents, issues and profits appertaining to the Parcel(s) or portions thereof covered by such reconveyance to the person or persons legally entitled thereto, unless its reconveyance expressly provides otherwise.

**2.3 Credit Agreement:** The Credit Agreement contemplates the making of the Loans, and in connection therewith there may be repayments and readvances of principal from time to time. It is expressly agreed that the outstanding principal balance of the Secured Obligations evidenced by the Loans governed by the Credit Agreement may, from time to time, be reduced to a zero balance without such repayment operating to extinguish and release the lien, security titles and security interests created by this Deed of Trust. This Deed of Trust shall remain in full force and effect as to any subsequent future advances made after the zero balance without loss of priority until the Secured Obligations are paid in full and fully performed and satisfied, all of the Commitments shall have been terminated in whole, the Termination Date has occurred, and the Credit Agreement and all other agreements between the Trustor and the Secured Creditors for further advances under the Credit Agreement have been terminated. Trustor waives the operation of any applicable statute, law or regulation having a contrary effect.

## **ARTICLE III**

### **WARRANTIES AND REPRESENTATIONS**

For the consideration aforesaid and to protect the security of this Deed of Trust, Trustor hereby unconditionally warrants and represents to Collateral Agent as follows:

**3.1 Title to Mortgaged Property and Lien of this Instrument:** Trustor has good and record and marketable title in fee simple to the Land, Buildings and Fixtures and good title to the Leases, in all cases free and clear of any Liens and claims of Liens except the Permitted Liens. This Deed of Trust constitutes a valid lien, deed of trust, mortgage or deed to secure debt on the Trustor's fee interests in the Land, the Buildings and the Fixtures, and a valid security

agreement which creates a valid security interest in and to, and a valid assignment of, the Fixtures, Leases and Rents, all in accordance with the terms hereof, in each case subject only to the Permitted Liens.

**3.2 [Intentionally Omitted]**

**3.3 [Intentionally Omitted]**

**3.4 [Intentionally Omitted]**

**3.5 Wetlands:** Except as described in any environmental assessment or report delivered by or on behalf of Trustor to Collateral Agent prior to or on the date hereof, to the best of Trustor's knowledge, there are no material wetlands, tidelands or swamp and overflow lands on the Mortgaged Property.

**3.6 Environmental Matters:** Except as described in any environmental site assessment or report delivered by or on behalf of Trustor or Borrower to Collateral Agent prior to or on the date hereof, or as otherwise permitted by the Credit Agreement, the 2013 Notes Agreement and the 2019 Notes Agreement, to the best of Trustor's knowledge, the Trustor and each Subsidiary is in compliance with all applicable Environmental Laws and has been issued and will maintain and keep current all required federal, state and local permits, licenses, certificates and approvals as may from time to time be necessary or appropriate in connection with the application of any Environmental Laws to any portion of the Mortgaged Property, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. Except as described in any environmental site assessment or report delivered by or on behalf of Trustor or Borrower to Collateral Agent, or as otherwise permitted by the Credit Agreement, to the best of Trustor's knowledge, neither the Trustor nor any Subsidiary, nor any previous owner or operator of the Mortgaged Property or any other Person, (a) has used or is using the Mortgaged Property in material violation of any Environmental Law; (b) has managed, generated, stored, released, discharged, treated, or disposed of any Hazardous Material on any portion of the Mortgaged Property in material violation of any Environmental Law, or (c) has transferred or caused to be transferred any Hazardous Material from the Mortgaged Property to any other location in material violation of any Environmental Law, except where the taking of any such actions could not reasonably be expected to have a Material Adverse Effect. Except for Hazardous Materials necessary for the routine maintenance of the Mortgaged Property and as used in the ordinary course of the Trustor's or any Subsidiary's business, which Hazardous Material shall be used in accordance with all applicable Environmental Laws, the Trustor covenants that it shall not permit any Hazardous Materials to be brought on to the Mortgaged Property, or if so brought or found located thereon, shall be immediately removed, with proper disposal, and all environmental cleanup requirements shall be diligently undertaken pursuant to all Environmental Laws. Neither the Trustor nor any Subsidiary has been notified of any pending or threatened action, suit, proceeding or investigation, and neither the Trustor nor any Subsidiary is aware of any facts, which (i) calls into question, or could reasonably be expected to call into question, compliance by the Trustor or any Subsidiary with any Environmental Laws, (ii) seeks, or could reasonably be expected to form the basis of a meritorious proceeding to seek, to suspend, revoke or terminate any license, permit or approval necessary for the operations of the Trustor's or Subsidiary's business or facilities or for the generation, handling, storage,

treatment or disposal of any Hazardous Materials, or (iii) seeks to cause, or could reasonably be expected to form the basis of a meritorious proceeding to cause, any property of the Trustor or any Subsidiary to be subject to any restrictions on ownership, use, occupancy or transferability under any Environmental Laws, except to the extent that any of the foregoing could reasonably be expected to have a Material Adverse Effect.

**3.7 Property Condition:** Except as otherwise previously disclosed to the Collateral Agent in writing, (a) the Land is not part of a larger tract of land owned by Trustor or any Subsidiary, is not otherwise included under any unity of title or similar covenant with other land not owned by Trustor, and constitutes a separate tax lot or lots with a separate tax assessment or assessments for the Land and Buildings, independent of those for any other property or improvements; (b) to the best of Trustor's knowledge the Mortgaged Property complies in all material respects with all Legal Requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property; (c) to the best of Trustor's knowledge the Land and Buildings comply in all material respects with all Legal Requirements regarding access and facilities for handicapped or disabled persons; (d) Trustor has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any material development rights, air rights or other similar rights, privileges or attributes with respect to the Mortgaged Property, including those arising under any zoning or property use ordinance or other Legal Requirements; (e) all utility services necessary for the use of the Mortgaged Property and the operation thereof for their intended purpose are satisfactory for the current use of the Mortgaged Property; (f) except as otherwise provided for in the Loan Documents and the Notes Documents, the Trustor has made no material contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Mortgaged Property; (g) to the best of Trustor's knowledge the current and anticipated use of the Mortgaged Property complies in all material respects with all applicable zoning ordinances, regulations and restrictive covenants affecting the Mortgaged Property without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Governmental Authority having jurisdiction have been satisfied, and no material violation of any Legal Requirement or regulation exists with respect thereto. Trustor has received no notice or claim and has no knowledge that the Mortgaged Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance in all material respects with any Law.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

Trustor hereby unconditionally covenants and agrees with Collateral Agent as follows:

**4.1 Payment and Performance:** Trustor will satisfy and perform the Secured Obligations, including the payment of any sums required thereby, in the manner required under this Deed of Trust, the Credit Agreement, the Intercreditor Agreement, the other Loan Documents and the Notes Documents.

#### **4.2 Compliance with Legal Requirements:**

(a) Trustor will promptly and faithfully comply with, conform to and obey respects all Legal Requirements whether or not the same shall necessitate structural changes in or improvements to, or interfere with the use or enjoyment of, the Mortgaged Property; except where the failure to so comply, conform or obey could not reasonably be expected to have a Material Adverse Effect; and provided however, Trustor shall have the right in good faith to contest any such Legal Requirement only so long as (i) the Mortgaged Property affected thereby shall be in no danger of being sold, forfeited or lost pursuant to such contest and (ii) adequate reserves have been set aside by Trustor, in accordance with GAAP, to pay the cost necessary to comply with such Legal Requirement in the event Trustor fails to prevail in such contest. Trustor will procure and continuously maintain in full force and effect all material permits, licenses and other authorizations required for construction of any improvements, for any permitted use of the Mortgaged Property or any part thereof then being made and for the lawful and proper installation, operation and maintenance of the Mortgaged Property. Trustor will not maintain any nuisance on the Mortgaged Property.

(b) Collateral Agent and any other person or entity designated by Collateral Agent, including but not limited to any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon any of the Mortgaged Property during normal business hours or at any time in the event of an emergency (including without limitation in connection with any securitization, participation or transfer of any of the Loan Documents or any of the Note Documents or in connection with the exercise of any remedies set forth in this Deed of Trust, the other Loan Documents or the other Notes Documents) to assess any and all aspects of the environmental condition of any of the Mortgaged Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Collateral Agent's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Trustor shall cooperate with and provide access to Collateral Agent and any such person or entity designated by Collateral Agent. Any such assessment and investigation shall be at Trustor's sole cost and expense if an Event of Default has occurred and is continuing; otherwise, any such assessment and investigation shall be at the sole expense of the Secured Parties.

**4.3 Lien Status:** Trustor will defend and protect the lien, security title and security interest status of this Deed of Trust subject only to the Permitted Liens. If Trustor shall fail to satisfy its obligations under this Section 4.3, Collateral Agent shall have the rights granted by Section 10.7 hereof to take such actions as Collateral Agent deems necessary to defend and protect the lien, security title and security interest status of this Deed of Trust, subject as aforesaid. Trustor shall reimburse Collateral Agent for any losses or Expenses reasonably incurred by Collateral Agent if an interest in the Mortgaged Property, other than as permitted hereunder, is claimed by others.

**4.4 Payment of Impositions and Other Amounts:**

(a) Trustor will duly pay and discharge, or cause to be paid and discharged, the Impositions as and when required under Section 6.04 of the Credit Agreement, Section 9.4 of the 2013 Notes Agreement, Section 9.4 of the 2019 Notes Agreement and any analogous covenant under any Additional Notes Documents.

(b) Notwithstanding the foregoing subsection (a), but subject to subsection (c) below, Trustor (i) shall pay all lawful claims and demands of mechanics, materialmen, laborers and others with respect to the Mortgaged Property before the earlier of (y) the day any fine, penalty, interest or cost may be added thereto or imposed thereon or (z) the day any Lien or claim of Lien may be filed for the non-payment thereof; and (ii) shall not create or suffer or permit any mechanic's liens or claims of lien, materialmen's liens or claims of lien, or other liens or claims for lien made by parties claiming to have provided labor or materials with respect to the Mortgaged Property (which liens and claims of lien are herein referred to as "Mechanic's Liens") to attach to or be filed against the Mortgaged Property, whether such Mechanic's Liens are inferior or superior to the lien of this Deed of Trust, except to the extent permitted by subsection (c) below.

(c) Notwithstanding the foregoing prohibition against Mechanic's Liens against the Mortgaged Property, Trustor, or any party obligated to Trustor to do so, may in good faith and with reasonable diligence by appropriate proceedings contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the affected Parcels and any part thereof, or any interest therein, to satisfy any such Mechanic's Lien; (ii) that, within twenty (20) days after Trustor has been notified of the filing of any Mechanic's Lien, any affidavit claiming a Mechanic's Lien or any notice of intention to file a Mechanic's Lien, Trustor shall have notified Collateral Agent in writing of Trustor's intention to contest such Mechanic's Lien or to cause such other party to contest such Mechanic's Lien; (iii) that to the extent required by applicable Legal Requirements in connection with such contest, Trustor shall deposit with the court or other applicable Person such bonds or other security as is so required; and (iv) that adequate reserves have been set aside by Trustor, in accordance with GAAP, to pay in full such Mechanic's Lien and all interest which may be due in connection therewith.

**4.5 Repair:** Trustor will maintain and preserve, or cause to be maintained and preserved, the Mortgaged Property as required under Section 6.06 of the Credit Agreement, Section 9.3 of the 2013 Notes Agreement, Section 9.3 of the 2019 Notes Agreement and any analogous covenant under any additional Notes Documents.

**4.6 Insurance:** Trustor will maintain or cause to be maintained upon and relating to the Mortgaged Property policies of liability and casualty insurance in amounts and otherwise in accordance with Section 6.07 of the Credit Agreement Section 9.2 of the 2013 Notes Agreement, Section 9.2 of the 2019 Notes Agreement and any analogous covenant under any additional Notes Documents.

