

THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED RETURN TO:

Nelson Mullins Riley & Scarborough
LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Rusty A. Fleming, Esq.

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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: ADVANTAGE TITLE
201 OLD COUNTRY RD STE 200MELVILLE, NY 117472731

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

NOTE:

- 1. TO THE EXTENT PROVIDED IN THE NOTES, INTEREST AND DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.**
- 2. THIS DEED OF TRUST COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.**

Tax Parcel No. 15-01-428-026-0000

370-390 SOUTH WEST TEMPLE OWNER LLC, a Delaware limited liability company,
as trustor

to

FIRST AMERICAN TITLE INSURANCE COMPANY,
as trustee

for the benefit of

PIPER CANYON PARTNERS LLC, a Delaware limited liability company,
as beneficiary

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

Dated: As of August 5, 2022
Location: 370-390 South West Temple, Salt Lake City, Utah
84101
County: Salt Lake

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this “**Security Instrument**”) is made as of this 5th day of August, 2022, by **370-390 SOUTH WEST TEMPLE OWNER LLC**, a Delaware limited liability company, having its principal place of business at 120 Broadway, Suite 1340, New York, New York 10271 (together with its permitted successors and/or assigns, “**Borrower**”), as grantor, to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, having an address at 215 South State Street, Suite 380, Salt Lake City, Utah 84111 as trustee (together with its successors and assigns, “**Trustee**”), for the benefit of **PIPER CANYON PARTNERS LLC**, a Delaware limited liability company, having a mailing address at 130 East 59th Street, 13th Floor, Suite A, New York, New York 10022 (together with its successors and assigns, “**Lender**”), as beneficiary. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

WITNESSETH:

WHEREAS, Borrower owns that certain real property situated in Salt Lake County, Utah and more particularly described in **Exhibit “A”** attached hereto and made a part hereof (the “**Land**”);

WHEREAS, the Borrower desires to secure the payment of the Debt and the performance of all of their obligations under the Note, the Loan Agreement and the other Loan Documents;

WHEREAS, this Security Instrument is given to secure a loan (the “**Loan**”) in the maximum principal amount of TWELVE MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$12,350,000.00) pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as 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 executed by Borrower in connection with the Loan Agreement (such Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the “**Note**”);

WHEREAS, Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents; and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and the payment, fulfillment and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, with each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, being hereby incorporated by reference herein as though set forth in full, and furthermore shall be considered a part of this Security Instrument. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

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:

ARTICLE 1 - GRANTS OF SECURITY

SECTION 1.1 PROPERTY MORTGAGED. Borrower has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL AND CONVEY, unto Trustee, in trust, WITH POWER OF SALE, all of Borrower's present and hereafter acquired estate, right, title and interest in, to and under the following (collectively, the "**Property**"):

(a) Land. 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 or for any other use 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 (the "**Additional Land**");

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

(d) Easements and Other Beneficial Interests. All easements, rights-of-way or rights-of-use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights and entitlements, concurrency approvals, site plans, plat approvals, development orders, development approvals, permits and licenses pertaining to the Property, including, without limitation, 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, the Additional Land or the Improvements, as well as the reversion (or reversions), the remainder (or 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 any and all of the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claims and demands whatsoever, both at law and in equity, of Borrower of, in and to the Land, the Additional 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 UCC (as defined hereinbelow), now owned or hereafter acquired by Borrower, which is used at or in connection with the Land, the Additional Land or the Improvements, or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings and electronic data-processing, and any other office equipment now owned or hereafter acquired by Borrower, as well as 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**”), provided that, notwithstanding the foregoing, the Equipment shall not include any property belonging to Tenants under Leases, except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned or hereafter acquired by Borrower which is so related to the Land, the Additional Land or the Improvements, or which forms part of the Property that is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building (and 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 (whether temporarily or permanently) any of the Land, the Additional Land or the Improvements, 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, in addition to 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 and all water tanks, water supply(ies), water power sites, fuel stations, fuel tanks and fuel supply(ies), and any other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing, and the proceeds thereof (collectively, the “**Fixtures**”), provided that, notwithstanding the foregoing, the 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, as such term is defined below in this Subsection 1.1(g)), other than the Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor, and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any “security interests”, as such term is defined in the Uniform Commercial Code adopted in and enacted by the State of Utah (the “**Uniform Commercial Code**” or “**UCC**”), superior in lien to the lien of this Security Instrument;

