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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
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CREF3 CLIFT OWNER LLC, CREF3 FELT OWNER LLC AND CREF3 AP1 OWNER LLC,  
each a Delaware limited liability company, as trustor  
(Borrower)

to

Inwest Title Services, Inc., as trustee  
(Trustee)

for the benefit of

CLNC CREDIT 7, LLC, a Delaware limited liability company, as beneficiary  
(Lender)

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

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Dated: As of September 26, 2019

Location: 10 W Broadway, Salt Lake City, Utah 84101  
341 S Main Street, Salt Lake City, Utah 84111  
77 W. 200 S., Salt Lake City, Utah 84101

County: Salt Lake

PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Akerman LLP  
50 N. Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Attention: Beau A. Baker, Esq.

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16-06-301-024  
15-01-280-034  
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**DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND  
RENTS AND FIXTURE FILING**

This **DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this "**Security Instrument**") is made as of this 26th day of September, 2019, by CREF3 CLIFT OWNER LLC ("**Clift Borrower**"), CREF3 FELT OWNER LLC ("**Felt Borrower**"), CREF3 AP1 OWNER LLC ("**American Plaza Borrower**", together with Clift Borrower and Felt Borrower, collectively, "**Borrower**"), having its principal place of business at 1345 Avenue of the Americas, 46<sup>th</sup> Floor, New York, NY 10105, as trustor, to Inwest Title Services, Inc., a Utah corporation ("**Trustee**") having an address at 2037 W Commerce Way, West Haven Ut. 84401, the trustee hereunder, for the benefit of **CLNC CREDIT 7, LLC**, a Delaware limited liability company (together with its successors and assigns, collectively, "**Lender**"), having an address at c/o Colony Credit Real Estate, Inc., 515 South Flower Street, 44<sup>th</sup> Floor, Los Angeles, California 90071, as beneficiary.

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

**WHEREAS**, this Security Instrument is given to secure a loan (the "**Loan**") in the maximum principal amount of up to Forty-Four Million Two Hundred Thirty Five Thousand and No/100 Dollars (\$44,235,000.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, by and among Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender (as the same may be amended, restated, replaced, supplemented, extended or otherwise modified, renewed or replaced from time to time, the "**Note**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement;

**WHEREAS**, Borrower desires to secure the payment of the Debt and the performance by Borrower of the Other Obligations (as defined in the Loan Agreement); and

**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents, dated as of the date hereof, made by Borrower in favor of Lender delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

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

and for such other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1 - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Borrower does hereby irrevocably grant, pledge, warrant, transfer and convey to Trustee **IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION** for the benefit and security of Lender and does hereby grant a security interest in and assigns to Lender all of Borrower's right, title and interest in and to all of the real, personal, tangible and intangible property, rights, interests and estates now owned, or hereafter acquired (collectively, the "**Property**"), including, without limitation, the following:

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

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

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

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

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

foregoing, Equipment shall not include any property belonging to Cushman & Wakefield U.S., Inc., a Missouri corporation, the property manager employed by Borrower for the management and operation of the property ("**Cushman & Wakefield**"), or any other property manager of the Property or tenants under leases except to the extent that Borrower shall have any right or interest therein;

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

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

(h) Leases and Rents. All leases (including, without limitation, ground leases, subleases or subsubleases), lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other

agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, tenant termination and contraction fees, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of the Other Obligations;

(i) Condemnation Awards. Subject to the terms of the Loan Agreement, all Awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to all or any portion of the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property including, without limitation, any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of all or any portion of the Improvements, the Equipment, the Fixtures, the Leases or the Personal Property, or any part thereof, under the power of eminent domain; or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Property or any portion thereof; and Borrower hereby agrees to execute and deliver from time to time such further instruments as may be requested by Trustee or Lender to confirm such assignment to Lender of any such award, damage, payment or other compensation;

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

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property, including, without limitation, as a result of tax certiorari or any applications or proceedings for reduction;