**4.7 Restoration Following Casualty:** If any acts or occurrences of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, shall result in damage to or loss or destruction of the Mortgaged Property, Trustor will give prompt notice thereof to Collateral Agent. If (a) there are sufficient insurance proceeds or sufficient other amounts available to Trustor to fully pay for the restoration, repair or replacement (hereinafter called "Work") of the Mortgaged Property and the projected appraised value of the Mortgaged Property upon completion of the Work is equal to or greater than the appraised value of the Mortgaged Property immediately prior to the casualty, (b) no Event of Default or monetary Default shall have occurred and be continuing, (c) neither Trustor nor any tenant leasing the Mortgaged Property has elected to terminate such tenant's Lease of the Mortgaged Property pursuant to the terms thereof and confirmation of the same has been delivered to Collateral Agent, (d) all parties having operating, management or franchise interests in, and arrangements concerning, the Mortgaged Property agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration or repair, (e) the Trustor presents sufficient evidence to the Collateral Agent that the damaged property will be restored prior to the Termination Date, and (f) the Collateral Agent will not incur any liability to any other person as a result of such use or release of insurance proceeds, then Trustor will so certify to Collateral Agent, and will certify that it will, and shall, within 30 days following reaching an agreement with the insurer under the casualty insurance policy relating thereto with regard to the disbursement of insurance proceeds commence and thereafter continue diligently to completion, to restore, repair, replace and rebuild such Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction with such alterations, modifications and/or betterments reasonably deemed necessary or desirable by Trustor in its business judgment. If the conditions set forth in such certificate of Trustor are not satisfied with respect to a casualty, or if Trustor fails to deliver such a certificate to Collateral Agent within 180 days following the casualty, or if Trustor shall otherwise fail to restore, repair, replace or rebuild such Mortgaged Property as provided herein, the insurance proceeds related thereto shall be promptly paid to Collateral Agent and applied to the Secured Obligations in accordance with the Intercreditor Agreement.

**4.8 Application of Proceeds:** Insurance proceeds to be used for Work, which proceeds are equal to or greater than \$1,000,000 (the "Threshold Amount") on a per occurrence or claim basis, initially shall be paid to Collateral Agent, and shall be paid out by Collateral Agent to Trustor from time to time as the Work progresses, subject to the following conditions: (a) prior to the commencement thereof (other than Work to be performed on an emergency basis to protect the Mortgaged Property or prevent interference therewith), an architect or engineer shall be retained by Trustor (at Trustor's expense) and charged with the supervision of the Work; (b) each request for payment by Trustor shall be made on ten (10) days prior notice to Collateral Agent and shall be accompanied by a certificate by an executive officer of Trustor, stating that: (i) all of the Work completed has been completed in substantial compliance with the plans and specifications therefor; (ii) the sum requested is justly required to reimburse Trustor for payments by Trustor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work; and (iii) when added to all sums previously paid out by Trustor, the sum requested does not exceed the value of the Work completed to the date of such certificate; (c) the amount of insurance proceeds remaining in the hands of Collateral Agent or remaining to be disbursed by the applicable insurance company, plus any further reserves agreed to be maintained by Trustor in conformity

with GAAP in connection with the Work, will be sufficient to complete the Work; (d) each request shall be accompanied by certification by an executive officer of Trustor or copies of waivers of Lien reasonably satisfactory in form and substance to Collateral Agent covering that part of the Work for which payment or reimbursement is being requested; provided, however, that in the event it is customary State practice not to grant such waivers prior to the making of such payments, Trustor shall have obtained affidavits from the parties requesting such payment (i) stating the amount then due and (ii) promising the delivery of the waiver upon the making of the payment; (e) an Event of Default or a monetary Default has not occurred and is not continuing since the hazard, casualty or contingency giving rise to payment of the insurance proceeds occurred; and (f) in the case of the request for the final disbursement, such request is accompanied by a copy of any certificates of occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful. Insurance proceeds to be used for Work, which proceeds are less than the Threshold Amount on a per occurrence or claim basis, initially shall be paid to Trustor and shall be used by Trustor to perform such Work in accordance with its certificate delivered pursuant to Section 4.7, with any excess thereof used to repay the Secured Obligations in accordance with the Intercreditor Agreement. In the event Trustor elects to restore, repair, replace or rebuild the Mortgaged Property and subsequently fails to comply with any of the conditions set forth herein prior to full disbursement of insurance proceeds, any proceeds remaining to be disbursed, whether held by Trustor, Collateral Agent or an insurance company, shall be paid to Collateral Agent and applied to the Secured Obligations in accordance with the Intercreditor Agreement.

**4.9     Inspection:** Trustor will permit Trustee, Collateral Agent, any of the Lenders and any of their agents, representatives and employees, upon reasonable advance notice to Trustor to inspect the Mortgaged Property at any reasonable time. Neither Trustee, nor Collateral Agent, nor any of the Lenders shall have any duty or responsibility to make or perform any inspections or assessments of the Mortgaged Property, and the making of any inspection or assessment by Trustee, Collateral Agent or any of the Lenders shall not expose any of said parties to any liability or responsibility to Trustor or any third party, including without limitation any disclosure obligation, concerning or with respect to the condition of the Mortgaged Property or any other aspect thereof.

**4.10    Leases:**

(a) Trustor shall promptly and fully keep, observe and perform, or cause to be kept, observed and performed, all of the material terms, covenants, provisions and agreements imposed upon or assumed by Trustor under any Leases, now or hereafter in effect, including any amendments or supplements to such Leases covering any part of the Mortgaged Property that is affected by the terms, covenants, provisions and agreements imposed upon or assumed by Trustor in such Leases and Trustor will not do or fail to do, or permit or fail to permit to be done, any act or thing, the doing or omission of which will give any party a right to terminate any of such Leases or, in the case of any tenant, to abate the rental or other material payment due thereunder;

(b) If Trustor shall, in any manner, fail to comply with subsection (a) above, Trustor agrees that Collateral Agent may (but shall not be obligated to) take, upon ten (10) days' written notice to Trustor (or upon lesser notice, or without notice, if Collateral

Agent reasonably deems that the same is required to protect its interest in the Mortgaged Property), any action which Collateral Agent shall reasonably deem necessary or desirable to keep, observe and perform or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Mortgaged Property and take all action thereon as may be necessary therefor, or to prevent or cure any default by Trustor in the performance of or compliance with any of Trustor's covenants or obligations under said Leases. Collateral Agent may rely on any notice of default received from any tenant unless, in connection with any such default or alleged default Trustor in good faith notifies Collateral Agent of Trustor's election to contest such default by appropriate procedures and diligently pursues such contest. Trustor shall promptly deliver to Collateral Agent a copy of any notice relating to defaults received from any tenant that is a party, or the trustee, receiver or successor for or to a party, to any of said Leases. Collateral Agent may expend such sums of money as are reasonable and necessary for any such purposes, and Trustor hereby agrees to pay to Collateral Agent, immediately upon demand, all sums so expended by Collateral Agent, together with interest thereon from the date of such payment at the Default Rate, and until so paid by Trustor, all sums so expended by Collateral Agent and the interest thereon shall be added to the Secured Obligations secured by the lien and legal operation and effect of this Deed of Trust; and

(c) Trustor will not, without the prior written consent of the Collateral Agent, which shall not be unreasonably withheld, conditioned or delayed unless there exists a Default, amend, modify, terminate or cancel any Lease in such a manner as would have a Material Adverse Effect, except as may otherwise be permitted under the Credit Agreement, the Intercreditor Agreement and the Notes Documents.

#### 4.11 [Intentionally Omitted]

**4.12 Taxes:** Trustor shall pay, together with interest, fines, and penalties, if any, any documentary stamp, recording, transfer, mortgage, intangibles (including without limitation all recurring intangible taxes) or other taxes or fees whatsoever due under the Laws of the State in connection with the making, execution, delivery, filing of record, recordation, assignment, release, or discharge of any of the Loan Documents or any of the Notes Documents or in connection with any advances made thereunder. This obligation shall survive the repayment of the Secured Obligations and shall continue for so long as Collateral Agent could be assessed for such taxes or fees, or for penalties or interest with respect to such taxes or fees.

#### 4.13 [Intentionally Omitted]

#### 4.14 [Intentionally Omitted]

**4.15 Estoppel Certificates:** Trustor, upon request of Collateral Agent, shall, from time to time, certify to the best of its knowledge to Collateral Agent or to any permitted assignee of this Deed of Trust, by an instrument in form satisfactory to Collateral Agent or such assignee, in its reasonable discretion, duly acknowledged, inter alia, the amount then owing under the Loan Documents and the Notes Documents and the date through which interest thereon has been paid, and whether any offsets, counterclaims, credits, or defenses exist against payment thereof

or performance of any Secured Obligation of Trustor under the Loan Documents, the Notes Documents or this Deed of Trust, within ten (10) days of such request. Collateral Agent and any permitted assignee of this Deed of Trust shall have the right to rely on any such certification.

**4.16 Creation and Recordation of Additions and Betterments:** Trustor shall arrange for timely recording or filing, as required, of all documents having to do with additions to or betterments of any portion of the Mortgaged Property, and the covenants and agreements set forth in this Deed of Trust shall apply to all such additions and betterments.

**4.17 Consents:** Trustor will obtain and maintain the consent or approval of any Person whose consent or approval is required to the granting of a Lien on any interest in the Mortgaged Property to the Collateral Agent.

**4.18 [Intentionally Omitted]**

**4.19 [Intentionally Omitted]**

**4.20 Change of Name or Address:** Trustor shall give written notice to Collateral Agent of any change in Trustor's name or address as required under the Intercreditor Agreement, any other Loan Documents or any other Notes Documents, and shall promptly execute (and acknowledge, as necessary) all documents and agreements reasonably required by Collateral Agent or the Secured Creditors to confirm or maintain the security interests granted herein, in the other Loan Documents or in the other Notes Documents.

**4.21 [Intentionally Omitted]**

**4.22 Notice of and Response to Environmental Complaint:** Trustor shall give to the Collateral Agent prompt written notice and true, accurate and complete copies of any complaint, order, directive, claim, citation or notice by any governmental authority or any Person to Trustor (or to any other Loan Party, of which Trustor has actual knowledge) relating to any (a) material violation or alleged violation by the Trustor or any tenant of the Mortgaged Property of any Environmental Law; (b) release or threatened release by or on behalf of the Trustor or any tenant or by any person, handling, transporting or disposing of any Hazardous Material on behalf of Trustor or any such tenant or at any facility or property owned or leased or operated by Trustor or any tenant, of any Hazardous Material; or (c) material liability or alleged liability of the Trustor or any such tenant for the costs of cleaning up, removing, remediating or responding to a release of Hazardous Materials. Such notice shall include, among other information, the name of the party making the claim, the nature of the claim and the actual or potential amount of the claim. Trustor shall, within the time period permitted and to the extent required by the applicable Environmental Law or the governmental authority responsible for enforcing such Environmental Law, remove, remedy, or respond to or cause to be removed, remedied or responded to, any material violation of any Environmental Law or any material release of any Hazardous Material or satisfy any liability for the costs of cleaning up, removing, remediating or responding to a release of Hazardous Materials; provided, however, that Trustor shall have the right in good faith to contest any such violation, release or liability so long as (i) the Mortgaged Property affected thereby shall be in no danger of being sold, forfeited or lost pursuant to such contest, (ii) adequate reserves have been set aside by Trustor, in accordance with GAAP, to pay

the cost necessary to cure or satisfy such violation, release or liability in the event Trustor fails to prevail in such contest, and (iii) the cost of curing such violation or release does not materially increase during the pendency of such contest.

