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919 Third Avenue  
New York, New York 10022  
Attention: Julian M. Wise, Esq.

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Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

Tax Parcel No. 16-06-151-030

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

**200 SOUTH OWNER LLC,**  
a Delaware limited liability company (Borrower), as trustor  
to

**COTTONWOOD TITLE INSURANCE AGENCY, INC.,**  
a Utah corporation (Trustee), as trustee

for the benefit of

**CMTG LENDER 100 LLC,**  
a Delaware limited liability company (Lender), as beneficiary

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Dated: As of September 2, 2022

Location: Astra Tower, 89 East 200 South  
City: Salt Lake City  
State: Utah

**PREPARED BY:**  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Julian M. Wise, Esq.

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

**THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND FIXTURE FILING** (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this "**Security Instrument**"), is made as of this 2nd day of September, 2022, by **200 SOUTH OWNER LLC**, a Delaware limited liability company ("**Borrower**"), as trustor, having its principal place of business at c/o Kensington Investment Company, Inc., 347 Congress Street, Boston, Massachusetts 02210, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation, having an address at 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121 ("**Trustee**"), for the benefit of **CMTG LENDER 100 LLC**, a Delaware limited liability company, having an address at c/o Mack Real Estate Credit Strategies, L.P., 60 Columbus Circle, New York, New York 10023, as lender (together with its successors and assigns, "**Lender**"), as beneficiary.

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

**WHEREAS**, this Security Instrument is given to secure a mortgage loan (the "**Loan**") in the maximum principal amount of up to **ONE HUNDRED TWENTY-THREE MILLION THREE HUNDRED SEVENTY-NINE THOUSAND NINE HUNDRED ONE AND NO/100 DOLLARS (\$123,379,901.00)** (the "**Loan Amount**"), made pursuant to that certain Senior Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Senior Loan Promissory Note, dated as of the date hereof, in the principal amount of the Loan (together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "**Note**"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement;

**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 (as hereinafter defined); and

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

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument, and intending to be legally bound:

## ARTICLE 1

### GRANTS OF SECURITY

Section 1.1 Trust Property. Borrower does hereby irrevocably grant, bargain, sell, pledge, assign, hypothecate, warrant, transfer and convey to Trustee IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Lender and does hereby grant a security interest in, on and to Lender and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property");

(a) Land. The fee interest of Borrower in the real property commonly known as Astra Tower and located at 89 East 200 South, Salt Lake City, Utah, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land");

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

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

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

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other equipment (which are located and used at the Improvements or on the Land) now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases (as hereinafter defined), except to the extent that Borrower shall have any right or interest therein;

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

(g) Personal Property. Subject to Borrower's rights with respect thereto, as may be expressly provided in the Loan Agreement, 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 hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Personal Property is located (as the same may be amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the Lien of this Security Instrument and all proceeds and products of the above. Notwithstanding the foregoing, "Personal Property" shall not include any property that would constitute Personal Property but for the fact that such property belongs to any tenant of the Property, as opposed to Borrower;

(h) Leases and Rents. Subject to the rights of Borrower as expressly set forth herein and in the Loan Agreement, all of Borrower's right, title and interest in, to and under all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into by or on behalf of Borrower (or its predecessor in interest), and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., and the regulations adopted and promulgated thereto, as the same may be amended from

time to time (the "Bankruptcy Code") (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (collectively, the "Rents") and the right of Borrower to receive and apply the Rents to the payment of the Debt. Notwithstanding the foregoing, "Rents" is not intended to include any Reserve Funds paid or returned to Borrower pursuant to and in accordance with the Loan Documents;

(i) Condemnation Awards. Subject to the applicable provisions of Article 7 of the Loan Agreement, all Awards and Condemnation Proceeds;

(j) Insurance Proceeds. All Insurance Proceeds (subject to the applicable provisions of Article 7 of the Loan Agreement) in respect of the Property under any Policies covering the Property, in each case, in accordance with the Loan Agreement;

(k) Tax Certiorari. All refunds, rebates or credits in connection with a 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) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Insurance Proceeds and Awards, into cash and liquidation claims (subject to the applicable provisions of Article 7 of the Loan Agreement);

(m) Rights. The right, subject to Section 9.4 hereof and any applicable terms of the Loan Agreement, following the occurrence and during the continuance of an Event of Default, 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, provided that the foregoing rights shall not in and of themselves restrict Borrower from exercising such rights during the period of time that no Event of Default exists;