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

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

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof including, without limitation, that certain Property Management Agreement, dated as of May 2, 2019, between Clift Borrower and Cushman & Wakefield (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Clift Management Agreement**”) and that certain Exclusive Authorization for Lease of Real Property agreement, dated as of April 30, 2019, between Clift Borrower and Mountain West Retail Property Services LLC d/b/a Mountain West Retail/Investment Commercial Real Estate Services (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Clift Retail Leasing Agreement**”) and that certain Exclusive Leasing Agreement, dated as of April 30, 2019, between Clift Borrower and JONES LANG LASALLE AMERICAS, INC. (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Clift Office Leasing Agreement**”), that certain Property Management Agreement, dated as of May 2, 2019, between Felt Borrower and Cushman & Wakefield (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Felt Management Agreement**”) and that certain Exclusive Authorization for Lease of Real Property agreement, dated as of April 30, 2019, between Felt Borrower and Mountain West Retail Property Services LLC d/b/a Mountain West Retail/Investment Commercial Real Estate Services (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Felt Retail Leasing Agreement**”) and that certain Exclusive Leasing Agreement, dated as of April 30, 2019, between Felt Borrower and JONES LANG LASALLE AMERICAS, INC. (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Felt Office Leasing Agreement**”) and that certain Property Management Agreement, dated as of May 2, 2019, between American Plaza Borrower and Cushman & Wakefield (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**American Plaza Management Agreement**”) that certain Exclusive Authorization for Lease of Real Property agreement, dated as of April 29, 2019, between American Plaza Borrower and Mountain West Retail Property Services LLC d/b/a Mountain West Retail/Investment Commercial Real Estate Services (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**American Plaza Retail Leasing Agreement**”) and that certain Exclusive Leasing Agreement, dated as of April 29, 2019, between American Plaza Borrower and JONES LANG LASALLE AMERICAS, INC. (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**American Plaza Office Leasing Agreement**”) and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(o) Intellectual Property. All intellectual property, including without limitation, all tradenames, trademarks, servicemarks, logos, copyrights, websites, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, (i) all accounts and sub-

accounts now or hereafter established or maintained pursuant to the Loan Agreement, the Clearing Account Agreement, Cash Management Agreement or any other Loan Documents, (ii) all other accounts and sub-accounts maintained by Borrower, and (iii) any account in which moneys, proceeds, receivables or other items of deposit are held for the benefit of Borrower; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof; and

(q) Interest Rate Cap Agreement. The Interest Rate Cap Agreement and any replacements, amendments or supplements thereto, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing, and all claims of Borrower for breach by the counterparty thereunder of any covenant, agreement, representation or warranty contained in the Interest Rate Cap Agreement; and all products and proceeds of any of the foregoing;

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

(s) Other Rights. All other or greater rights and interests of every nature in the Real Property (as hereinafter defined) and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower (including, without limitation, any and all other rights of Borrower in and to the items set forth in Subsections (a) through (r) above).

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

**Section 1.2 Assignment of Rents**. Borrower hereby absolutely and unconditionally assigns to Trustee in trust for Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, the Loan Agreement, the Clearing Account Agreement, the Cash Management Agreement and Section 7.2(e) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

**Section 1.3 Security Agreement**. This Security Instrument is both a real property mortgage or deed of trust and a "security agreement" within the meaning of the

Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property including all accounts established by Lender pursuant to the Loan Agreement, Clearing Account Agreement or the Cash Management Agreement. By executing and delivering this Security Instrument, Borrower hereby grants, warrants, transfers and conveys to Lender and Trustee, as security for the Obligations (as defined in the Loan Agreement), a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender and Trustee, each acting individually, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender or Trustee after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender or Trustee at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable third party legal expenses and attorneys' fees and costs, incurred or paid by Lender or Trustee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on the first page hereof and the address of Lender (secured party) is as set forth on the first page hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement (naming Borrower as the Debtor with an address as set forth on the first page hereof and an organizational identification numbers of 7320007 for Clift Borrower, 7320002 for Felt Borrower and 7337598 for American Plaza Borrower, and Lender as the Secured Party with an address as set forth on the first page hereof) filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5 Pledges of Monies Held.** Borrower hereby pledges to Lender and grants, warrants, transfers and conveys to Lender a security interest in any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Clearing Account, the Cash Management Account, the



Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

### CONDITIONS TO GRANT

**TO HAVE AND TO HOLD** the above granted and described Property unto Trustee, and its successor and assigns, **IN TRUST WITH POWER OF SALE**, for the benefit of Lender and its successors and assigns, forever, to secure the Borrower's payment to Lender of the Debt and performance of the Other Obligations at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument;

**PROVIDED, HOWEVER**, these presents are upon the express condition that, if Borrower shall well and truly (a) pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (b) perform the Other Obligations as set forth in the Loan Agreement, this Security Instrument and the other Loan Documents, and (c) abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender and Trustee pursuant to the provisions hereof shall survive any such payment or release. To the extent necessary, (x) Lender shall request Trustee to reconvey the Property and shall surrender this Security Interest and all notes evidencing debt secured by this Security Instrument to Trustee; (y) Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto; and (z) as a condition thereto, such person or persons shall pay Trustee's reasonable costs incurred in so reconvening the Property.

### ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are given for the purpose of securing the Debt.

**Section 2.2 Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are also given for the purpose of securing the Other Obligations relating to any Loan Documents executed by Borrower (other than the Environmental Indemnity).

### ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

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

**Section 3.2 Incorporation by Reference.** All the representations, warranties, covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Maintenance of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender or as otherwise permitted pursuant to the Loan Agreement. Subject to the terms of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.4 Waste.** Borrower shall not commit or suffer any physical waste of the Property or make any change in the use of the Property which will materially increase the risk of fire or other hazard arising out of the operation of the Property, or knowingly take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.5 [intentionally omitted]**

**Section 3.6 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.7 [intentionally omitted]**

#### **ARTICLE 4 - OBLIGATIONS AND RELIANCES**

**Section 4.1 Relationship of Borrower and Lender.** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of the Loan Agreement, the Note, this Security Instrument or any other Loan Document shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

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

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

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

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

## ARTICLE 5 - FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance reasonably and customarily required, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, etc.** So long as it does not expand the Obligations or reduce the benefits to Borrower hereunder or under any of the Loan Documents, Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages,

assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender and Trustee to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. After providing Borrower five (5) Business Days prior notice, Borrower grants to Lender and Trustee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

**Section 5.3** [intentionally omitted]

**Section 5.4** Severing of Security Instrument. This Security Instrument and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be severed into two or more notes and two or more security instruments as set forth in, and subject to the terms and conditions of Article 9 of the Loan Agreement.

**Section 5.5** Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record together with an indemnity with respect to a Note, and, in the case of any such mutilation, upon surrender and cancellation of such Note or a replacement of such other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

**ARTICLE 6 - DUE ON SALE/ENCUMBRANCE**

**Section 6.1** Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

**Section 6.2** No Sale/Transfer. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any direct or indirect interest therein or permit

or suffer the Property or any part thereof or any direct or indirect interest therein to be Transferred other than pursuant to a Permitted Transfer as expressly permitted pursuant to the terms of the Loan Agreement.

## ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Default.** The occurrence of a default of any of the terms, provisions or covenants under this Security Instrument and/or a breach of any representation or warranty under this Security Instrument which is capable of being cured but is not cured within thirty (30) days after receipt of written notice from Lender (or such longer period of time so long as Borrower is diligently pursuing a cure) shall constitute an Event of Default under the Loan Agreement. The occurrence of an Event of Default under the Loan Agreement or any other Loan Document shall constitute an "Event of Default" under this Security Instrument.

**Section 7.2 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender or Trustee may take such action, without notice or demand to the fullest extent permitted by law, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure, in accordance with Utah law, of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, in accordance with Utah law, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by Utah law; and without limiting the foregoing:
  - (i) in connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or

all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender;

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

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

(d) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(e) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may, to the extent permitted by applicable law, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender reasonably deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify any Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower or its Affiliates; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(f) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Lender or Trustee at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(g) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security

Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; and/or
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation, the Yield Maintenance Premium, if applicable, and advances made by Lender pursuant to the terms of this Security Instrument;

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

(i) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole and absolute discretion.

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

**Section 7.3 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper, subject to applicable law.

**Section 7.4 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Default or Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any Other Obligations hereunder, make any payment or do any act required of Borrower hereunder or in the other Loan Documents with respect to any Other Obligations which payment or action on the part of Lender shall be in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or to collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and expenses to the extent permitted by law), with interest as provided in this Section 7.4, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying any Default or Event of Default or in appearing in, defending, or bringing any such action or



proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

**Section 7.5 Actions and Proceedings.** Upon ten (10) Business Days prior written notice, Lender and Trustee, or either of them, has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

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

**Section 7.7 Other Rights, etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) Unless caused by the gross negligence, willful misconduct or bad faith of Lender, it is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender may resort for the payment of the Debt and the performance of the Other Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and

remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Upon the occurrence and during the continuance of an Event of Default, Lender, or Trustee upon written instructions from Lender, may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and Lender may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.9 [intentionally omitted]**

**Section 7.10 Right of Entry.** Upon reasonable notice to Borrower (which may be given verbally but not less than two (2) Business Days), Lender and its agents (including Trustee) shall have the right to enter and inspect the Property at all reasonable times, provided that so long as no Event of Default exists and is continuing, Borrower may accompany Lender and its agents.