**4.23 Indemnification:** THE TRUSTOR HEREBY AGREES THAT IT WILL REIMBURSE THE TRUSTEE, THE COLLATERAL AGENT AND THE SECURED CREDITORS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ADVISORS (INDIVIDUALLY, AN "INDEMNIFIED PARTY" AND COLLECTIVELY, THE "INDEMNIFIED PARTIES") FOR, AND DEFEND, INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST, ANY AND ALL CLAIMS, COSTS, EXPENSES, LOSSES, PENALTIES, LIABILITIES AND DAMAGES (INCLUDING, WITHOUT LIMITATION, ASSESSMENT AND CLEANUP COSTS AND REASONABLE ATTORNEYS', CONSULTANTS' AND OTHER EXPERTS' FEES, EXPENSES AND DISBURSEMENTS) AND ALL JUDGMENTS, FINES AND PENALTIES INCURRED, ENTERED OR LEVIED AGAINST ANY INDEMNIFIED PARTY BY ANY GOVERNMENTAL AGENCY OR AUTHORITY ARISING DIRECTLY OR INDIRECTLY FROM, OR AS A RESULT OF OR IN CONNECTION WITH (A) THE USE OF THE MORTGAGED PROPERTY; (B) THE USE OF THE FACILITIES THEREON; (C) THE USE, GENERATION, STORAGE, TRANSPORTATION, TREATMENT, EMISSION, DISCHARGE, DISPOSAL, RELEASE OR HANDLING OF ANY HAZARDOUS MATERIALS AT, UPON OR FROM THE MORTGAGED PROPERTY; (D) THE VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW BY TRUSTOR OR ANY SUBSIDIARY; (E) THE PRESENCE ON THE MORTGAGED PROPERTY OF WETLANDS, TIDELANDS OR SWAMP AND OVERFLOW LANDS; EXCEPT (1) TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS FOUND IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (2) TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE RESULTS FROM ANY ACTION OR INACTION OF ANY SECURED PARTY FOLLOWING A TRANSFER OF TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE OF THE MORTGAGED PROPERTY (UNLESS SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS FOUND IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM ANY LOAN PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). THE TRUSTOR'S SECURED OBLIGATIONS UNDER THIS SECTION 4.23 SHALL SURVIVE THE REPAYMENT OF THE SECURED OBLIGATIONS, THE OCCURRENCE OF THE TERMINATION DATE, AND EXPIRATION OR TERMINATION OF THIS DEED OF TRUST OR ANY FORECLOSURE OR A DEED IN LIEU OF FORECLOSURE OF THIS DEED OF TRUST OR OTHER COLLATERAL SECURING THE SECURED OBLIGATIONS.

**4.24 Other Agreements:** Without first obtaining on each occasion the written approval of the Collateral Agent, which shall not be unreasonably withheld, conditioned or delayed unless there exists a Default, the Trustor shall not, except as permitted by the Credit Agreement and the Notes Documents, enter into, cancel, surrender or modify or permit the

cancellation of any rental agreement, management contract, construction contract, technical services agreement or other contract, license or permit now or hereafter affecting the Mortgaged Property, or modify any of said instruments, or accept or permit to be made any prepayment of any installment of rent or fees thereunder, if doing so could reasonably be expected to result in a Default or Event of Default, to have a Material Adverse Effect or to otherwise have a material adverse effect on Trustor or the Mortgaged Property. Certified copies of each such agreement shall be submitted to the Collateral Agent as soon as possible. The Trustor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions, and agreements contained in each of said instruments, now or hereafter existing, on the part of the Trustor to be kept and performed (including performance of all covenants to be performed under any and all leases of the Premises or any part thereof) and shall at all times do all things necessary and appropriate to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder, except to the extent that failure to do so could not reasonably be expected to result in a Default or Event of Default, have a Material Adverse Effect or to otherwise have a material adverse effect on Trustor or the Mortgaged Property.

**4.25 Transfer of License:** If Collateral Agent acquires title to the Mortgaged Property, Trustor shall execute, deliver and file or use its best efforts to cause any tenant under any Lease of such Mortgaged Property to execute, deliver and file all documents and statements requested by Collateral Agent to effect the transfer of the licenses and other governmental authorizations necessary for the continued use and operation of the Mortgaged Property, subject to any required approval of Governmental Authorities, and shall provide to Collateral Agent all information and records required in connection therewith.

**4.26 Operation of Mortgaged Property:** Trustor will operate the Mortgaged Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith, except where the failure to so operate could not reasonably be expected to have a Material Adverse Effect. Trustor will keep the Mortgaged Property occupied if necessary so as not to impair the insurance carried thereon. Trustor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Mortgaged Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable any insurance then in force with respect thereto, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect or to otherwise have a material adverse effect on Trustor or the Mortgaged Property. Trustor will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement, if any such action could reasonably be expected to have a Material Adverse Effect or to otherwise have a material adverse effect on Trustor or the Mortgaged Property. Trustor will not impose any easement, restrictive covenant or encumbrance upon the Mortgaged Property, execute or file any subdivision plat or condominium declaration affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality, without the prior written consent of Collateral Agent if any such action could reasonably be expected to have a Material Adverse Effect. Trustor will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may

be materially lessened. Trustor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Mortgaged Property. Without the prior written consent of Collateral Agent, except as done in the ordinary course of operations of the Land, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Trustor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Mortgaged Property) incurred in the construction, maintenance, operation and development of the Mortgaged Property to be promptly paid, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect or to otherwise have a material adverse effect on Trustor or the Mortgaged Property.

**4.27 Additional Environmental Provisions:** With respect to any Mortgaged Property:

The amount of Trustor's liability under the provisions of this Deed of Trust relating to indemnification of Collateral Agent in respect of any environmental obligations or liabilities is unrelated to, and independent of, the amount of any loss that Collateral Agent may suffer by reason of the failure of the Secured Obligations to be paid in full, and shall not be determined by reference to the amount of any loss suffered on account of such failure of payment. No amount paid to Collateral Agent or any other indemnified party pursuant to any such indemnification provisions shall be considered to be paid on account of the Secured Obligations or on account of any deficiency or loss suffered by Collateral Agent or such other indemnified party by reason of the failure of the Secured Obligations to be repaid in full. The enforcement of any such indemnification provisions by Collateral Agent or any other indemnified party shall not be construed as an indirect attempt to recover any such loss with respect to the Secured Obligations. Trustor acknowledges that Trustor may have liability under this provision of the Deed of Trust even if the Secured Obligations are repaid in full, including, without limitation, by reason of a full credit bid at any foreclosure sale under this Deed of Trust, and that the amount of Trustor's liability hereunder could exceed the entire amount paid by Trustor for or in respect of the Secured Obligations.

## ARTICLE V

### NEGATIVE COVENANTS

Trustor hereby covenants and agrees with Collateral Agent that, until all of the Secured Obligations shall have been fully paid, performed, satisfied and discharged, all of the Commitments shall have been terminated in whole, and the Termination Date has occurred:

**5.1 Use Violations:** Trustor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Mortgaged Property in any manner which would result in a violation of Section 4.2 above or make void, voidable or cancelable, or substantially increase the premium of, any insurance then in force with respect thereto.

**5.2      Waste:** Trustor will not commit or permit any waste of the Mortgaged Property.

**5.3      Transfer of Mortgaged Property; Partial Release:** Trustor will not, except as expressly permitted by the Credit Agreement, the Intercreditor Agreement and the Notes Documents or as otherwise consented to in advance in writing by Collateral Agent in accordance with the Credit Agreement, the Intercreditor Agreement and the Notes Documents, permit any of the Mortgaged Property to be sold, transferred, conveyed, mortgaged, pledged, encumbered, disposed of, leased or removed at any time (any or all of the foregoing being referred to herein as a "Transfer"). If such Transfer is consented to by the Collateral Agent and is otherwise expressly permitted by the Credit Agreement, the Intercreditor Agreement and the Notes Documents, then upon compliance with the conditions imposed by Collateral Agent and the Credit Agreement, the Intercreditor Agreement and the Notes Documents, and upon at least thirty (30) days' prior notice to Collateral Agent, Trustor shall have the right to obtain from the Trustee and the Collateral Agent, as applicable, the release or reconveyance of such transferred portions of the Mortgaged Property. As a condition of any such release or reconveyance, (i) Trustor shall pay all trustees' fees, recording fees, escrow fees, attorneys' fees and other costs and expenses incurred by Collateral Agent and/or Trustee in connection with any release or reconveyance given hereunder; and (ii) Trustor shall deliver to Collateral Agent such evidence as Collateral Agent reasonably requests that (A) such release or reconveyance of any portion of the Mortgaged Property can be done in compliance with all applicable subdivision and other Laws and regulations, and (B) Collateral Agent's and the Secured Creditors' rights and remedies with respect to the remaining Mortgaged Property hereunder, under the other Loan Documents and under the other Notes Documents will not be impaired by such release or reconveyance.

## ARTICLE VI

### **DEFAULT AND FORECLOSURE**

**6.1      Remedies:** If an Event of Default shall have occurred, and all or any portion of the Secured Obligations then remaining unpaid shall have been declared due and payable in accordance with the Loan Documents, then, without notice or demand, which are hereby expressly waived to the extent permitted under applicable Laws, the Trustee or Collateral Agent, as applicable, may exercise any or all of the following rights, remedies and recourses:

(a)      Entry Upon Mortgaged Property: To the extent permitted by applicable Legal Requirements, by itself or by the appointment of a receiver in accordance with applicable Legal Requirements, enter upon all or any part of the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Trustor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Collateral Agent's prior written consent thereto, Trustee or Collateral Agent, as applicable, may invoke any and all legal remedies to dispossess Trustor, including without limitation one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(b) Operation of Mortgaged Property:

(i) To the extent permitted by applicable Legal Requirements, by itself or by the appointment of a receiver in accordance with applicable Legal Requirements, hold, lease, manage, operate or otherwise use or permit the use of all or any portion of the Mortgaged Property, either by itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Trustee or Collateral Agent, as applicable, may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Collateral Agent shall reasonably deem necessary or desirable), and apply all Rents and other amounts collected by Trustee or Collateral Agent in connection therewith in accordance with the Intercreditor Agreement.

(ii) To the extent permitted by applicable Legal Requirements, as attorney-in-fact or agent of the Trustor, or in its own name as Collateral Agent or by the appointment of a receiver in accordance with applicable Legal Requirements and under the powers herein granted, hold, operate, manage, and control all or any portion of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and to exercise the powers described in Section 8.3 hereof. Such remedies may be exercised cumulatively and concurrently, and in this respect Collateral Agent shall be entitled to avail itself of the benefits and rights stated in Section 6.3 below.

(c) Foreclosure: Institute a proceeding, judicial or otherwise, for the complete foreclosure of this Deed of Trust to the fullest extent permitted by applicable Laws; or institute a proceeding or proceedings, judicial or otherwise, for the partial foreclosure of this Deed of Trust, as permitted by applicable Legal Requirements for the portion of the Secured Obligations then due and payable, with this Deed of Trust then continuing unimpaired and without loss of priority so as to secure the balance of the Secured Obligations.

No remedy herein conferred upon or reserved to the Collateral Agent is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this Deed of Trust to the Collateral Agent may be exercised from time to time and as often as may be deemed expedient. No delay or omission by the Collateral Agent to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein. In case the Collateral Agent shall have proceeded to enforce any right under this Deed of Trust by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely, then, and in such and every case, the Trustor and the Collateral Agent shall severally and respectively be restored to their former positions and rights hereunder in

respect of the Mortgaged Property, and all rights, remedies and powers of the Collateral Agent shall continue as though no such proceedings had been taken.