(h) Leases and Rents. Any and all Leases (including any guaranties of such Leases), Rents, Bankruptcy Claims and other items assigned to Lender pursuant to that certain Assignment of Leases and Rents of even date herewith and executed by Borrower

in favor of Lender to be recorded in the Official Records of Salt Lake County, Utah (the “**Assignment of Leases and Rents**”);

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

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

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

(l) **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;

(m) **Agreements**. All agreements, contracts, certificates, instruments, letters of credit, 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 respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence of any Event of Default, to receive and collect any sums payable to Borrower thereunder;

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

(o) **Accounts**. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, (i) all accounts established or maintained in connection with deposits collected pursuant to Leases, if any, and subject to the rights of lessees in and to such deposits and (ii) all accounts established or maintained pursuant to the Loan Agreement; 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 and/or substitutions thereon and therefor;

(p) **Payment Rights**. All rights, including all payments (and interest thereon), which may heretofore and hereafter be made with respect to the Property;

(q) Reserved;

(r) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise;

(s) All Other Assets. All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims and oil, gas and minerals, as well as any and all other property and interests in property of Borrower, whether tangible or intangible; and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections 1.1(a) through 1.1(s) above.

AND, without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a 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 hereinafter 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 conveyed hereby. Notwithstanding anything set forth herein, all of the foregoing assignments and grants shall solely be to the maximum extent permitted by applicable law.

SECTION 1.2 **ASSIGNMENT OF RENTS**. Borrower hereby absolutely and unconditionally assigns, to the extent assignable, to Lender and Trustee 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 and conditions of the Loan Agreement and Assignment of Leases and Rents (in addition to Subsection 7.1(h) and Section 7.11 of this Security Instrument), Lender grants to Borrower a revocable license until an Event of Default to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or the 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 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. By executing and delivering this Security Instrument, Borrower hereby grants to Lender and Trustee, as security for the Obligations (as defined hereinbelow), a security interest in all right, title and interest of Borrower in the Fixtures, the Equipment, the Personal Property and 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 hereinafter referred to as the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land, if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender within five (5) Business Days of written demand any and all out-of-pocket expenses, including reasonable legal expenses and attorneys’ fees, actually incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, 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 shall deem proper, as determined in the sole discretion of Lender. The principal place of business of Borrower (Debtor) is as set forth on page two hereof and the address of Lender (Secured Party) is as set forth on page two 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, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement 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 any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any Reserve Accounts, any sums deposited in any account held by Lender and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Documents.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on benefit of Lender and to the use and benefit of Lender and Trustee and their successors and assigns, forever; and Borrower does hereby bind itself, its successors and assigns to **WARRANT AND FOREVER DEFEND** the title to the Property unto Lender against every person whomsoever lawfully claiming the same or any part thereof;

IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Obligations, at the time and in the manner provided for its payment in the Note, the Loan Agreement and in this Security Instrument.

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

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

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

SECTION 2.2 **OTHER OBLIGATIONS.** This Security Instrument, as well as the grants, assignments and transfers made in Article 1, are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) The payment and performance of all other obligations of Borrower contained herein;
- (b) The performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document;
- (c) The performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation or change of, or any substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document; and
- (d) The payment and performance of all future advances made by Lender to Borrower.

SECTION 2.3 **DEBT AND OTHER OBLIGATIONS.** Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**".