**Section 7.11 Lender Not Obligated; Cumulative Rights.** Nothing in this instrument shall be construed as obligating Lender to take any action or incur any liability with respect to the Property, and all options given to Lender are for its benefit and shall and may be exercised in such order and in such combination as Lender in its sole discretion may from time to time decide. Each remedy is distinct and cumulative to all other rights and remedies under this Instrument and the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

## ARTICLE 8 – MORTGAGE TAX INDEMNIFICATION

**Section 8.1 Mortgage and/or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon, incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. The provisions of this Section 8.1 are exceptions to any non-recourse or exculpation provisions in this Security Instrument or the other Loan Documents with respect to Borrower only, and Borrower shall be fully and personally liable for the obligations set forth in this Section 8.1, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower only.

## ARTICLE 9 - WAIVERS

**Section 9.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender or Trustee arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 9.2 Marshalling and Other Matters.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES THE BENEFIT OF ALL APPRAISEMENT, VALUATION, STAY, EXTENSION, REINSTATEMENT, HOMESTEAD AND REDEMPTION LAWS NOW OR HEREAFTER IN FORCE AND ALL RIGHTS OF MARSHALLING IN THE EVENT OF ANY SALE HEREUNDER OF THE PROPERTY OR ANY PART THEREOF OR ANY INTEREST THEREIN.

**Section 9.3 Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower.

**Section 9.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the Other Obligations.

**Section 9.5 Waiver of Jury Trial.** BORROWER AND LENDER BY ITS ACCEPTANCE HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THAT CALIFORNIA LAW APPLIES TO THIS SECURITY INSTRUMENT, BORROWER AND LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ANY ACTION TO RESOLVE A DISPUTE RELATING TO OR ARISING OUT OF THIS SECURITY INSTRUMENT SHALL BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO SECTION 638, ET SEQ., OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND BORROWER AND

LENDER SHALL ATTEMPT TO SELECT AND PROPOSE JOINTLY TO THE COURT A MUTUALLY AGREEABLE RETIRED JUDGE AS A REFEREE AND, FAILING THAT, EACH OF BORROWER AND LENDER SHALL RECOMMEND TO THE COURT A LIST OF RETIRED JUDGES WHO MAY SERVE AS THE REFEREE. BORROWER AND LENDER KNOWINGLY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION TO RESOLVE ANY DISPUTE RELATING TO OR ARISING OUT OF THIS SECURITY INSTRUMENT OR ANY PART THEREOF; AND IN CONNECTION WITH THIS SECURITY INSTRUMENT, EACH OF BORROWER AND LENDER REPRESENTS THAT IT HAS DISCUSSED SUCH WAIVER WITH ITS OWN INDEPENDENT COUNSEL AND HAS RELIED ON ADVICE OF ITS COUNSEL AND MAKES SUCH WAIVER KNOWINGLY AND VOLUNTARILY.

#### ARTICLE 10 - EXCULPATION

The provisions of Section 3.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### ARTICLE 11 - NOTICES

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

#### ARTICLE 12 - APPLICABLE LAW

**Section 12.1 Governing Law.** WITH RESPECT TO MATTERS RELATING TO THE ATTACHMENT, CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE RIGHTS, OBLIGATIONS AND SECURITY INTERESTS CREATED PURSUANT TO THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**Section 12.2 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid,

unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

### ARTICLE 13 - DEFINITIONS

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

### ARTICLE 14 - MISCELLANEOUS PROVISIONS

**Section 14.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 14.2 Successors and Assigns.** This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns, as set forth in the Loan Agreement. Lender shall have the right to assign, sell, pledge, participate, delegate or transfer, as applicable, to one or more Persons, all or any portion of its rights and obligations under this Security Instrument in connection with any assignment of the Loan and the Loan Documents done in accordance with the Loan Agreement. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign, delegate or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment, delegation or transfer without such consent shall be null and void.