(d) Sale: To the extent permitted by applicable Legal Requirements, sell or offer for sale the Mortgaged Property, in such portions, order and parcels as Trustee or Collateral Agent, as the case may be, may determine, with or without having first taken possession of same, to the highest bidder for cash in lawful money of the United States at public auction in accordance with applicable Legal Requirements, or the UCC, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Deed of Trust shall continue as a lien and security interest on the remaining portion of the Mortgaged Property. Trustee or Collateral Agent, as the case may be, may postpone any sale by public announcement at the time and place noticed for the sale. If the Mortgaged Property consists of several lots, Parcels or items of property, Trustee or Collateral Agent, as the case may be, may, in its sole discretion and to the extent permitted by applicable Laws: (i) designate the order in which such lots, parcels or items shall be offered for sale or sales, or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales or in any other manner Trustee or Collateral Agent, as the case may be, deems in its best interest. Should Trustee or Collateral Agent, as the case may be, desire that more than one sale or other disposition of the Mortgaged Property or any portion thereof be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Trustee or Collateral Agent, as the case may be, may deem to be in its best interests, no such sale shall terminate or otherwise affect the lien and security interest of this Deed of Trust on any part of the Mortgaged Property not sold until all the Secured Obligations have been fully satisfied and all Commitments of the Lenders under the Credit Agreement, the Intercreditor Agreement and the Notes Documents, have been fully terminated and the Termination Date has occurred. Trustor shall pay the Expenses of any sale of the Mortgaged Property, whether one or more, and of any judicial proceedings wherein the same may be made, including reasonable compensation to Trustee and Collateral Agent, their agents and counsel, and shall pay all expenses, liabilities and advances made or incurred by Trustee or Collateral Agent, as the case may be, in connection with such sale or sales, together with interest on all such advances made by Trustee or Collateral Agent, as the case may be, at the Default Rate. Upon any sale hereunder, Trustee or Collateral Agent, as the case may be, shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

(e) Trustee or Receiver: Prior to, upon or at any time after, commencement of foreclosure of the lien, security title and security interest provided for herein or any legal proceedings pursuant hereto, make application to a court of competent jurisdiction for appointment of a receiver of the Mortgaged Property. Such application may be made as a matter of strict right and without notice to Trustor (unless notice is required by applicable

Legal Requirements and such right of notice may not be waived) or regard to the adequacy of the Mortgaged Property or insolvency of the Trustor or any of the Loan Parties or any person who may be legally or equitably liable to pay the Secured Obligations and without giving bond to Trustor (unless bond is required by applicable Legal Requirements and such right of bond may not be waived), and Trustor does hereby irrevocably consent 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 Mortgaged Property all upon such terms as may be approved by the court, and shall apply the Rents in accordance with the provisions of this Deed of Trust.

(f) Separate Sales: To the extent permitted by applicable Legal Requirements, the Mortgaged Property may be sold in one or more Parcels and in such manner and order as Trustee and Collateral Agent, as applicable, in their sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

(g) Other: Exercise any and all other rights, remedies and recourses granted under the Collateral Documents or now or hereafter existing in equity or at law, by virtue of statute or otherwise, including, without limitation, the right to bring an action in any court of competent jurisdiction to foreclose this instrument as a realty mortgage or enforce any of the terms hereof.

(h) Remedies Cumulative, Concurrent and Nonexclusive: Trustee and Collateral Agent shall have all rights, remedies and recourses granted in the Collateral Documents and available at law or equity (including specifically those granted by the UCC in effect and applicable to the Mortgaged Property) and, except as limited by applicable Legal Requirements, the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Trustor and/or any of the other Loan Parties or against all or any portion of the Mortgaged Property, at the sole discretion of Trustee or Collateral Agent, as the case may be; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise or failure to exercise any of same shall in no event 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.

(i) Collection of Costs and Expenses: The Trustee and the Collateral Agent shall be entitled to receive all costs and expenses of the sale or repossession of the Mortgaged Property including the Trustee's fees and reasonable attorneys' fees or receivers reasonable fee or commission, if any, title and abstracting charges, reasonable attorneys' fees and a reasonable auctioneer's fees, and all other costs and expenses incurred in exercising its remedies hereunder.

**6.2 No Conditions Precedent to Exercise of Remedies:** Neither Trustor nor any of the other Loan Parties shall be relieved of any obligation it has under the Loan Documents or the Notes Documents by reason of (i) the release, regardless of consideration, of any of the Mortgaged Property or any other collateral held pursuant to the Loan Documents or the Notes

Documents or the addition of any other property to the Mortgaged Property or any other such collateral; (ii) any agreement or stipulation between any subsequent owner of all or any portion of the Mortgaged Property and Collateral Agent extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents or the Notes Documents without first having obtained the consent of, given notice to or paid any consideration to the Trustor or any of the other Loan Parties, and in such event the Trustor shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Collateral Agent; or (iii) any other acts or occurrence, save and except the full payment and performance of all of the Secured Obligations, and the termination of the Commitments of the Lenders under the Credit Agreement, and the occurrence of the Termination Date.

**6.3 Release of and Resort to Collateral:** To the fullest extent permitted by applicable Laws, Collateral Agent may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Secured Obligations, to the fullest extent permitted by applicable Legal Requirements, Collateral Agent may resort to any other security therefor held by Trustee in such order and manner as Collateral Agent may elect, and such resort may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

**6.4 Waivers:** To the fullest extent permitted by applicable Legal Requirements, Trustor hereby irrevocably and unconditionally WAIVES and RELEASES (a) all benefits that might accrue to Trustor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, homestead exemption, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any election by Trustee or Collateral Agent, as applicable, to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents or the Notes Documents; (c) any right to a marshalling of assets or a sale in inverse order of alienation; and (d) any restrictions or conditions upon the exercise by the Trustee or the Collateral Agent, as applicable, of the remedies set forth in Section 6.1. Furthermore, Trustor, for itself and for all persons now or hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the Secured Obligations marshaled upon any foreclosure of this Deed of Trust or upon the foreclosure or exercise of remedies with respect to any other security for any of the Secured Obligations.

**6.5 Discontinuance of Proceedings:** To the extent permitted by applicable Legal Requirements, in case Trustee or Collateral Agent, as the case may be, shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents or the Notes Documents and shall thereafter elect to discontinue or abandon same for any reason, Trustee or Collateral Agent, as the case may be, shall have the unqualified right so to do and, in such an event, the Trustor, the other Loan Parties, Trustee and Collateral Agent shall be restored to their

former positions with respect to the Loan Documents, the Notes Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Trustee and Collateral Agent shall continue as if same had never been invoked.

**6.6 Application of Proceeds:**

(a) To the extent permitted by applicable Legal Requirements, all proceeds received from the sale or other dispositions of the Mortgaged Property, including but not limited to, the Rents and other income generated by the holding, leasing, operating or other use of the Mortgaged Property, pursuant to Article 6 of this Deed of Trust shall be applied by the Trustee and/or Collateral Agent (or the receiver, if one is appointed), as applicable, to the extent that funds are so available therefrom, in accordance with the Intercreditor Agreement.

(b) If the Trustee and/or Collateral Agent shall be ordered, in connection with any bankruptcy, insolvency or reorganization of the Trustor or any other Loan Party, to restore or repay to or for the account of the Trustor or any other Loan Party or any of their creditors any amount theretofore received under this Section 6.6, the amount for such restoration or repayment shall be deemed to be a Secured Obligation so as to place the Trustee and/or Collateral Agent in the position they would have been in had such amount never been received by any party hereto.

**6.7 Cooperation:** If an Event of Default shall occur, Trustor will use its best efforts to cooperate with Trustee and Collateral Agent and promptly do all things reasonably required of it toward obtaining all necessary authority and permission from any Governmental Authority or otherwise to accomplish any disposition, abandonment or change in use of the Mortgaged Property (or any portion thereof) as Trustee or Collateral Agent, as the case may be, may reasonably request in connection with the exercise of its rights and powers hereunder, under the other Loan Documents and under the other Notes Documents. Without limiting the generality of the foregoing, following an Event of Default and reasonable advance notice to Trustor, Trustor agrees to relocate operations located on the Mortgaged Property to accommodate the disposition, abandonment, change in use or foreclosure by Trustee or Collateral Agent, as the case may be, of any portion thereof, provided that such relocation does not materially violate any Legal Requirement applicable to Trustor or the Mortgaged Property.

**ARTICLE VII**

**CONDEMNATION**

**7.1 General:** Promptly following the date on which an executive officer of Trustor obtains knowledge of the institution or the threatened institution of any proceeding for the condemnation of all or any portion of the Mortgaged Property, Trustor shall notify Trustee and Collateral Agent of such fact. Trustor shall then, unless Collateral Agent waives this requirement, file or defend its claim in respect of such proceeding and prosecute same with due diligence to its final disposition. Trustor may be the nominal party in such proceeding but Collateral Agent shall be entitled to participate in same and to be represented therein by counsel of its own choice, and Trustor will deliver or cause to be delivered to Collateral Agent such

instruments as may be reasonably requested by it from time to time to permit such participation. All proceeds received from any such condemnation proceeding shall be paid to Collateral Agent and applied in the manner set forth in the Intercreditor Agreement.

**7.2 Rebuilding, Restoration and Repair:** In the event (a) no Event of Default or monetary Default shall have occurred and be continuing, (b) only a portion of the Mortgaged Property is taken, (c) Trustor elects to rebuild, restore or repair the remaining portion of the Mortgaged Property, (d) the cost of the rebuilding, restoration or repair reasonably estimated by Collateral Agent shall not exceed the Threshold Amount, (e) there are sufficient proceeds or other amounts available to Trustor to fully pay for the rebuilding, restoration or repair of the Mortgaged Property and the projected appraised value of the Mortgaged Property upon completion of the same is equal to or greater than the appraised value of the Mortgaged Property immediately prior to the condemnation, (f) neither the Trustor nor any tenant leasing the Mortgaged Property has elected to terminate the Lease pursuant to the terms thereof and confirmation of the same has been delivered to Collateral Agent, (g) Trustor has received and is entitled to continue to receive full rental payments under such Lease through the period of rebuilding, restoration or repair, whether such payments are made by the tenant or from rental or business interruption insurance proceeds, (h) all parties having operating, management or franchise interests in, and arrangements concerning, the Mortgaged Property agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration, (i) the Trustor presents sufficient evidence to the Collateral Agent that the Mortgaged Property will be restored to an architectural whole prior to the Termination Date and (j) the Collateral Agent will not incur any liability to any other person as a result of such use or release of proceeds, then Trustor will so certify to Collateral Agent, and will certify that it will and shall continue diligently to completion to restore, repair, replace and rebuild such Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such condemnation with such alterations, modifications and/or betterments reasonably deemed necessary or desirable by Trustor in its business judgment. With the certification described in the preceding sentence, the Trustor shall deliver to Collateral Agent plans and specifications for such rebuilding, restoration or repair; and Trustor shall thereafter commence the rebuilding, restoration or repair in accordance with the plans and specifications required pursuant to the preceding provisions within sixty (60) days after the date of the disbursement of the award or settlement, and complete same to the satisfaction of the Collateral Agent within a reasonable time thereafter. In the event each of the conditions set forth above in the first sentence of this Section are satisfied except that the cost of rebuilding, restoration or repair is in excess of the Threshold Amount, the above provisions shall apply except that the proceeds shall be paid to Collateral Agent and disbursed in accordance with Section 4.8 (with all references to insurance proceeds being revised to be condemnation proceeds). Upon completion of such rebuilding, restoration and repair in accordance with the preceding provisions, Trustor may apply such amount or settlement to the costs of such rebuilding, restoration or repair. If (i) there is a total condemnation of the Mortgaged Property, or (ii) if the remaining Mortgaged Property is no longer suitable for use by the Trustor or the tenant of such Mortgaged Property, or (iii) if Trustor elects not to rebuild, restore or repair as specified above, or (iv) the requirements set forth above for rebuilding, restoration or repair after a partial condemnation are not met to Collateral Agent's satisfaction, then Trustor shall pay to Collateral Agent such award or settlement to be applied to reduce the outstanding balance of the Secured Obligations. At all times during which an Event of Default shall have occurred and be continuing, Collateral Agent shall be entitled to receive

direct and immediate payment of the proceeds of such condemnation, and Trustor shall take all action as the Collateral Agent may reasonably request to accomplish such payment. In the event Trustor shall receive any such proceeds during the occurrence and continuance of an Event of Default, Trustor shall immediately deliver the proceeds to Collateral Agent for the benefit of the Secured Creditors and pending such delivery, shall hold such proceeds in trust for the benefit of the Secured Creditors and keep the same segregated from its other funds.