(n) Agreements. Subject to the rights of Borrower hereunder and under the other Loan Documents, and to the extent assignable, all of Borrower's right, title and interest in and to all agreements (including, without limitation, the Management Agreement and all other management agreements, contracts, certificates, instruments, franchises, permits, licenses plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder (collectively, "Agreements"), including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement) hereunder, to receive and collect any sums payable to Borrower thereunder;

provided, however, unless an Event of Default has occurred and is continuing, Borrower shall in the ordinary course be entitled to deal with the foregoing in accordance with the requirements of the Loan Agreement or the other Loan Documents with respect to such Agreements, including taking actions thereunder, modifying and terminating the same, provided such actions are commercially reasonable and do not violate any covenant contained in the Loan Agreement or other Loan Documents with respect thereto;

(o) Trademarks. To the extent assignable, all trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All Accounts, Account Collateral, reserves, escrows and deposit accounts maintained by Borrower with respect to the Property and all proceeds, products, distributions or dividends or substitutions thereof, other than amounts (including, without limitation, Excess Cash Flow) paid or returned to Borrower under any of the Loan Documents (and provided no Event of Default or Cash Trap Period exists at the time such amounts are paid or returned to Borrower), including the Cash Management Agreement;

(q) Causes of action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan, subject, however, to the limitations set forth in Section 10.4 of the Loan Agreement;

(r) Interest Rate Protection Agreement. All right, title, interest and claim of Borrower in, to, under or pursuant to any Interest Rate Protection Agreement, and all claims of Borrower for breach by any Counterparty of any covenant, agreement, representation or warranty contained in the Interest Rate Protection Agreement;

(s) Proceeds. All proceeds of any of the foregoing, including, without limitation, Insurance Proceeds and Awards, whether cash, liquidation or other claims or otherwise, subject to Borrower's right to use such Proceeds and Awards to the extent provided and in accordance with the Loan Agreement and the other Loan Documents; and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in clauses (a) through (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, to the extent of Borrower's right, title and interest in same, 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 being collectively referred to herein 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 granted hereby.

The definition of Property shall not include any proper distributions made by Borrower to its members prior to the occurrence of an Event of Default from available Excess Cash (provided that a Cash Trap Period does not exist at such time) in accordance with the terms and provisions of the Loan Documents (which distributions shall be made free and clear of any lien and shall not constitute Property, "proceeds" or otherwise be subject to the terms of this Security Instrument or any of the other Loan Documents).

Section 1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, prior to an Event of Default or upon written waiver thereof by Lender (which waiver may be granted in its sole and absolute discretion), Lender grants to Borrower a revocable license, revocable at any time during the continuance of an Event of Default upon receipt by Borrower of written notice thereof from Lender to collect, receive, use and enjoy the Rents (provided that such term shall specifically exclude the security deposits collected in connection with the Leases) and exercise all rights of landlord under these Leases. Borrower shall hold the Rents, or any portion thereof sufficient to discharge all sums currently due on the Debt, for use in the payment of such sums. This license shall only be revoked as provided in this Security Instrument, the Loan Agreement and/or the Assignment of Leases and Rents. If the Event of Default that gave rise to the revocation of such license is no longer continuing, then the revocable license granted pursuant to this Section 1.2 shall be reinstated for so long as no other Event of Default shall occur and be continuing, subject to the provisions of this Section 1.2.

Section 1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest 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 being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, but upon notice to Borrower to the extent expressly required by the terms of the Loan Documents, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other reasonable measures as Lender may deem reasonably necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender or Trustee during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender or Trustee at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender within ten (10) Business Days after written request therefor any and all reasonable out-of-pocket expenses, including reasonable out-of-pocket legal expenses and attorneys' fees of outside counsel, actually incurred or paid by Lender or Trustee in

protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral during the continuance of an Event of Default (but excluding any special, punitive or consequential damages except to the extent payable by Lender to a third party). Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its reasonable discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one 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 and county wherein such fixtures are situated, shall operate also as a financing statement (naming Borrower as a Debtor and Lender as the Secured Party) 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 Funds, the Accounts, Net Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in this Security Instrument or other Loan Documents.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, and its successors and assigns, IN TRUST WITH POWER OF SALE, for the benefit and use of Lender and its successors and assigns;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay the Debt in full to Lender, Lender shall instruct, and the Trustee (upon the written request of Lender and at the sole cost and expense of Borrower) shall promptly reconvey, release and discharge this Security Instrument and the liens, security interests and assignments created hereby and Lender will provide (or, as applicable, cause Trustee to provide) a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Borrower for recording or filing (as applicable), in forms reasonably acceptable to Lender and Borrower. The foregoing notwithstanding, to the extent that Borrower's obligation to indemnify and hold harmless Lender and Trustee pursuant to the provisions hereof are expressly stated to survive any such payment or release, such obligation shall so survive. Lender shall execute and deliver to Borrower, or cause the Trustee to execute and deliver to Borrower for recording, at Borrower's sole cost and expense, any documentation reasonably requested by Borrower to evidence such termination. Upon the recording of such documentation and the filing of such termination statements, the absolute assignments set forth in Section 1.2 shall automatically terminate and become null and void.