**Section 14.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 14.4 Headings, etc.** The headings and captions of the various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.5 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 14.6 Entire Agreement.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 14.7 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger; provided, however, Lender shall be liable for its gross negligence, willful misconduct or bad faith. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 14.8 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Security Instrument and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall control and be binding.

**Section 14.9 Severability.** In case any one or more of the provisions of this Security Instrument, the Note, the Assignment of Leases, the Loan Agreement, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Lender to the fullest extent now or hereafter permitted by law.

**Section 14.10 No Partnership or Joint Venture.** No provision of this Security Instrument or any of the other Loan Documents shall constitute a partnership, joint venture, tenancy in common or joint tenancy between Borrower and Lender, it being intended that the only relationship created by this Security Instrument, the Loan Agreement, the Note and the other Loan Documents shall be that of debtor and creditor.

**Section 14.11 No Merger.** So long as the Obligations owed to Lender secured hereby remain unpaid and undischarged and unless Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of such estates (without implying Borrower's consent to such union) either in Borrower, Lender, any tenant or any third party by purchase or otherwise, in the event this Security Instrument is originally placed on a leasehold estate and Borrower later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

## **ARTICLE 15 - TRUSTEE'S FEES; SUBSTITUTE TRUSTEE; POWER OF SALE**

**Section 15.1 Trustee's Fees.** Borrower shall pay all reasonable, actual costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such reasonable, actual costs, fees and expenses shall be secured by this Security Instrument.

**Section 15.2 Substitute Trustee.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Lender may remove Trustee at any time or from time to time and select a successor trustee by filing the appropriate instrument in the office where this Security Instrument is recorded. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, with full power of substitution to file, execute and record any document required to appoint such substitute trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise. Borrower agrees to the foregoing for itself, its successors and assigns.

**Section 15.3 Power of Sale.**

(a) Upon the occurrence and continuance of an Event of Default, Trustee, or the agent or successor of Trustee, at the request of Lender, shall sell or offer for sale the Property in such portions, order and parcels as Lender may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and provisions of the law of the State in which the Property is located. Such sale shall be made at the area within the courthouse of the county in which the Property (or any portion thereof to be sold) is situated (whether the parts or parcels thereof, if any, in different counties are contiguous or not, and without the necessity of having any personal property hereby secured present at such sale) which is designated by the applicable court of such County as the area in which public sales are to take place, or, if no such area is designated, at the area at the courthouse designated in the notice of sale as the area in which the sale will take place, on such day and at such times as permitted under applicable law of the State where the Property is located, after advertising the time, place and terms of sale and that portion of the Property in accordance with such law, and after having served written or printed notice of the proposed sale by certified mail on each Borrower obligated to pay the Note and other secured indebtedness secured by this Security Instrument according to the records of Lender in accordance with applicable law. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

At any such public sale, Trustee may execute and deliver in the name of Borrower to the purchaser a conveyance of the Property or any part of the Property in fee simple. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Property may be sold in its entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect, and if Lender so elects, Trustee may sell the personal property covered by this Security Instrument at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State in which the Property is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until all the Property is sold or the Note and other secured indebtedness is paid in full. If the Note and other secured indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts or guaranty, assignments of lease, or other security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Lender may determine.

(b) Upon any foreclosure sale or sales of all or any portion of the Property under the power herein granted, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

(c) In the event of a foreclosure or a sale of all or any portion of the Property under the power herein granted, the proceeds of said sale shall be applied, in whatever order Lender in its sole discretion may decide, subject to applicable law, to the expenses of such sale and of all proceedings in connection therewith (including, without limitation, attorneys' fees and expenses), to fees and expenses of Trustee (including, without limitation, Trustee's attorneys' fees and expenses), to insurance premiums, liens, assessments, taxes and charges (including, without limitation, utility charges advanced by Lender), to payment of the outstanding principal balance of the Debt, and to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.



(d) In case Trustee shall have proceeded to enforce any right or remedy under this Security Instrument by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every case, Borrower, Lender and Trustee shall be restored to their former positions and the rights, powers and remedies of Lender and Trustee herein provided or arising, or existing otherwise as herein set forth shall continue as if no such proceeding had been taken.