## ARTICLE VIII

### SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

**8.1 Assignment:** Subject to the terms and conditions hereinafter set forth, Trustor as debtor does hereby irrevocably transfer, assign and deliver unto Collateral Agent as secured party for its benefit and the ratable benefit of the Secured Creditors, as security for the payment and performance of the Secured Obligations, and grant a security interest in, all of the right, title and interest of Trustor in and to all of the following (collectively, the "Collateral"):

- (a) The Leases;
- (b) The Rents;
- (c) The Fixtures; and
- (d) Any other Mortgaged Property.

This assignment of rentals and any other assignments required by the provisions hereof shall terminate and become null and void upon release of this Deed of Trust.

The Trustor authorizes Collateral Agent to file, in form and substance satisfactory to Collateral Agent, such financing statements and such further assurances as required by applicable Laws or as Collateral Agent may, from time to time, consider reasonably necessary to create, perfect and preserve Collateral Agent's security interest herein granted, and Trustor will (or Collateral Agent at its option may) cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by applicable Laws to so create, perfect and preserve such security interest. Trustor authorizes Collateral Agent to file one or more financing statements, without the signature of Trustor, covering the Collateral.

Trustee and Collateral Agent shall have, and Trustor grants to Trustee and Collateral Agent, all the rights, remedies and recourses with respect to the Mortgaged Property afforded a secured party by the aforesaid UCC in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents, the Notes Documents and at law.

This Deed of Trust shall be effective as a Financing Statement filed as a fixture filing from the date of its filing for record covering the Fixtures and is to be filed for record in the real estate records of each county, city or town, as applicable, where any part of the Mortgaged Property (including Fixtures) is situated. The record owner of the real property described in Exhibit A is the Trustor. The addresses of Trustor, as Debtor, and Collateral Agent, as Secured Party, are as set forth herein. The above described goods are or are to become fixtures related to the Land and Improvements of which the Trustor is record title owner or lessee. This Deed of

Trust shall also be effective as a financing statement covering the Collateral and may be filed in any other appropriate filing or recording office.

This instrument covers goods that are or are to become fixtures on the Land described herein. This instrument shall be deemed to be a fixture filing and financing statement and for such purpose the following information is set forth:

- (1) Name and Address of Debtor: as set forth on page 2 hereof.
- (2) Name and Address of Secured Party: as set forth on page 2 hereof.
- (3) The mailing address of the Trustor/Debtor is the address of Trustor set forth on page 2 hereof.
- (4) The mailing address of the Collateral Agent/Secured Party is set forth on page 2 hereof.
- (5) Description of the types (or items) of property covered by this financing statement: as set forth in Section 1.1 and this Section 8.1.
- (6) Description of real estate to which collateral is attached or upon which it is located: as set forth on Exhibit "A".
- (7) A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to herein. Trustor is an organization that is a corporation organized under the Laws of the State of California. Trustor's California organization identification number is C0097484.
- (8) The record owner of the real estate to which the Collateral is attached or upon which it is located is Trustor.

**8.2 Collection of Rents:** Trustor absolutely, presently, unconditionally and irrevocably assigns to Collateral Agent, with or without taking possession of the Land or the Buildings, the Rents, and hereby authorizes and empowers Collateral Agent to collect the Rents as the same shall become due, and does hereby irrevocably direct each and all of the lessees, sublessees, licensees, or other occupants of the Mortgaged Property to pay to Collateral Agent, upon demand by Collateral Agent, the Rents, provided that prior to the occurrence of an Event of Default and so long as no Event of Default is continuing, Trustor shall have a license to collect and receive all Rents, which license shall be terminable in the sole and absolute discretion of Collateral Agent, without regard to the adequacy of its security and without notice to or demand on Trustor, upon the occurrence of any Event of Default. Upon the termination of Trustor's license to collect the Rents, Trustor shall immediately turn over or cause to be turned over to Collateral Agent, or its agent or designee, promptly upon receipt or collection, all Rents previously paid to Trustor or any managing or collection agent of Trustor and not theretofore expended for the Mortgaged Property, as well as all Rents which are collected or received by Trustor or any managing or collection agent of Trustor after the termination of Trustor's license

to collect the Rents. Any such Rents not turned over to Collateral Agent as required hereby shall be deemed to be held by Trustor in trust for Collateral Agent. The foregoing assignment shall not impose upon Collateral Agent any duty to produce Rents from the Mortgaged Property, and shall not cause Collateral Agent to be a "mortgagee-in-possession" for any purpose. Without limiting the application of the provisions of real property law to the aforesaid assignment of the Rents to Collateral Agent, Collateral Agent is hereby expressly granted a first priority security interest in all of such items included as Rents for which perfection of a lien or charge thereon may be governed by the provisions of the CUCC. Without limiting any other provisions of this Deed of Trust, Collateral Agent shall be entitled to enforce this assignment of Rents and to exercise all rights and remedies in accordance with any applicable provisions of law.

**8.3 Collateral Agent's Powers of Attorney:** Trustor does hereby irrevocably constitute and appoint Collateral Agent, while this Deed of Trust remains in force and effect, its true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, delegation and revocation, for Trustor and in its name, place and stead, in person or by the appointment of a receiver, to enter and take possession of the Mortgaged Property after an Event of Default by actual physical possession without the commencement of any action to foreclose this Deed of Trust or to exercise any power of sale Collateral Agent may have hereunder and to do and perform any or all of the following actions, as fully as Trustor could do if personally present, hereby ratifying and confirming all that Collateral Agent, as attorney or its substitute, or any receiver, shall lawfully do or cause to be done by virtue hereof:

- (a) to enter into subordination and non-disturbance agreements with respect to any Leases or with any of the tenants or lessees under any of the Leases;
- (b) to demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts, releases, discharges or other instruments for all Rents, issues, and other amounts that may hereafter become due, owing or payable with respect to the Mortgaged Property or any part thereof from any present or future tenants, lessees, sublessees, licensees or other occupants thereof;
- (c) to institute, prosecute to completion, or compromise and settle, all summary proceedings, actions for rent or for removing any and all tenants, lessees, sublessees, licensees or other occupants of the Mortgaged Property or any part or parts thereof;
- (d) to enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any of the Leases;
- (e) to pay, from and out of any Rents and issues collected in respect of the Mortgaged Property or any part thereof, or from or out of any other funds, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed, or imposed against the Mortgaged Property, or any portion thereof, and also any and all other charges, costs and expenses which it may be reasonably necessary or advisable for Collateral Agent to pay in the management or operation of the Mortgaged Property, including commissions for renting the Mortgaged Property or any portion thereof,

management and consulting fees, and legal expenses incurred in enforcing claims, drafting and negotiating documents or for any other services that may be required;

(f) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Mortgaged Property;

(g) to receive, indorse, and collect any drafts or other instruments, documents and chattel paper, in connection with subsection (f) above;

(h) to file any claims or take any action or institute any proceedings which the Collateral Agent may deem necessary or desirable for the collection of any of the Mortgaged Property or otherwise to enforce the rights of the Collateral Agent with respect to any of the Mortgaged Property, including without limitation the execution, delivery and filing of financing statements, continuation statements, affidavits or other security instruments and agreements necessary to perfect, confirm and continue in effect the lien of this Deed of Trust with respect to the Mortgaged Property; and

(i) to generally do, execute, and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Property, as fully as Trustor might do; provided, however, that this Assignment shall not operate to place upon Collateral Agent any responsibility or obligation to take any of the above actions or any action whatsoever with respect to the operation, control, care, management or repair of the Mortgaged Property, and that any action taken or failure or refusal to act by Collateral Agent under this Deed of Trust shall be at Collateral Agent's election and without any liability on its part.

**8.4 Trustor Remains Liable:** Anything herein to the contrary notwithstanding:

(a) Trustor shall remain liable under the Leases to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Deed of Trust had not been executed;

(b) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Trustor from any of its duties or obligations under any of the Leases; and

(c) the Collateral Agent shall not have any obligation or liability under any of the Leases to any person or entity under this Deed of Trust nor shall the Collateral Agent be obligated to perform any of the obligations or duties of the Trustor thereunder or to take any action to collect or enforce any claims thereunder.

**8.5 Trustor's Representations and Warranties:** Trustor represents and warrants

that:

(a) No Rents, nor any part thereof, becoming due subsequent to the date hereof have been collected with respect to the Leases (excepting an amount not exceeding one month's installment under the Leases), nor has payment of any of the

same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(b) This Deed of Trust creates a valid security interest in the Collateral as security for the payment and performance of the Secured Obligations. Upon the filing of financing statements (the "Financing Statement") under the UCC naming the Trustor as debtor and the Collateral Agent as secured party and covering the Collateral, such security interests shall be perfected under the UCC and such security interests are not subject to any prior lien, or to any agreement purporting to grant to any Person, other than the Collateral Agent, a security interest in any of the Collateral, in each case other than with respect to the Permitted Liens. No further filings, recordings or other actions are necessary to perfect or maintain the priority of such security interests other than the filing of UCC continuation statements on or prior to the date required by applicable Legal Requirements. The Financing Statements are in appropriate form and have been duly filed pursuant to the UCC;

(c) The chief place of business and chief executive office of the Trustor are located at the address first specified above for the Trustor;

(d) Each of the Leases, as amended to the date of execution and delivery hereof, true and complete copies of which have been delivered to the Collateral Agent, has been duly authorized, executed and delivered by Trustor (and to Trustor's knowledge all other parties thereto) and is in full force and effect and binding upon and enforceable against Trustor and, to Trustor's knowledge, against the other parties thereto, in accordance with its terms. No event has occurred and is continuing, or will occur as a result of the performance of this Deed of Trust, that constitutes or would constitute any material event of default under any of the Leases or would constitute such an event of default but for the requirement that notice be given or time lapse or both.

**8.6 Trustor's Covenants:** In addition to Trustor's obligations in Section 4.10, Trustor covenants and agrees with respect to the Leases that:

(a) It will perform and observe each of its material obligations under the terms of the Leases now or hereafter in effect (except when the amount or validity of such obligations is being contested in good faith) and use best efforts to cause the other parties thereto to comply with their obligations thereunder;

(b) It will, upon the reasonable written request by Collateral Agent, while this Assignment remains in force and effect, serve written notices of this Assignment upon any lessor or lessee, sublessee, licensee, or other occupant of any portion of the Mortgaged Property or include among the written provisions of any instrument hereafter creating any such lease, sublease, license, or right of occupancy specific reference to this Assignment, and make, execute and deliver all such powers of attorney or instrument of pledge or assignment, and such other instrument or documents as Collateral Agent may reasonably request at any time for the purpose of securing its rights hereunder;

(c) It will furnish to Collateral Agent, promptly following demand, true copies of all Leases hereafter executed and true copies of each agreement or letter effecting the renewal, amendment or modification of any Lease; and in each case after request by the Collateral Agent, furnish to the Collateral Agent promptly following receipt thereof copies of all notices, requests and other documents received by the Trustor under or pursuant to the Leases during the term of each of the Leases and from time to time (A) furnish to Collateral Agent such information and reports regarding the Leases as the Collateral Agent may reasonably request, and (B) promptly following request of the Collateral Agent make such demands and requests for information or action upon such person, firm, corporation, or other entity as the Trustor is entitled to make under the Leases.