## 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 and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document (other than the Environmental Indemnity); and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

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 throughout the term of the Loan:

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. In the event of any conflict between the express provisions of the Loan Agreement and the express provisions of this Security Instrument, the provisions of the Loan Agreement shall control.

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 Payment of Taxes. Borrower shall promptly pay all Taxes and Other Charges in accordance with the terms of the Loan Agreement, subject to Section 6.1.3 of the Loan Agreement.

Section 3.5 Maintenance of Property. Without limiting any other applicable restrictions set forth in the Loan Documents, (a) Borrower shall cause the Property to be maintained in a good and safe condition and repair, and (b) except for Permitted Alterations, as expressly permitted in accordance with the terms of the Loan Agreement, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for usual and customary replacement of the Fixtures, the Equipment or the Personal Property of equal or greater value) without the consent of Lender, which consent (provided no Event of Default then exists) shall not be unreasonably withheld, conditioned or delayed. To the extent required by 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 pursuant to the terms of the Loan Agreement.

Section 3.6 Waste. Borrower shall not commit or suffer any intentional physical 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 is reasonably likely to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair in any material adverse respect the value of the Property or the security of this Security Instrument. Subject to the terms of the Loan Agreement, 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 3.7

(a) Payment for Labor and Materials. Subject to Section 3.7(b) hereof, Borrower will (i) promptly pay prior to delinquency all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred by or on behalf of Borrower in connection with the Property and (ii) subject to the contest and cure rights in Section 3.7(b) hereof, will 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 created hereby and by the other Loan Documents, and 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 hereby and by the other Loan Documents except for the Permitted Encumbrances and as permitted under the Loan Agreement.

(b) 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) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject or which affects the Property and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with Legal Requirements, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid, in full, all of the Labor and Material Costs under protest,

(iv) Borrower shall promptly upon final determination thereof pay the amount of any such Labor and Material Costs, together with all costs, interest and penalties which may be payable in connection therewith, (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 furnish such security as may be required pursuant to the terms of the Loan Agreement

Section 3.8 Performance of Other Loan Documents. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement and any other Loan Document to the extent that failure to observe and perform such term would be reasonably likely to result in a Material Adverse Change.

Section 3.9 Change of Name, Identity or Structure. Except as expressly permitted under the Loan Agreement, Borrower shall not change Borrower's name, identity (including trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure as a single purpose Delaware limited liability company without first (a) notifying Lender of such change in writing at least ten (10) Business Days prior to the effective date of such change, (b) taking all action reasonably required by Lender for the purpose of perfecting or protecting the Lien and security interest of Lender and (c) without first obtaining the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Borrower shall promptly notify Lender in writing of any change in its 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 (but in no event will Borrower be required to incur, suffer or accept (except to a de minimis extent) any lesser rights or greater obligations than as currently set forth in the Loan Documents). At the request of Lender, Borrower shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property (but in no event will Borrower be required to incur, suffer or accept (except to a de minimis extent) any lesser rights or greater obligations than as currently set forth in the Loan Documents).

Section 3.10 Warranty of Title. Borrower has good title to the Property and has the right to grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Borrower possesses a fee simple absolute estate in the Land (and the Improvements located thereon), and Borrower owns the Property free and clear of all Liens, encumbrances and charges whatsoever except for the Permitted Encumbrances and as expressly permitted under the Loan Agreement. This Security Instrument, when properly recorded in the appropriate records, together with the Assignment of Leases and any Uniform Commercial Code financing statements required to be filed in connection therewith, when properly filed, will create (i) a valid, perfected first priority Lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases) for which perfection may be achieved by the filing of UCC financing statements, all in accordance with the terms thereof, subject only to Permitted Encumbrances, such other Liens as are expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents.