**Section 15.4 Acceptance by Trustee.** Trustee accepts the Property when this Security Instrument, duly executed and acknowledged, becomes a public record as provided by law. Trustee shall not be obligated to perform any act required hereunder unless the performance of such act is requested in writing and Trustee is reasonably indemnified against loss, cost, liability and expense.

**Section 15.5 Acts of Trustee.** From time to time, upon written request of Lender and without affecting the liability of any person for payment of any indebtedness or performance of the obligations secured hereby, Trustee may, without liability therefor and without notice: reconvey all or any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustee may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and Trustee may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding unless held or commenced and maintained by Trustee under this Security Instrument.

**Section 15.6 No Liability of Trustee.**

(a) The Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except due to the Trustee's negligence, breach of agreement or willful misconduct. The 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 them hereunder, believed by the Trustee in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law or under the Loan Documents), and the Trustee shall be under no liability for interest on any moneys received by the Trustee hereunder.

(b) Borrower shall indemnify, protect, defend and hold Lender and Trustee harmless, singularly and jointly, from all costs and expenses, including reasonable third party attorney's fees, incurred by them or any of them by reason of this Security Instrument, including any legal action to which Lender or Trustee shall become a party, except to the extent of Lender's or Trustee's gross negligence or willful misconduct. Any money so paid or expended by Lender or Trustee shall be due and payable upon demand together with interest at the Default Rate from the date incurred and shall be secured by this Security Instrument.

**Section 15.7 Trustee Powers.** Trustee may exercise any of its powers through appointment of attorney-in-fact or agents. Trustee may select and employ legal counsel at the expense of Borrower. Notwithstanding any other provision set forth in this Security Instrument, Trustee's rights and duties shall be governed and controlled by Utah Code ANN. Section 57-1-1, *et seq.*

**Section 15.8 Priority.** All amounts advanced by either of Lender or Trustee hereunder shall be secured by this Security Instrument with priority dating back to the date of the grant of this Security Instrument.

**Section 15.9 Ratification.** Borrower hereby ratifies and confirms every act that Trustee and its successors may lawfully do at the Property by virtue of powers granted to Trustee hereunder.

[THE REMAINDER OF THE PAGE IS INTENTIONALLY BLANK]

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

**CLIFT BORROWER:**

CREF3 CLIFT OWNER LLC.  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: **DAVID SCHEIBLE**  
Title: **AUTHORIZED SIGNATORY**

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

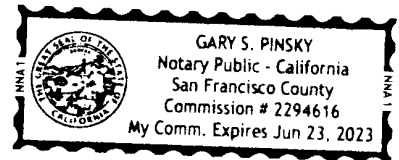
State of California  
County of San Francisco

On September 24, 2019, before me, Gary S. Pinsky, a Notary Public, personally appeared David William Scheible, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signature Page to Deed of Trust

**FELT BORROWER:**

CREF3 FELT OWNER LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: DAVID SCHEIBLE  
Title: AUTHORIZED SIGNATORY

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

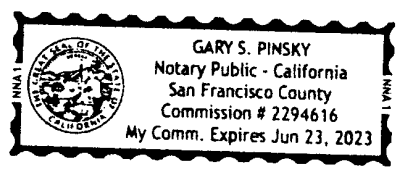
State of California )  
County of San Francisco )

On September 24, 2019 before me, Gary S. Pinsky, a Notary Public, personally appeared David William Scheible, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signature Page to Deed of Trust

**AMERICAN PLAZA BORROWER:**

CREF3 API OWNER LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: DAVID SCHEIBLE  
Title: AUTHORIZED SIGNATORY

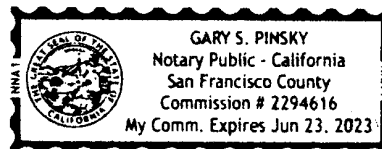
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Francisco

On September 24, 2019 before me, Gary S. Pinsky, a Notary Public, personally appeared David William Scheible who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.  
Signature \_\_\_\_\_ (Seal)



**EXHIBIT A**

**Legal Description**

**CLIFT PROPERTY**

PARCEL 5: (15-01-280-033)