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 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 **INSURANCE.** Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

SECTION 3.4 **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. Subject to the provisions 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 3.5 **WASTE.** Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or 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. Other than in connection with environmental testing done in the ordinary course, 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 3.6 **PAYMENT FOR LABOR AND MATERIALS.**

(a) Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage or deed of trust (or any other additional security instrument) to secure debt affecting the Property, if any, (iii) such proceeding shall suspend the collection of

the Labor and Material Costs from Borrower and from the Property with regard to such contested Labor or Material Costs or Borrower shall have paid all of the Labor and Material Costs under protest, or Borrower shall have bonded over and removed such claim from title in a manner reasonably acceptable to Lender, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender in accordance with the Loan Agreement to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

SECTION 3.7 **PERFORMANCE OF OTHER AGREEMENTS.** Unless prohibited by applicable law, 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, subject to the notice, grace and cure rights set forth therein, and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

SECTION 3.8 **CHANGE OF NAME, IDENTITY OR STRUCTURE.** Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender and (c) in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the reasonable prior written request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower is operating or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

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 any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

SECTION 4.2 **NO RELIANCE ON LENDER.** The general partners, officers, shareholders, members, principals and/or other beneficial owners of Borrower 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 Subsection 1.1(h), Subsection 1.1(m) and Section 1.2 of this Security Instrument, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to 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 insurance policy, Lender shall not be deemed to have warranted, consented to or affirmed the sufficiency, 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 Article III 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 Article III 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 fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes and filing, registration and recording fees (in addition to all other reasonable out-of-pocket expenses) incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument or the other Loan Documents, or for (a) any note, mortgage or deed of trust supplemental hereto, (b) any security

instrument with respect to the Property (and any supplement thereto), (c) any instrument of further assurance, and any modification or amendment of the foregoing documents, (d) all federal, state, county and municipal taxes, duties, imposts, assessments and charges (but excluding any income, franchise or similar taxes) arising out of or in connection with the execution and delivery of this Security Instrument, (e) any security instrument with respect to the Property, (f) any instrument of further assurance reasonably required in connection therewith, or (g) any modification or amendment of the foregoing documents, except where prohibited by law so to do.

SECTION 5.2 FURTHER ACTS, ETC. Borrower will, at the reasonable cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances (provided that any such further actions or documents shall not increase any obligation of Borrower or diminish any right of Borrower), 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 deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, within five (5) Business Days after written request by Lender, will execute and deliver, and in the event it shall fail to so execute and deliver within such five (5) Business Day Period, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2, provided that Lender shall not exercise such power of attorney unless an Event of Default is continuing.

SECTION 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

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

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same within five (5) Business Days after receipt of notice of the requirement to pay said revenue, other stamps, other tax or charge, with interest and penalties thereon, if any.

SECTION 5.4 **SPLITTING OF MORTGAGE.** This Security Instrument and the Note may be split or divided in accordance with the terms and provisions 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, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. In connection therewith, Lender shall indemnify, defend and hold Borrower harmless from any losses imposed upon or incurred by or asserted against Borrower which directly arise out of the loss, theft, destruction or mutilation of the Note or any other loan Documents which are not a public record and the reissuance thereof by Borrower pursuant to this Section 5.5.

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 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 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 TRANSFER.** Borrower shall not permit or suffer any Transfer to occur, unless specifically permitted by Article VIII of the Loan Agreement or unless Lender shall consent thereto in writing.

ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

SECTION 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may, or acting by or through Trustee may, take such action, without additional notice or demand (to the 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 or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (a) Declare the entire unpaid Debt to be immediately due and payable;
- (b) Institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit (including a credit bid by Lender) in one or more parcels or in several interests or portions and in any order or manner;
- (c) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) 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 (to the extent permitted by applicable law) or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) Recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) Apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;
- (h) Revoke the license granted to Borrower under Section 1.2 hereof upon which Lender shall deliver notice of the applicable Event of Default (but if an Event of Default has been waived in writing by Lender, then Borrower's license shall thereafter be