(d) It will cause the security interest in the Collateral to remain a continuously perfected, first priority security interest free and clear of any liens (other than the Collateral Agent's lien hereunder and the Permitted Liens), and from time to time, at its own expense, the Trustor will promptly execute and deliver all further instruments and documents and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to otherwise enforce its rights and remedies hereunder with respect to the Collateral. Without limiting the generality of the foregoing or of Section 4.3 hereof, the Trustor will: (i) execute and file such financing or continuation statements, or amendments thereto, and such other collateral assignments, security agreements, instruments or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby, and (ii) defend the title to the Collateral and the Collateral Agent's lien thereon and security interest therein against the claim of any person, firm, corporation, or other entity claiming against or through Trustor and will maintain and preserve such lien and security interest so long as this Deed of Trust shall remain in effect;

(e) It authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Trustor where permitted by applicable Laws; and

(f) It will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail.

(g) Prior to approving, and except for rights expressly set forth in any Lease, (i) any change in use of the Mortgaged Property from its present use, or (ii) any mortgage, lien or encumbrance encumbering any leasehold interest in the Mortgaged Property or a transfer of any such leasehold interest, the Trustor will obtain the prior written approval of the Collateral Agent to such change in use or to such mortgage, lien, encumbrance or transfer, such approval of Collateral Agent to be granted or withheld in its sole and absolute discretion. In the event Collateral Agent does not approve such

change in use or such mortgage, lien, encumbrance or transfer, Trustor shall accordingly not approve the same.

**8.7 Effect of Release of Mortgaged Property:** The Trustor hereby consents to, and hereby agrees that the rights of the Collateral Agent and the security interests hereunder, and the obligations of the Trustor hereunder, to the fullest extent permitted by applicable Legal Requirements, shall not be affected by any and all releases of any of the Mortgaged Property from the liens or security interests created by this Deed of Trust or otherwise, whether for purposes of sales or other dispositions of assets or for some other purpose, except to the extent expressly provided herein, by any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness secured hereby, or subordinating, modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof, each such agreement to be in writing to be binding and effective, by exercising or refraining from exercising or waiving any right Collateral Agent may have hereunder, or by accepting additional security of any kind or additional parties to the Secured Obligations secured hereby or instruments creating or evidencing such.

**8.8 Hold Harmless: WITHOUT LIMITATION OF THE INDEMNITY SET FORTH IN SECTION 10.15, TRUSTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS (A) AGAINST AND FROM ANY AND ALL LIABILITY, LOSS, DAMAGE AND EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, WHICH ANY INDEMNIFIED PARTY MAY OR SHALL INCUR UNDER OR IN CONNECTION WITH THE EXERCISE BY COLLATERAL AGENT OF ITS RIGHTS HEREUNDER IN RESPECT OF ANY OF THE LEASES, OR BY REASON OF ANY ACTION TAKEN OR EXPENSES PAID OR INCURRED BY COLLATERAL AGENT UNDER AND IN ACCORDANCE WITH THE TERMS OF THIS DEED OF TRUST, AND (B) AGAINST AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST TRUSTOR BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKING ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS AND CONDITIONS CONTAINED IN ANY OF THE LEASES, EXCEPT TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS FOUND IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SHOULD COLLATERAL AGENT PAY OR INCUR ANY SUCH LIABILITY, LOSS, DAMAGE OR EXPENSE, SUBJECT TO THE LIMITATION IN THE PRECEDING SENTENCE, THE AMOUNT THEREOF, TOGETHER WITH INTEREST THEREON FROM THE DATE OF SUCH PAYMENT AT THE DEFAULT RATE, SHALL BE PAYABLE BY TRUSTOR TO COLLATERAL AGENT IMMEDIATELY UPON DEMAND THEREFOR; AND UNTIL SO PAID BY TRUSTOR, ALL SUMS SO EXPENDED BY COLLATERAL AGENT, AND INTEREST THEREON, SHALL BE ADDED TO THE SECURED OBLIGATIONS AND SECURED BY THE LIEN AND LEGAL OPERATION AND EFFECT OF THIS DEED OF TRUST. AT ITS OPTION, COLLATERAL AGENT MAY REIMBURSE ITSELF THEREFOR OUT OF ANY RENTS WHICH IT HAS COLLECTED OR MAY COLLECT.**

## ARTICLE IX

### CONCERNING THE TRUSTEE

**9.1 No Required Action:** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in his opinion such action will be likely to involve him in expense or liability, unless requested to do so by a written instrument signed by Collateral Agent and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to it against any and all costs, expense and liabilities arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Loan Documents or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourses of Collateral Agent.

**9.2 Certain Rights:** With the approval of Collateral Agent, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Collateral Agent) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel; (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through its agents or attorneys; (c) to select and employ, in and about the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith; and (d) to take any and all other lawful action as Collateral Agent may instruct Trustee to take to protect or enforce Collateral Agent's rights hereunder. Trustee shall not be personally liable, except for its gross negligence or misconduct, in case of entry by it, or anyone entering by virtue of the owners herein granted to it, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. 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 reasonable expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor will, from time to time, pay the reasonable compensation due to Trustee hereunder and reimburse Trustee for, and save it harmless against, any and all liability and expenses which may be incurred by it in the performance of its duties.

**9.3 Retention of Moneys:** 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 applicable Laws) and Trustee shall be under no liability for interest on any moneys received by it hereunder.

**9.4 Successor Trustees:** Trustee may resign by the giving of sixty (60) days written notice of such resignation in recordable form to Collateral Agent. If Trustee shall resign or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Collateral Agent so to do, or if, for any reason and without cause, Collateral Agent shall prefer to appoint a substitute trustee or trustees to act instead of the aforementioned Trustee, or any successor or substitute trustee, Collateral Agent shall have full power to appoint a substitute trustee or trustees and, if preferred, several substitute trustees in succession who shall succeed to all the estates, properties, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent or officer of Collateral Agent, and if such Collateral Agent be a corporation and such appointment be executed in its behalf by any officer of such corporation, 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. Such appointment shall be duly recorded in the appropriate real estate records at any time before or, if permitted by applicable law, upon sale of Mortgaged Property by the successor appointed thereby. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, lawfully does by virtue hereof. Trustor shall reimburse Collateral Agent and/or Trustee for any Expenses incurred pursuant to the provisions of this Section 9.4.

**9.5 Perfection of Appointment:** Should any deed, conveyance or instrument of any nature be required from Trustor by any successor Trustee to more fully and certainly vest in and confirm to such new Trustee such estates, rights, powers and duties, then, upon request by such Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Trustor and Trustor shall pay for any Expenses incurred by Trustee pursuant to this Section 9.5.

**9.6 Succession Instruments:** Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Collateral Agent or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument in recordable form transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the successor Trustee so appointed in its place.

**9.7 No Representation by Trustee:** By accepting or approving anything required to be observed, performed or fulfilled or to be given to Trustee or Collateral Agent pursuant to the Loan Documents or the Notes Documents, including but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Trustee nor Collateral Agent shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Trustee or Collateral Agent.

## ARTICLE X

### MISCELLANEOUS

**10.1 Performance at Trustor's Expense:** The cost and expense of performing or complying with any and all of the Secured Obligations shall be borne solely by Trustor and/or the other Loan Parties, and no portion of such cost and expense shall be, in any way or to any extent, credited against any installment on or portion of the Secured Obligations.

**10.2 Survival of Secured Obligations:** Each and all of the Secured Obligations shall survive the execution and delivery of the Loan Documents and the Notes Documents, the consummation of the loans called for therein, and the Notes Documents and shall continue in full force and effect with respect to Trustor until the Secured Obligations shall have been paid, performed and satisfied in full, and all of the Commitments have been terminated and the Termination Date shall have occurred.

**10.3 Further Assurances:** Trustor, upon the request of Trustee or Collateral Agent, will execute, acknowledge, and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and the Notes Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.

**10.4 Recording and Filing:** Trustor will cause this Deed of Trust and all amendments and supplements thereto and supplements therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as required by applicable Laws, or as Trustee or Collateral Agent shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

**10.5 Notices:** Any notice shall be conclusively deemed to have been received by any party hereto and be effective (i) on the day on which delivered (including hand delivery by commercial courier service) to such party (against receipt therefor) (provided that if such day is not a Business Day, such date of delivery or receipt shall be deemed to be the next following Business Day), (ii) on the day of receipt (provided that if such day is not a Business Day, such date of delivery or receipt shall be deemed to be the next following Business Day) at such address, telefacsimile number or telex number as may from time to time be specified by such party in written notice to the other parties hereto or otherwise received), in the case of notice by telegram or telefacsimile, respectively (where the receipt of such message is verified by return), or (iii) on the fifth Business Day after the day on which mailed, if sent prepaid by certified or registered mail, return receipt requested, in each case delivered, transmitted or mailed, as the case may be, to the address or telefacsimile number, as appropriate, set forth below or such other address or number as such party shall specify by notice hereunder:

(a) if to the Trustor:

c/o Granite Construction Incorporated  
585 West Beach Street  
Watsonville, California 95076  
Attention: Jigisha Desai, Treasurer  
Telephone: (831) 761-4784  
Telefacsimile: (831) 768-4065

(b) if to the Collateral Agent:

Bank of America, N.A.  
Mail Code: CA5-701-05-19  
1455 Market Street  
San Francisco, California 94103  
Attention: Bridgett Manduk, Agency Management  
Telephone: (415) 436-1097  
Telefacsimile: (415) 503-5011

With a copy to:

McGuireWoods LLP  
201 North Tryon Street  
Charlotte, NC 28202  
Attention: Kevin A. McGinnis, Esq.  
Telephone: (704) 343-2000  
Telefacsimile: (704) 343-2300

(c) If to the Trustee:

METRO NATIONAL TITLE  
345 E. Broadway  
Salt Lake City, Utah 84111

**10.6 No Waiver; Remedies:** The Collateral Agent's failure, at any time or times hereafter, to require strict performance by the Trustor of any provision of this Deed of Trust shall not waive, affect or diminish any right of the Collateral Agent or Trustee thereafter to demand strict compliance and performance therewith, and the Collateral Agent's or Trustee's single or partial exercise of any right, remedy, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights, remedies, powers or privileges herein provided are cumulative and not exclusive of any rights, remedies, powers or privileges provided by applicable Legal Requirements. Any suspension or waiver of a Default or Event of Default shall not suspend, waive or affect any other Default or Event of Default, whether the same is prior or subsequent thereto and whether of

the same or of a different kind of character. None of the undertakings, agreements, warranties, covenants and representations of the Trustor contained in this Deed of Trust and no default by the Trustor under this Deed of Trust shall be deemed to have been suspended or waived unless such suspension or waiver is in writing signed by an officer of the Collateral Agent, and directed to the Trustor specifying such suspension or waiver.