COMMENCING AT THE NORTHEAST CORNER (ABOVE THE SURFACE OF THE GROUND) OF WHAT IS COMMONLY KNOWN AS THE VIRTUE CLIFT BUILDING, AS NOW CONSTRUCTED AND EXISTING, WHICH BUILDING IS AT THE NORTHWEST CORNER OF THE STREET INTERSECTION OF EAST TEMPLE, OR MAINS STREET AND BROADWAY, OR THIRD SOUTH STREET IN SALT LAKE CITY, UTAH AND SITUATE ON A PART OF LOT 1, BLOCK 58, PLAT 'A', SALT LAKE CITY SURVEY, SAID POINT OF COMMENCEMENT BEING NORTH 0°01'01" EAST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 80.30 FEET, FROM THE SOUTHEAST CORNER OF SAID LOT 1, BLOCK 58, PLAT 'A', SALT LAKE CITY SURVEY; AND RUNNING THENCE SOUTH 89°58'23" WEST, PARALLEL TO THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 170.00 FEET; THENCE SOUTH 0°01'01" WEST, PARALLEL TO THE EAST LINE OF SAID LOT 1, A DISTANCE OF 80.30 FEET; THENCE NORTH 89°58'23" EAST, ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 170.00 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE NORTH 0°01'01" WEST, ALONG AFORESAID EAST LINE OF LOT 1, A DISTANCE OF 80.30 FEET, TO THE POINT OF BEGINNING.

AS PREPARED IN SURVEY DATED JANUARY 21, 2019 BY MCNEIL ENGINEERING, DENNIS K. WITHERS 6135190 PLS.

PARCEL 5A:

TOGETHER WITH A RIGHT-OF-WAY BEGINNING WEST ALONG THE SOUTH LINE OF BLOCK 58, PLAT "A", SALT LAKE CITY SURVEY 165.00 FEET FROM THE SOUTHEAST CORNER OF SAID BLOCK 58 AND RUNNING THENCE NORTH PARALLEL TO THE EAST LINE OF SAID BLOCK 58, 79.50 FEET; THENCE WEST PARALLEL TO THE SOUTH LINE OF SAID BLOCK 58, 30.00 FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID BLOCK 58, 79.50 FEET TO THE SOUTH LINE OF SAID BLOCK 58; THENCE EAST ALONG THE SOUTH LINE OF SAID BLOCK 58, 30.00 FEET TO THE POINT OF BEGINNING.

**FELT PROPERTY**

PARCEL 6: (16-06-301-024)

BEGINNING AT A POINT WHICH IS SOUTH 267 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 52, PLAT "A", SALT LAKE CITY SURVEY; AND RUNNING THENCE SOUTH 69 FEET; THENCE EAST 224.5 FEET; THENCE NORTH 6 FEET; THENCE WEST 4.5 FEET; THENCE NORTH 43 FEET; THENCE WEST 59.0 FEET; THENCE NORTH 20 FEET; THENCE WEST 161 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING PROPERTY:

BEGINNING AT A POINT SOUTH 6.00 FEET AND EAST 152.00 FEET FROM THE SOUTHWEST CORNER OF LOT 5, BLOCK 52, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE NORTH 6°30'37" EAST 34.27 FEET; THENCE NORTH 35.00 FEET; THENCE EAST 5.12 FEET; THENCE SOUTH 20.00 FEET; THENCE EAST 59.00 FEET; THENCE SOUTH 43.00 FEET; THENCE EAST 4.50 FEET; THENCE SOUTH 6.00 FEET; THENCE WEST 72.50 FEET TO THE POINT OF BEGINNING.

PARCEL 6A:

TOGETHER WITH A PERPETUAL RIGHT-OF-WAY AND COMMON EASEMENT FOR THE USE AND BENEFIT OF ALL ABUTTING PARCELS OF LAND SOLELY FOR TRAVEL BY TEAM, MOTOR VEHICLE, OR OTHER VEHICLE, ON FOOT OR OTHERWISE, AS FULLY SET OUT IN THAT CERTAIN RIGHT-OF-WAY CONTRACT DATED APRIL 27, 1917, AND RECORDED IN BOOK "3-J" OF LIENS AND LEASES, PAGE 323 AS INSTRUMENT 409108 OF THE RECORDS IN THE OFFICE OF THE COUNTY RECORDS OF SAID SALT LAKE COUNTY, UPON AND ALONG THE SURFACE OF THE FOLLOWING DESCRIBED TWO STRIPS OF LAND TO-WIT:

FIRST STRIP:

BEGINNING AT A POINT 138.5 FEET EAST FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 52, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE SOUTH 100 FEET; THENCE SOUTH 7°16' EAST 168.3 FEET; THENCE EAST 10 FEET; THENCE NORTH 7°16' WEST 168.3 FEET; THENCE NORTH 100 FEET; AND THENCE WEST 10 FEET TO THE POINT OF BEGINNING.