automatically reinstated without further action of either of Borrower or Lender), upon which Lender may, subject to the rights of tenants under Leases, if any, 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 same wholly therefrom, as well as take possession of all books, records and accounts relating thereto (which Borrower hereby agrees to surrender in such event to Lender upon demand, together with Borrower's possession of the Property), and thereupon Lender may (subject to the rights of tenants under Leases, if any): (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 deems reasonably necessary; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property that Lender deems reasonably necessary; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender (or require any receiver appointed to collect) the Rents, which Rents shall be equal to the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all reasonable out-of-pocket expenses (including reasonable attorneys' fees) actually incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property as well as just and reasonable compensation for the services of Lender and its counsel, agents and employees. Notwithstanding anything contained herein to the contrary, so long as such Event of Default is no longer continuing, and provided that the Debt has not been accelerated and no other Event of Default shall then exist, the license granted to Borrower in Section 1.2 shall be automatically reinstated without any further action of the parties;

(i) Exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the following: (a) the right to take possession of the Fixtures, the Equipment and 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 the Personal Property, and (b) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender at a convenient place acceptable to Lender; provided, however, that any notice of sale, disposition or other intended action by Lender in accordance with the provisions hereof with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower at least five (5) Business Days prior to such action shall constitute commercially reasonable notice to Borrower;

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

(i) Taxes and Other Charges;

(ii) Insurance Premiums

(iii) Interest on the unpaid principal balance of the Note;

(iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, any prepayment fees, if applicable, and advances made by Lender pursuant to the terms of this Security Instrument;

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

(l) Apply the undisbursed balance of any other 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 discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of 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 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its sole discretion shall deem proper, to the extent consistent with applicable law.

SECTION 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without additional notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof. Lender or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof actually incurred (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, 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 or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending or bringing any such action or proceeding shall bear interest at the

Default Rate, for the period after notice from Lender that such cost or expense was incurred to 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 be secured by this Security Instrument and the other Loan Documents and shall be due and payable within five (5) Business Days of demand by Lender therefor.

SECTION 7.4 ACTIONS AND PROCEEDINGS. Upon the occurrence and during the continuance of an Event of Default, subject to the terms hereof and of the other Loan Documents, Lender or Trustee 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 reasonable discretion, decides should be brought to protect its interest in the Property.

SECTION 7.5 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 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 an Event of Default by Borrower that is continuing at the time such earlier action was commenced.

SECTION 7.6 EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable notice, Lender and its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender and its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the Term of the Loan, and without regard to whether an Event of Default has occurred or is continuing.

SECTION 7.7 OTHER RIGHTS, ETC.

(a) The failure of Lender or Trustee 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 or Trustee 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 Debt 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 (except to the extent expressly provided in such agreement).

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies (except to the extent sufficient funds remain in the Tax and Insurance Reserve Account for such purpose) or for failure to determine whether insurance in force is adequate as to the amount of risks insured (provided, however, Borrower shall no liability for any loss or damage to the Property which results from Lender's fraud, illegal acts, gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction). 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 and performance of the Obligations (including, but not limited to, payment of the Debt) to any other security held by Lender in such order and manner as Lender, in its sole discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. Neither Lender nor Trustee shall be limited exclusively to rights under this Security Instrument but shall be entitled to every right and remedy now and hereafter afforded at law or in equity. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. The rights of Lender or Trustee shall not be limited exclusively to the rights and remedies herein stated, but shall be include 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 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 obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

SECTION 7.9 VIOLATION OF LAWS. If the Property is not in compliance with Legal Requirements in all material respects, Lender may require Borrower to take such action, including, without limitation, monetary reserves or financial equivalents, as would be necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property.