## ARTICLE 4

### OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Borrower and Lender. The relationship between Borrower, on the one hand, and Lender, on the other, 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, on the one hand, and Lender, on the other, to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(i) and (o) or Section 1.2, except to the extent that Lender, or any Affiliate, nominee, or designee of Lender has taken title to and possession of the Property through foreclosure (or deed in lieu thereof, upon such Person's acceptance, in its sole and absolute discretion, of such deed in lieu), 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, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 of the Loan Agreement and Articles 3 and 4 hereof 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 5 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 related to this Security Instrument 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 recording taxes due and payable, filing, registration or recording fees due and payable, and all reasonable out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance required under any of the Loan Documents, and any modification or amendment of the foregoing documents and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance required under any of the Loan Documents, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, etc. Subject to the terms and provisions of the Loan Agreement, Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby 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 (but in no event will Borrower be required to incur, suffer or accept (except to a de minimis extent) any lesser rights or greater obligations than as currently set forth in the Loan Documents). Borrower, promptly after written demand, will execute and deliver and, in the event it shall fail to so promptly execute and deliver, hereby authorizes Lender and Trustee to file one or more financing statements or execute in the name of Borrower to the extent Lender or Trustee may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property or any Collateral. Borrower grants to Lender and Trustee an irrevocable power of attorney coupled with an interest for the purpose of perfecting its security interest with respect to the Property and the Loan (within ten (10) Business Days of Lender's written demand or at any time that an Event of Default exists). Lender shall provide Borrower with copies of any notices and/or instruments of filings executed by Lender in accordance with the two (2) immediately preceding sentences.

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 (other than, in the case of Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of the office in which Lender has

made the Loan or any political subdivision thereof), Borrower will, upon demand of Lender, 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, exercisable by written notice to Borrower of not less than one hundred fifty (150) days to declare the Debt immediately due and payable, and so long as no Event of Default has occurred and is continuing, without premium or penalty. Borrower will not, in any event, be required to pay any excise, profits, income, transfer or similar tax of Lender.

(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 to Borrower of not less than one hundred fifty (150) days to declare the Debt immediately due and payable, and so long as no Event of Default has occurred and is continuing, without interest, premium or penalty.

(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, with interest and penalties charged by such governmental authority thereon, if any.

Section 5.4 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, such affidavit to be in customary form, and, in the case of any such mutilation, upon surrender and cancellation of such Note or a replacement of such other Loan Document, Borrower will promptly issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## **ARTICLE 6**

### **DUE ON SALE/ENCUMBRANCE**

Section 6.1 No Transfer. Borrower shall not permit or suffer any Transfer to occur, unless expressly permitted by the Loan Agreement or unless Lender (in its sole and absolute discretion) shall consent thereto in writing.

## **ARTICLE 7**

### **RIGHTS AND REMEDIES UPON DEFAULT**

Section 7.1 Remedies. Upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement) and subject to the provisions of the Loan Agreement, all or any one or more of the rights, powers, privileges and other remedies available

to Lender or Trustee, against Borrower under this Security Instrument or at law or in equity may be exercised by Lender or Trustee at any time and from time to time. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine, in its sole discretion, except to the extent prohibited under any applicable law, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) commence and complete a power of sale foreclosure as provided by this Security Instrument or otherwise in accordance with Utah law;
- (c) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument, including without limitation a judicial foreclosure of this Security Instrument as a mortgage, in accordance with Utah law, of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (d) to the extent permitted by applicable law, 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 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, and without limiting the foregoing:
  - (i) in connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
  - (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law;
  - (iii) should Lender elect to sell any portion of the Property which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable law in accordance with the laws governing a sale of the Personal Property, Equipment or Fixtures, Lender shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the giving of such notice of sale and the expiration of any required time period as may

then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale, as and when permitted by applicable law; and

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

(e) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, to the extent permitted law applicable law, 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;

(f) the license granted to Borrower under Section 1.2 hereof shall be revoked and such license thereafter shall be void and of no further force or effect upon written notice to Borrower from Lender, and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom to the extent permitted by applicable law, without liability for trespass, damages or otherwise (except for any damages directly caused by the gross negligence, illegal acts or willful misconduct of Lender), but subject to the rights of any Tenant under its Lease, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand (keeping copies of same at its election), and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict Tenants (subject to and in accordance with the terms of their Leases), and demand, sue for, collect and receive all Rents of the Property and



every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all actual out-of-pocket expenses (including reasonable attorneys' fees) 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, its counsel, agents and employees, in each case, subject to and in accordance with the Loan Documents;

(g) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) without demand to Borrower, the right to enter the Property and 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 (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender or Trustee at a convenient place reasonably acceptable to Lender (which in the case of the tangible personal property shall be at the Land). Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Borrower;