SECOND STRIP:

BEGINNING AT A POINT 55 FEET EAST AND 160 FEET SOUTH FROM THE NORTHWEST CORNER OF LOT 6, BLOCK 52, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE EAST 12 FEET; THENCE SOUTH 127 FEET; THENCE WEST 72.4 FEET; THENCE NORTH 20 FEET; THENCE EAST 60.4 FEET; THENCE NORTH 87 FEET; THENCE NORTH 45° WEST 14.1 FEET; THENCE WEST 40.4 FEET; THENCE SOUTH 45° WEST 15.5 FEET; THENCE NORTH 7°16' WEST 47.7 FEET; THENCE SOUTH 30° EAST 30.4 FEET; THENCE EAST 52 FEET TO THE POINT OF BEGINNING.

PARCEL 6B:

TOGETHER WITH AN EASEMENT APPURTENANT TO THE PROPERTY RESERVED IN WARRANTY DEED RECORDED AS ENTRY NO. 4976057 AT BOOK 6259 AND PAGE 2221 OF SALT LAKE COUNTY RECORDS. SAID EASEMENT IS FOR ALL EXISTING STAIRWAYS AND OTHER PORTIONS OF THE BUILDING LOCATED ON THE ADJACENT PROPERTY TO THE EXTENT THAT SUCH STAIRWAYS AND OTHER PORTIONS ENCROACH ONTO OR PROJECT OVER THE PROPERTY.

PARCEL 6C:

TOGETHER WITH THAT CERTAIN PARKING EASEMENT AGREEMENT DATED SEPTEMBER 25, 2019, AND RECORDED SEPTEMBER 25, 2019, AS ENTRY NO. 13083268 IN BOOK 10836, AT PAGE 2421 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

**AMERICAN PLAZA PROPERTY**

PARCEL 1: (15-01-280-034)

BEGINNING AT A THE NORTHWEST CORNER OF LOT 5, BLOCK 58, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE EAST 135.8 FEET; THENCE SOUTH 68.93 FEET; THENCE EAST 44.45 FEET; THENCE SOUTH 68.9 FEET; THENCE WEST 180.25 FEET; THENCE NORTH 137.83 FEET TO THE POINT OF BEGINNING.

SITUATE IN SALT LAKE COUNTY, STATE OF UTAH.

PARCEL 2: (15-01-280-040)

BEGINNING AT A POINT WHICH IS 137.83 FEET SOUTH FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 58, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE EAST 182.55 FEET; THENCE SOUTH 19.34 FEET; THENCE WEST 182.55 FEET; THENCE NORTH 19.34 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

TOGETHER WITH THOSE CERTAIN NON-EXCLUSIVE EASEMENTS PROVIDED FOR IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT DATED APRIL 15, 1980 AND RECORDED APRIL 28, 1980 AS ENTRY NO. 3428092 IN BOOK 5094 AT PAGE 303 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, AND IN THAT CERTAIN RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT WITH CONDITIONS, COVENANTS AND RESTRICTIONS DATED MARCH 16, 1981 AND RECORDED MAY 20, 1981 AS ENTRY NO. 3566733 IN BOOK 5250 AT PAGE 640 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER AND IN THAT CERTAIN AMENDMENT TO RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT DATED JUNE 2, 1981 AS RECORDED JUNE 5, 1981 AS ENTRY NO. 3571928 IN BOOK 5256 AT PAGE 704 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, AND IN THAT CERTAIN AMENDMENT TO RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT WITH CONDITIONS, COVENANTS AND RESTRICTIONS DATED FEBRUARY 12, 1998 AND RECORDED FEBRUARY 19, 1988 AS ENTRY NO. 4587998 IN BOOK 6005 AT PAGE 591 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

PARCEL 4:

THE BENEFICIAL RIGHTS PURSUANT TO THAT CERTAIN CROSS EASEMENT RECORDED DECEMBER 31, 1987 AS ENTRY NO. 4569856 IN BOOK 5993 AT PAGE 448 OF THAT OFFICIAL RECORDS.

ALL OF THE ABOVE SITUATE IN SALT LAKE COUNTY, STATE OF UTAH.