SECTION 7.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, Lender and the other Indemnified Parties (as defined hereinbelow) are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Article 8 herein and Section 9.2 of the Loan

Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure, exercise of a power of sale or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, or exercises the power of sale pursuant to this Security Instrument, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Article 8 herein and Section 9.2 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower with respect to the Loan are fully and personally liable for the obligations pursuant to Article 8 herein and Section 9.2 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Article 8 herein and Section 9.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising a power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Article 8 herein and Section 9.2 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

SECTION 7.11 **RIGHT OF ENTRY.** Upon reasonable notice to Borrower, Lender and its agents shall have the right to access, enter and/or inspect the Property at all reasonable times.

SECTION 7.12 **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform any of the covenants and agreements contained in this Security Instrument, the Note or the other Loan Documents and does not cure that failure within the applicable notice and cure period, or if any action or proceeding is threatened or commenced which materially and adversely affects Lender's interest in the Property, then Lender, at Lender's option, upon prior written notice to Borrower, may make such appearances, disburse such sums, including reasonable actual attorneys' fees, and take such action as it deems reasonably expedient or necessary to protect Lender's interest, including: (i) making repairs; (ii) discharging prior encumbrances in full or part; (iii) paying, settling or discharging tax liens, mechanics' or other liens, paying ground rents (if any); (iv) procuring insurance; and (v) renting; operating and managing the Property, and paying operating costs and expenses (including management fees) of every kind and nature in connection therewith so that the Property shall be operational and usable for its intended purposes. Lender, in making payments of real estate taxes or assessments, may do so in accordance with any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof. Lender may apply to the payment of such expenses any Reserve Funds available on deposit pursuant to the terms of the Loan Agreement, and any amounts additionally disbursed by Lender pursuant to this Section 7.12 shall be part of the Debt and shall bear interest at the Default Rate. Nothing contained in this Section 7.12 shall require Lender to incur any expense or take any action

hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Section 7.12.

ARTICLE 8 - INDEMNIFICATION

SECTION 8.1 **GENERAL INDEMNIFICATION**. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as defined hereinbelow) from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, diminutions in value, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement, of whatever kind or nature (including, but not limited to, reasonable out-of-pocket attorneys' fees and other costs of defense actually incurred) (collectively, "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any breach by Borrower of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 8; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document; provided, however, that notwithstanding the foregoing, "**Losses**" shall not include: (a) any items that would otherwise be included in Losses but which result from Lender's fraud, illegal acts, gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction, (b) any consequential or punitive damages, except for consequential or punitive damages actually payable to a third party, or (c) any items that would otherwise be included in Losses that were not present prior to the date Lender acquires title to the Property, whether by

foreclosure, exercise of power of sale, acceptance of a deed-in-lieu of foreclosure or otherwise. Any amounts payable to Lender by reason of the application of this Section 8.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Security Instrument, the term “**Indemnified Parties**” means, collectively, Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded and any Person who may hold or acquire, or will have held, a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, and any custodians, trustees and other fiduciaries who hold, have held or may hold a full or partial interest in the Loan secured hereby for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, employees, agents, servants, contractors, subcontractors, representatives, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, without limitation, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the Term of the Loan or as a part of or following a foreclosure of the Loan, as well as any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business).

SECTION 8.2 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 or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

SECTION 8.3 ERISA INDEMNIFICATION. 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 (including, without limitation, reasonable attorneys’ fees and costs incurred in the investigation, defense and settlement of Losses incurred in correcting any non-exempt prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s reasonable discretion) that Lender may incur, directly or indirectly, as a result of a default by Borrower under Sections 3.1.8 or 4.2.10 of the Loan Agreement.

SECTION 8.4 DUTY TO DEFEND; ATTORNEYS’ FEES; OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower’s consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the

Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 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 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 appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

SECTION 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 provides 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 and the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower, or for which applicable law does not require.