(h) apply any sums then deposited in the Accounts 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 discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

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

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

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

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

Section 7.2 Application of Proceeds. To the extent permitted by applicable law, the Trustee shall apply the proceeds actually received from any foreclosure sale of the Property as follows: (i) first, to discharge all taxes, levies and assessments due and payable with respect to the Property, including a proper proration for the current year; (ii) second, to the discharge of all of the Obligations, in such order as Lender, in its sole discretion, may determine; (iii) third, to the satisfaction of other liens of record which are inferior to the lien of this Security Instrument, in order of their priority; and (iv) last, to pay any remaining surplus to the Borrower or its assigns. However, the Trustee as to such surplus shall not be bound by any inheritance, devise, conveyance, assignment or Lien upon the Borrower's equity, without actual notice prior to distribution.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized, subject to the terms and conditions of the Loan Agreement, to enter upon the Property (subject to the rights of Tenants under their respective Leases) 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 Lender's actual, out-of-pocket fees, costs and expenses incurred in connection with any such action (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 actual, out-of-pocket fees, costs and expenses incurred by Lender 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 beginning on the first day after notice to Borrower from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such actual, out-of-pocket fees, 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 to Lender within five (5) Business Days following written demand by Lender therefor.

Section 7.4 Actions and Proceedings. During the continuance of an Event of Default, Lender, upon reasonable notice to Borrower, shall have 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. During the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become delinquent, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender

thereafter to bring an action of foreclosure or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 Other Rights, etc.

(a) To the extent permitted by applicable law, the failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved (except as and to the extent expressly provided in any written instrument executed and delivered by Lender as described in clause (ii) or (iii) of this Section 7.6(a)) of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the 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.

(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, or for failure to determine whether insurance in force is adequate as to the amount of risks insured, unless same was caused by the gross negligence, willful misconduct, fraud, or illegal acts of Lender. To the extent permitted by applicable law, 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) During the continuance of an Event of Default, Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to, subject to Section 10.4 of the Loan Agreement, every right and remedy now or hereafter afforded at law or in equity.

Section 7.7 Right to Release Any Portion of the Property. Lender, or Trustee upon written instructions from Lender, may, in exercising any remedies under this Security Instrument or any other Loan Document, 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 Lender may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other

lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

## ARTICLE 8

### INTENTIONALLY OMITTED

## ARTICLE 9

### INDEMNIFICATION

Section 9.1 General Indemnification. The provisions of Section 11.13 of the Loan Agreement are hereby incorporated by reference into this Security Instrument as if fully set forth herein.

Section 9.2 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 actually incurred by any Indemnified Parties and arising out of 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 (such as Lender's excise and income taxes attributable to payments under the Note), except for (1) any claim to the extent caused by Lender's gross negligence or willful misconduct, and (2) except to the extent payable by Lender to any third party, any special, punitive or consequential damages.

Section 9.3 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 actually incurred in correcting any 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 sole discretion) that Lender actually incurs, as a result of a default under Sections 5.1.8 and 6.2.8 of the Loan Agreement.

Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, promptly after any action, judgment, suit written claim or written demand or threat of action with respect to which any Indemnified Party claims the benefit of Sections 9.1 and 9.2 hereof and, absent an Event of Default, such Indemnified Party provides Borrower the opportunity to defend the same, Borrower shall defend such Indemnified Party by attorneys and other professionals reasonably approved by the Indemnified Parties, unless such attorneys and other professionals are not required by an insurance company defending such claim. Notwithstanding the foregoing, in the event, in the reasonable opinion of Lender, a conflict or potential conflict exists between an Indemnified Party and Borrower that would make separate representation advisable, any Indemnified Parties may, in their reasonable discretion, at Borrower's sole cost and expense, engage their own attorneys to defend or assist them, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Within ten (10) days of written demand by the Indemnified Parties or, if an Event of Default shall have occurred and be continuing, on written

demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties (if any Indemnified Parties are entitled to separately defend any indemnified matter as provided above), for the payment of reasonable actual, out-of-pocket fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals actually incurred in connection therewith. If more than one Indemnified Party is entitled to itself defend or participate in any action, judgment, suit, claim or demand, the foregoing shall not, in and of itself, require Borrower to pay for any separate attorneys or other personnel (i.e., more than one (1) additional attorney or law firm) described above of more than one Indemnified Party.