**10.7 Collateral Agent's and Secured Creditors' Right to Perform the Secured Obligations:**

(a) If Trustor shall fail, refuse or neglect to make any payment or perform any act required of it by this Deed of Trust (including the Trustor's obligation under Section 4.3 hereof to defend the first lien status of this Deed of Trust), then at any time thereafter, subject to Trustor's right to contest any such matter as expressly set forth in this Deed of Trust, the Credit Agreement, the Intercreditor Agreement and the Notes Documents upon reasonable notice to Trustor and without waiving or releasing any other right, remedy or recourse Collateral Agent may have because of same, Collateral Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Trustor, and shall have the right to enter upon or in the Land and Buildings, in person or by appointment of a receiver, for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem reasonably necessary or appropriate. In its exercise of its rights under this Section 10.7, if Collateral Agent shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Collateral Agent may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof subject to any other applicable terms and provisions set forth herein. Similarly, in making any payments to protect the security intended to be created by the Loan Documents and the Notes Documents, Collateral Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same subject to any other applicable terms and provisions set forth herein. No entry by Collateral Agent on the Land or any other portion of the Mortgaged Property pursuant to any provision of this Deed of Trust, whether in person or by the appointment of a receiver, shall be deemed to make Collateral Agent a mortgagee in possession or to otherwise impose on Collateral Agent any obligation or liability for or with respect to the Mortgaged Property. **TRUSTOR SHALL INDEMNIFY COLLATERAL AGENT FOR ALL LOSSES, EXPENSES, DAMAGE, CLAIMS AND CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY'S FEES, INCURRED OR ACCRUING BY REASON OF ANY ACTS PERFORMED BY COLLATERAL AGENT PURSUANT TO THE PROVISIONS OF THIS SECTION 10.7, EXCEPT TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS FOUND IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM COLLATERAL AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ALL SUMS PAID BY COLLATERAL AGENT PURSUANT TO THIS SECTION 10.7 AND ALL OTHER SUMS EXPENDED BY COLLATERAL AGENT TO WHICH IT SHALL BE ENTITLED TO BE INDEMNIFIED, TOGETHER WITH INTEREST**

**THEREON AT THE DEFAULT RATE FROM THE DATE OF SUCH PAYMENT OR EXPENDITURE, SHALL CONSTITUTE ADDITIONS TO THE SECURED OBLIGATIONS, AND SHALL BE SECURED BY THE COLLATERAL AND TRUSTOR COVENANTS AND AGREES TO PAY THEM TO THE ORDER OF COLLATERAL AGENT UPON DEMAND.**

(b) Any reference in this Deed of Trust to amounts advanced by or owed to Collateral Agent shall be deemed to refer equally to amounts advanced by or owed to the Trustee or the Secured Creditors, and wherever Collateral Agent is required or permitted to advance funds, such funds may be advanced by the Trustee or the Secured Creditors with the same effect as if advanced by Collateral Agent.

**10.8 Covenants Running with the Land:** All Secured Obligations are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Property until such Mortgaged Property has been released from the lien of this Deed of Trust.

**10.9 Successors and Assigns:** All of the terms of this Deed of Trust shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**10.10 Severability:** This Deed of Trust is intended to be performed in accordance with, and only to the extent permitted by, applicable Legal Requirements. If any provision of this Deed of Trust or the application thereof to any person or circumstance shall, for any reasons and to any extent, be invalid or unenforceable, then neither the remainder of this Deed of Trust nor the application of such provision to other persons or circumstances nor the other instruments referred to above shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable Laws.

**10.11 Entire Agreement and Modification:** The Loan Documents and the Notes Documents contain the entire agreement between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. This Deed of Trust may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party. In the event of a conflict between the covenants contained herein and the covenants contained in the Intercreditor Agreement, the other Loan Documents or the other Notes Documents, the provisions of the Intercreditor Agreement, such Loan Document or such Notes Document, as applicable, shall govern, other than with respect to the "Applicable Law" section and references contained herein.

**10.12 APPLICABLE LAW:** THE PARTIES TO THIS DEED OF TRUST AGREE THAT THEIR RIGHTS AND SECURED OBLIGATIONS UNDER THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF LAW RULES AND PRINCIPLES THEREOF. THE PARTIES FURTHER AGREE AND STIPULATE THAT THIS DEED OF TRUST AND THE LOAN

DOCUMENTS WERE NEGOTIATED BY THE BORROWER PRIMARILY IN CALIFORNIA AND THAT CALIFORNIA HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS DEED OF TRUST. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT:

(A) THE PROCEDURES GOVERNING LIEN CREATION, PERFECTION AND ENFORCEMENT BY COLLATERAL AGENT OF THE PROVISIONAL REMEDIES AGAINST TRUSTOR, INCLUDING BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ACTIONS FOR REPLEVIN, FOR CLAIM AND DELIVERY OF PROPERTY, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER AND THE REQUIREMENTS NECESSARY TO CREATE OR GRANT, PERFECT OR FORECLOSE ON, OR DETERMINE THE PRIORITY OF, THE LIEN AND SECURITY INTEREST OF THIS DEED OF TRUST, SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED;

(B) OTHER THAN AS SET FORTH IN SUBSECTION (A) ABOVE, TRUSTEE AND COLLATERAL AGENT SHALL COMPLY WITH THE APPLICABLE LAWS OF THE STATE, TO THE EXTENT REQUIRED IN CONNECTION WITH THE POWER OF SALE OR THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED HEREBY PROVIDED, HOWEVER, THAT THIS SUBSECTION SHALL IN NO EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAWS OF SUCH STATE SHALL APPLY TO THE SECURED OBLIGATIONS SECURED BY THIS DEED OF TRUST WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES FURTHER AGREE THAT COLLATERAL AGENT MAY ENFORCE ITS RIGHTS UNDER THIS DEED OF TRUST AND THE COLLATERAL DOCUMENTS, INCLUDING BUT NOT LIMITED TO, ITS RIGHT TO SUE ANY LOAN PARTY, TO COLLECT ANY OUTSTANDING SECURED OBLIGATIONS OR TO OBTAIN A JUDGMENT FOR ANY DEFICIENCY FOLLOWING FORECLOSURE, IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. NOTHING IN THE FOREGOING SHALL BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAWS OF THE STATE, WITH RESPECT TO THE APPLICABLE PORTION OF THE MORTGAGED PROPERTY LOCATED IN UTAH, SHALL APPLY TO THE SECURED OBLIGATIONS SECURED BY OR EVIDENCED BY THIS DEED OF TRUST AND THE LOAN DOCUMENTS; AND

(C) TRUSTOR HEREBY ACKNOWLEDGES, WARRANTS AND REPRESENTS THAT IT IS SOPHISTICATED, KNOWLEDGEABLE AND EXPERIENCED IN COMMERCIAL TRANSACTIONS SIMILAR TO THE TRANSACTION EMBODIED IN THIS DEED OF TRUST AND THE LOAN DOCUMENTS; IT AND THE OTHER LOAN PARTIES HAVE BEEN FULLY, COMPLETELY AND ADEQUATELY REPRESENTED AND ADVISED BY COMPETENT COUNSEL AND OTHER CONSULTANTS RETAINED FOR SUCH PURPOSES IN CONNECTION WITH ALL ASPECTS (INCLUDING BUSINESS AND LEGAL) OF THE TRANSACTIONS UNDER THIS DEED OF TRUST, THE

LOAN DOCUMENTS AND THE NOTES DOCUMENTS; ALL PARTIES TO SUCH TRANSACTION HAVE EQUAL BARGAINING STRENGTH; AND, BASED ON THE FOREGOING, THE PARTIES HAVE SELECTED THE LAW OF THE STATE OF CALIFORNIA TO GOVERN THIS DEED OF TRUST AND THE LOAN DOCUMENTS AS HEREIN SPECIFIED.

**10.13 No Partnership; Control in Trustor:** Except to the extent occurring as a matter of law (a) nothing contained in this Deed of Trust is intended to, or shall be construed as, creating to any extent and in any manner whatsoever, any partnership, joint venture, or association between Trustor, Trustee and Collateral Agent, or in any way make Collateral Agent or Trustee co-principals with Trustor with reference to all or any portion of the Mortgaged Property, and any inferences to the contrary are hereby expressly negated; (b) notwithstanding anything contained herein which may be to the contrary, this Deed of Trust, the Loan Documents, the Notes Documents, any agreement, deed of trust or other document referred to herein by reference, whether specifically or generally, and the transactions contemplated hereby do not and will not constitute or create indirect, actual or practical ownership of the Mortgaged Property or Trustor by Collateral Agent, or control, affirmative or negative, direct or indirect, by Collateral Agent over the programming, management, or any other aspect of the day-to-day operation of the Mortgaged Property or Trustor, which control remains in Trustor, its shareholders and board of directors; and (c) Collateral Agent's activities in connection with this Deed of Trust, the Loan Documents and the Notes Documents shall not be "outside the scope of the activities of a lender of money" within the meaning of any applicable statutes, as amended or recodified from time to time, and Collateral Agent does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Mortgaged Property. Collateral Agent shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction, or occupancy or use of, any of the Mortgaged Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements-thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of its agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on any of the Mortgaged Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor, any of its licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Mortgaged Property in a safe condition; and (v) any nuisance made or suffered on any part of the Mortgaged Property.

**10.14 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.

**10.15 Hold Harmless:** NEITHER TRUSTEE, COLLATERAL AGENT NOR ANY SECURED CREDITORS SHALL BE OBLIGATED TO PERFORM OR DISCHARGE, NOR DO ANY OF THEM HEREBY UNDERTAKE TO PERFORM OR DISCHARGE, ANY OBLIGATION, DUTY OR LIABILITY WITH RESPECT TO THE MORTGAGED PROPERTY UNDER OR BY REASON OF THIS DEED OF TRUST, ANY OF THE LOAN DOCUMENTS OR ANY OF THE NOTES DOCUMENTS, AND TRUSTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY TRUSTEE, COLLATERAL

AGENT AND EACH SECURED PARTY FOR AND TO HOLD TRUSTEE, COLLATERAL AGENT AND EACH SECURED PARTY HARMLESS FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH THEY MAY OR MIGHT INCUR WITH RESPECT TO THE MORTGAGED PROPERTY OR UNDER OR BY REASON OF THIS DEED OF TRUST, ANY OF THE LOAN DOCUMENTS OR ANY OF THE NOTES DOCUMENTS AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST THEM BY REASON OF ANY ALLEGED SECURED OBLIGATIONS OR UNDERTAKINGS ON THEIR PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS RELATING TO THE MORTGAGED PROPERTY, EXCEPT TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS FOUND IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SHOULD TRUSTEE, COLLATERAL AGENT OR ANY SECURED PARTY INCUR ANY SUCH LIABILITY, LOSS OR DAMAGE, THE AMOUNT THEREOF, INCLUDING ALL ATTORNEYS' FEES AND COSTS AND EXPENSES ASSOCIATED WITH ACTIONS TAKEN BY TRUSTEE COLLATERAL AGENT OR ANY SUCH SECURED PARTY IN DEFENSE THEREOF, OR OTHERWISE IN PROTECTING THEIR INTERESTS HEREUNDER, SHALL BE SECURED HEREBY, AND TRUSTOR COVENANTS AND AGREES TO REIMBURSE TRUSTEE, COLLATERAL AGENT OR ANY SUCH SECURED PARTY THEREFOR IMMEDIATELY UPON DEMAND.

**10.16 Pronouns and Plurals:** All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require, and the singular form of nouns, pronouns and verbs shall include the plural, and vice versa, whichever the context may require.