SECTION 9.4 **WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

SECTION 9.5 **WAIVER OF JURY TRIAL.** BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH; OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS. BORROWER AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

SECTION 9.6 **SURVIVAL.** The indemnifications made pursuant to Article 8 herein and the representations, warranties, covenants and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect in accordance with the terms hereof or the Environmental Indemnity, as applicable, and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

ARTICLE 10 - RESERVED

ARTICLE 11 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

Notices to the Trustee shall be sent as follows:

First American Title Insurance Company
215 South State Street, Suite 380
Salt Lake City, Utah 84111

ARTICLE 12 - APPLICABLE LAW

SECTION 12.1 **GOVERNING LAW.** The governing law and related provisions contained in Section 11.3 of the Loan Agreement are hereby incorporated by reference as if fully set forth herein.

SECTION 12.2 **USURY LAWS.** Notwithstanding anything to the contrary, (i) all agreements and communications between Lender and Borrower are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest under the law, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (ii) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (iii) if, through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate (including funds held in reserve accounts), any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

SECTION 12.3 **PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 13 - DEFINITIONS

SECTION 13.1 All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Trustee" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to 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 reasonable out-of-pocket attorneys', paralegal and law clerk fees and disbursements of outside counsel, 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.

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, Lender or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

SECTION 14.2 **SUCCESSORS AND ASSIGNS.** This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents. 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 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 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, unless such continued effectiveness of this Security Instrument, as modified, would be contrary to basic understandings and intentions of the parties as expressed herein.

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

SECTION 14.5 **NUMBER AND GENDER.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

SECTION 14.6 **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 repayment 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 14.7 **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 Debt 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 14.8 **LIMITATION ON LENDER'S RESPONSIBILITY.** Other than obligations assumed by Lender in connection with a foreclosure or other exercise of remedies by Lender, 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, Borrower shall have no liability for any loss or damage to the Property which results from Lender's fraud, illegal acts, gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Nothing herein contained shall be construed as constituting Lender a "mortgagee-in-possession".

ARTICLE 15 – DEED OF TRUST PROVISIONS

SECTION 15.1 **CONCERNING THE 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 gross negligence or willful 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. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor 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.

SECTION 15.2 **TRUSTEE'S FEES.** Borrower shall pay all reasonable 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 costs, fees and expenses shall be secured by this Security Instrument. Notwithstanding anything to the contrary contained herein or in any other Loan Documents, Trustee hereby acknowledges and agrees that no fees or other compensation shall be payable to Trustee hereunder or otherwise in connection with the Loan or Loan Documents except in connection with (a) a sale of the Property in connection with an exercise of remedies hereunder and/or under the other Loan Documents or (b) a release hereof in accordance with the applicable terms and conditions hereof.

SECTION 15.3 **CERTAIN RIGHTS.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally

liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

SECTION 15.4 **RETENTION OF MONEY.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

SECTION 15.5 **PERFECTION OF APPOINTMENT.** Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

SECTION 15.6 **SUCCESSION INSTRUMENTS.** Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

ARTICLE 16 – STATE SPECIFIC PROVISIONS

SECTION 16.1 **STATE SPECIFIC PROVISIONS.** The state-specific provisions set forth and contained in this Section 16.1, to the extent inconsistent with the remaining terms, conditions, and provisions of this Security Instrument, shall supersede said inconsistent provisions and, in the event of such conflict, govern and control:

SECTION 16.2 **Remedies of Lender.** Subject to the provisions of the Loan Documents, upon the occurrence of an Event of Default under the terms of the Loan Documents, in addition to any rights and remedies provided for in the Loan Documents, and to the extent permitted by applicable law, the following provisions apply:

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

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

First: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed.

Second: To payment of the obligations secured by this Security Instrument.

Third: The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting to the Obligations of Borrower secured by this Security Instrument such credit bid amount. Lender, upon so acquiring the Property shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all default rate interest and late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's lien upon the Property, and (ii) Lender may add all default rate interest and late charges, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all unpaid late charges in any credit bid Lender may make at a foreclosure sale of the Property pursuant to this Security Instrument.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Instrument, this Security

Instrument shall, at the sole election of Lender, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

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

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

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

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

(f) Reinstatement. If Borrower, Borrower's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined

by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

SECTION 16.3 Acceptance by Trustee. Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law.

SECTION 16.4 Trustee's Fees and Expenses. In no event shall Borrower be required to pay to Trustee any fees or compensation in excess of amounts permitted by *Utah Code Annotated* § 57-1-21.5.

SECTION 16.5 Substitution of Trustee. Lender, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Lender and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by *Utah Code Annotated* § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Borrower, Trustee and Lender hereunder, the book and page where this Security Instrument is recorded and the name and address of the new Trustee and all other information required by *Utah Code Annotated* § 57-1-22 or any successor statute. In compliance with *Utah Code Annotated* § 57-1-21.5, the Trustee shall not require the trustor reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

SECTION 16.6 Fixture Filings. This Security Instrument covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, LENDER IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR." BORROWER IS THE RECORD OWNER OF THE PROPERTY. THE ORGANIZATIONAL ID NUMBER FOR THE BORROWER IS 6929309.

SECTION 16.7 Integration. PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, BORROWER IS NOTIFIED THAT THIS SECURITY INSTRUMENT, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF

PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

SECTION 16.8 Liens. Except as allowed and provided for in Section 1.8 below or as otherwise permitted pursuant to the Loan Documents, Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien or any other lien, charge, attachment, or lis pendens filed or recorded against the Property which relates to Borrower or the Property.


SECTION 16.9 Right to Contest. Borrower may, in good faith and by appropriate proceedings, contest the validity, applicability or amount of any asserted property taxes, property liabilities or liens, charges, attachments or lis pendens ("**Contested Sum**") after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if: (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender or Lender's nominee cash or other security, in form reasonably satisfactory to Lender, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower, Trustee or Lender therefor, together with interest, costs and penalties thereon; and (ii) Borrower promptly pays any amounts adjudged to be due, together with all costs, penalties and interest thereon, on or before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final and before any writ or order is issued under which the Property could be sold pursuant to such judgment. With respect to any mechanic's lien, with the prior consent of Lender and in lieu of depositing cash or other security as described above, Borrower shall have the right to contest any such mechanic's claim or lien so long as Borrower previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Borrower may, with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security. Borrower shall cause Lender to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-204. Borrower shall also provide to Lender copies of all preliminary notices or other notices filed by any contactor, subcontractor or supplier with respect to the Property.

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

BORROWER:

370-390 SOUTH WEST TEMPLE OWNER LLC, a Delaware limited liability company

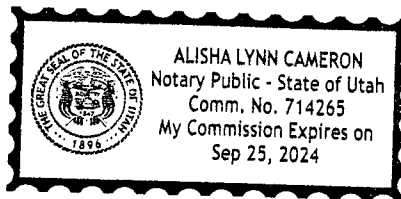
By: 
Name: Matthew G. Schwartz
Title: Authorized Signatory

STATE OF Utah
COUNTY OF Salt Lake

On this 3rd day of August, in the year 2022, before me, Alisha Lynn Cameron, a notary public, personally appeared Matthew G. Schwartz, Authorized Signatory of 370-390 South West Temple Owner LLC, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal

(Seal)




Notary Public

EXHIBIT "A"

Legal Description of the Land

Real property in the City of Salt Lake City, County of Salt Lake, State of Utah, described as follows:

THAT CERTAIN REAL PROPERTY LOCATED IN THE COUNTY OF SALT LAKE, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 50, PLAT "A", SALT LAKE CITY SURVEY, THENCE SOUTH 89°58'00" WEST 214.5 FEET; THENCE NORTH 00°01'10" WEST 330 FEET; THENCE NORTH 89°58'00" EAST 49.5 FEET; THENCE SOUTH 00°01'10" EAST 13 FEET; THENCE NORTH 89°58'00" EAST 28.52 FEET; THENCE SOUTH 63.93 FEET; THENCE EAST 136.5 FEET; THENCE SOUTH 00°01'10" EAST 252.99 FEET TO THE BEGINNING.

APN: 15-01-428-026-0000