**10.17 WAIVER OF TRIAL BY JURY: TO THE EXTENT PERMITTED UNDER THE LAWS OF THE STATE IN WHICH THE APPLICABLE PORTION OF THE MORTGAGED PROPERTY IS SITUATED, TRUSTOR AND THE COLLATERAL AGENT EACH HEREBY WAIVES AND SHALL WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS DEED OF TRUST.**

**10.18 Assignment:** Collateral Agent may assign or transfer all or any portion of its rights under this Deed of Trust in accordance with the Intercreditor Agreement. Without limiting the generality of the foregoing sentence of this section, any Lender may assign to one or more Persons, or grant to one or more Persons participations in or to, all or any part of its rights and obligations under the Credit Agreement (to the extent permitted by the Credit Agreement) and any Noteholder may assign or otherwise transfer, or grant to one or more Persons participations in or to, all or a portion of its rights and obligations under the 2013 Notes Agreement, the 2013 Notes, the 2019 Notes Agreement, the 2019 Notes or any other Notes Document (including, without limitation, any Notes held by it) to any other Person (to the extent permitted by the 2013 Notes Agreement, the 2019 Notes Agreement or such other Notes Document, as applicable); and to the extent of any such assignment, transfer or participation such other Person shall, to the fullest extent permitted by law, thereupon become vested with all the benefits in respect thereof

granted to such Lender or such Noteholder herein or otherwise, subject however, to the provisions of the Intercreditor Agreement and, with respect to any obligations under the Credit Agreement, including Article IX thereof (concerning the Collateral Agent) and Section 10.06 thereof (concerning assignments and participations). All references herein to the Collateral Agent and to the Secured Creditors shall include any successor thereof or permitted assignee, and any other obligees from time to time of the Secured Obligations.

**10.19 No Merger:** So long as this Deed of Trust is an encumbrance upon the Mortgaged Property, there shall be no merger of the interest of any lessor or any lessee under any Lease or sublease.

**10.20 Enforceability of Lien:** In the event that any part of the Secured Obligations cannot be lawfully secured by this Deed of Trust, or the lien or security interest hereof cannot be lawfully enforced to pay any part of the Secured Obligations, then and in either such event, at the option of Collateral Agent, all payments on the Secured Obligations shall be deemed to have been first applied against the unsecured part of the Secured Obligations.

**10.21 Knowledge:** Whenever referenced in this Deed of Trust, the "knowledge" or "best knowledge" of Trustor shall include the knowledge of its parent corporations, if any, and its Subsidiaries, if any.

**10.22 Best Efforts:** Whenever referenced in this Deed of Trust, the term "best efforts" shall not be interpreted as requiring the expenditure of unreasonable sums of money, in view of the objectives sought.

**10.23 [Intentionally Omitted]**

**10.24 Payment of Prior Encumbrances:** If any or all of the proceeds of the Secured Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Collateral Agent at Trustor's request, and, to the extent of such funds so used, the Secured Obligations in this Deed of Trust shall be subrogated to and extend to all of the rights, claims, liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, liens, title and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of the Collateral Agent and shall be merged with the lien and security for the repayment of and satisfaction of the Secured Obligations.

**10.25 [Intentionally Omitted]:**

**10.26 Secured Cash Management Agreements, Secured Hedging Agreements and Secured Card Related Products Agreements.** No Cash Management Bank, Hedge Bank or Card Related Products Bank that obtains the benefit of this Security Agreement shall have any right to notice of any action or to consent to, direct or object to any action hereunder or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents and the Intercreditor Agreement. Notwithstanding any other provision of this

Security Agreement to the contrary, neither the Bank Agent nor the Collateral Agent shall be required to verify the payment of, or that other satisfactory arrangement have been made with respect to, the Secured Obligations arising under Secured Cash Management Agreements, Secured Hedge Agreements and Secured Card Related Products Agreements except to the extent expressly provided in the Credit Agreement or the Intercreditor Agreement and unless the Bank Agent and the Collateral Agent have received written notice of such Secured Obligations, together with such supporting documentation as they may request, from the applicable Cash Management Bank, Hedge Bank or Card Related Products Bank, as the case may be. Each Cash Management Bank, Hedge Bank or Card Related Products Bank not a party to the Credit Agreement and the Intercreditor Agreement that obtains the benefit of this Deed of Trust shall be deemed to have acknowledged and accepted the appointment of the Collateral Agent pursuant to the terms of the Intercreditor Agreement, and that with respect to the actions and omissions of the Collateral Agent hereunder or otherwise relating hereto that do or may affect such Cash Management Bank, Hedge Bank or Card Related Products Bank, the Collateral Agent and each of its Related Parties shall be entitled to all the rights, benefits and immunities conferred under Article IX of the Credit Agreement and the Intercreditor Agreement. Neither the Bank Agent nor the Collateral Agent shall be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements, Secured Hedge Agreements and Secured Card Related Products Agreements in the case of a Termination Date.

**10.27 Statements:** Trustor agrees to pay Collateral Agent, or its agent or designee, for each statement of Collateral Agent as to the obligations secured hereby, furnished at Trustor's request, the maximum fee allowed by law, or if there be no maximum fee, then such reasonable fee as is charged by Collateral Agent, or its agent or designee, as of the time said statement is furnished. Trustor further agrees to pay all charges of Collateral Agent, and its agent or designee, for any other service rendered Trustor, or on its behalf, connected with this Deed of Trust or the Secured Obligations secured hereby, including without limitation the delivery to an escrow holder of a request for full or partial reconveyance of this Deed of Trust, transmitting to an escrow holder moneys secured hereby, changing its records pertaining to this Deed of Trust and Secured Obligations secured hereby to show a new owner of the Mortgaged Property, and replacing an existing policy of insurance held hereunder with another such policy.

**10.28 Statute of Limitations:** The pleading of any statute of limitations as a defense to any and all Secured Obligations secured by this Deed of Trust is hereby waived to the fullest extent permitted by law.

**10.29 Consents:** Whenever the consent or approval of Collateral Agent is required or requested hereunder, such consent or approval shall not be unreasonably withheld or delayed, except to the extent expressly provided otherwise in this Deed of Trust.

**10.30 Waiver for Deed of Trust:** If any Secured Obligation provides for any charge of any nature for or in respect of the prepayment of any such Secured Obligation, including without limitation any termination payment that may be owing under or with respect to any Swap Contract, Trustor agrees to pay said charge, including without limitation any such termination payment, if for any reason any such Secured Obligation shall be paid prior to the stated maturity date thereof, even if and notwithstanding that an Event of Default shall have occurred and any

Secured Party, by reason thereof, shall have declared any or all Secured Obligations secured hereby immediately due and payable, and whether or not said payment is made prior to or at any foreclosure sale held under or by virtue of this Deed of Trust.

**10.31 Other Mortgages and Deeds of Trust.** The Secured Obligations are secured by mortgages and deeds of trust (the “**Other Mortgages and Deeds of Trust**”) encumbering other properties owned or leased by Trustor or affiliates of Trustor. To the full extent permitted by law, Collateral Agent may exercise its rights and remedies under this Deed of Trust and the Other Mortgages and Deeds of Trust by applicable proceeding, whether foreclosure or, exercise of power of sale, either separately or together, or in any combination thereof in one or more proceedings, and concurrently or at different times, and Trustor will not object to any such separate or consolidated exercise of such rights and remedies or any efforts by Collateral Agent to consolidate one or more actions in the exercise of its rights and remedies under this Deed of Trust and the Other Mortgages and Deeds of Trust.

*[Remainder of page left blank intentionally.]*

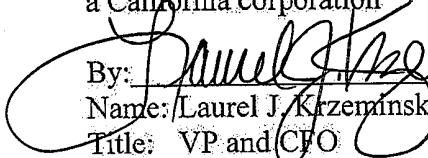
Utah (Salt Lake County)  
Project #30001  
W. Warm Springs Road/1000 Street, Salt Lake City, Utah

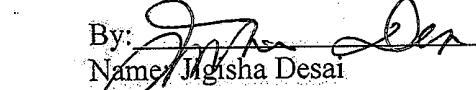
TRUSTOR HEREBY REQUESTS THAT A COPY OF ANY NOTICE OF DEFAULT AND NOTICE OF SALE AS MAY BE REQUIRED BY LAW BE MAILED TO TRUSTOR AT THE ABOVE ADDRESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

Trustor hereby acknowledges that it has received a copy of this Deed of Trust free of charge.

WITNESS THE EXECUTION OF THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES AND RENTS as of the date first above written.

GRANITE CONSTRUCTION COMPANY,  
a California corporation

By:  (SEAL)  
Name: Laurel J. Krzeminski  
Title: VP and CFO

By:  (SEAL)  
Name: Jigisha Desai  
Title: VP Treasurer

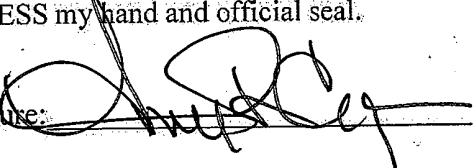
## ACKNOWLEDGEMENT

State of California  
County of Santa Cruz

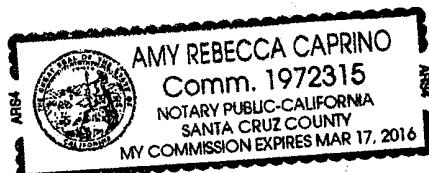
On September 19, 2012, before me, Amy Rebecca Caprino, a notary personally appeared Laurel J. Krzeminski, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or 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: 

(Seal)

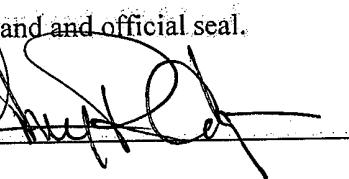


State of California  
County of Santa Cruz

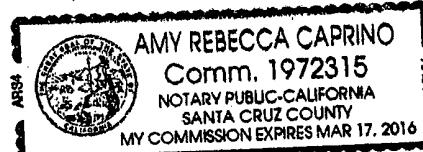
On September 19, 2012, before me, Amy Rebecca Caprino, a notary personally appeared Jigisha Desai, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or 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: 

(Seal)



DEED OF TRUST

Utah (Salt Lake County)  
Project #30001

W. Warm Springs Road/1000 Street, Salt Lake City, Utah

**EXHIBIT A**  
**Description of Land**

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Beginning at a point on the Northerly right-of-way line of 800 North Street, said point being also North 89°59'29" West 66.35 feet and North 63.92 feet from the centerline Intersection Monument of 800 North and 700 West Streets, said point being also North 89°59'29" West 2.11 feet from the Southeast corner of Lot 1, Block 107, Plat "C", SALT LAKE CITY SURVEY, and running thence along said Northerly right-of-way line, North 89°59'29" West 207.68 feet; thence North 80°52'44" West 225.00 feet to the Easterly right-of-way line of Interstate 15; thence along said Easterly right-of-way line, the following six (6) courses: (1) North 27°00'03" West 502.14 feet, (2) North 26°12'03" West 344.40 feet, (3) North 26°55'22" West 134.93 feet, (4) thence North 25°56'58" West 255.64 feet, (5) Northwesterly 331.63 feet along the arc of a 2769.90 foot radius curve to the right, chord bears North 20°47'13" West 331.43 feet to the North line of Lot 7, Block 111, Plat "C"; SALT LAKE CITY SURVEY, (6) along said North line, South 89°59'34" East 0.39 feet; thence North 00°36'49" East 132.11 feet to the South line of Block 66 of Kinney & Gourley's Improved City Plat as recorded in Book A at Page 89 in the Salt Lake County Recorders Office; thence along said South line of Block 66, South 89°59'34" East 107.83 feet; thence South 72°47'54" East 181.44 feet; thence South 89°55'28" East 310.64 feet to the projection Southerly of the West line of Block 64 of said Kinney & Gourley's Improved City Plat; thence along said projection Southerly, South 00°00'55" East 78.92 feet to the North line of Lot 5, Block 110, Plat "C" of the Salt Lake City Survey; thence along said North line South 89°59'34" East 43.95 feet to the Westerly line of the Denver and Rio Grande Western Railroad; thence along said Westerly line, the following four (4) courses: (1) South 17°18'57" East 691.36 feet, (2) South 22°37'46" East 143.03 feet, (3) South 17°18'00" East 666.64 feet; (4) Southerly 23.85 feet along the arc of a 2259.00 foot radius curve to the right, chord bears South 09°13'31" East 23.85 feet to the point of beginning.