Section 9.5 BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER; AND IN CONNECTION WITH THIS SECURITY INSTRUMENT, EACH OF BORROWER AND LENDER REPRESENTS THAT IT HAS DISCUSSED SUCH WAIVER WITH ITS OWN INDEPENDENT COUNSEL AND HAS RELIED ON ADVICE OF ITS COUNSEL AND MAKES SUCH WAIVER KNOWINGLY AND VOLUNTARILY.

## ARTICLE 10

### WAIVERS

Section 10.1 Waiver of Counterclaim. To the extent permitted by applicable law and except as may otherwise be expressly provided in the Loan Documents, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim (or an affirmative defense based on actual payment), in any action or proceeding brought against it by Lender or Trustee arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 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.

Section 10.3 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 and/or any of 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 or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower.

Section 10.4 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 10.5 Survival. The indemnifications made pursuant to Article 9 herein shall continue indefinitely in full force and effect until the Debt has been fully repaid and shall survive and shall in no way be impaired by: (i) any satisfaction or other termination of this Security Instrument, (ii) 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), (iii) 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, (iv) any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, (v) 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), (vi) any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents (except as may be expressly modified therein), and/or (vii) any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the provisions of this Section 10.5, Borrower shall have no liability to any Indemnified Party if such Losses are caused by the gross negligence or willful misconduct of Lender or such other Indemnified Party (provided that none of the foregoing shall be excluded to the extent that such damages are payable to a third party by any Indemnified Party).

## ARTICLE 11

### EXCULPATION

Section 11.1 Exculpation. The provisions of Section 10.4 of the Loan Agreement are hereby incorporated by reference into this Security Instrument, *mutatis mutandis*, to the same extent and with the same force as if fully set forth herein.

## ARTICLE 12

### NOTICES

Section 12.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 11.5 of the Loan Agreement.

## ARTICLE 13

### APPLICABLE LAW

Section 13.1 Governing Law. The provisions of Section 11.2 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 13.2 Usury Laws. Notwithstanding anything to the contrary contained herein, to the extent permitted by applicable law, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender pursuant to the Loan Documents shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 13.3 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 14

### DEFINITIONS

Section 14.1 Definitions. 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 each Lender and each and any subsequent holder(s) of the Note or any part thereof," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all reasonable out-of-pocket attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, reasonable fees and

disbursements at the pre-trial, trial and appellate levels, in each case as actually incurred or actually paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder (provided, that, Borrower shall not be obligated to pay or reimburse Lender for the allocated costs of Lender's internal services except to the extent that Borrower is obligated to pay any such amounts in accordance with the Loan Agreement).

## ARTICLE 15

### TRUSTEE'S FEES; SUBSTITUTE TRUSTEE; POWER OF SALE

Section 15.1 Trustee's Fees. Borrower shall pay all costs, fees and expenses actually 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.

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

### Section 15.3 Power of Sale.

(a) Upon the occurrence and during the continuance of an Event of Default, Lender may execute or cause Trustee to execute a written notice of default and of election to cause the Property, or any portion thereof, to be sold to satisfy the Obligations hereof, and Trustee shall file such notice for record in the office of the county recorder of the county in which the Property is located. After lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Borrower, may sell the Property on the date



and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to any statutory right of Borrower 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. The person conducting the sale may, for any cause deemed expedient and in accordance with applicable law, 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 a time longer than permitted by applicable law, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser a trustee's deed 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.

At any such public sale, Trustee may sell the personal property covered by this Security Instrument at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State in which the Property is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until all the Property is sold or the Note and other secured indebtedness is paid in full. If the Note and other secured indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts or guaranty, assignments of lease, or other security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Lender may determine.

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

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

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

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

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

Section 15.6 No Liability of Trustee.

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

(b) Borrower shall indemnify, protect, defend and hold Lender and Trustee harmless, singularly and jointly, from all costs and expenses, including reasonable attorney's fees, actually incurred by them or any of them by reason of this Security Instrument, including any legal action to which Lender or Trustee shall become a party. Any money so paid or expended by Lender or Trustee shall be due and payable within five (5) Business Days of written demand together with interest at the Default Rate from the date that is the sixth (6<sup>th</sup>) Business Day after written demand and shall be secured by this Security Instrument.

Section 15.7 Trustee Powers. Trustee may exercise any of its powers through appointment of attorney-in-fact or agents. Trustee may select and employ legal counsel at the expense of Borrower.

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

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

## ARTICLE 16

### MISCELLANEOUS PROVISIONS

Section 16.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 16.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns as set forth in the Loan Agreement.

Section 16.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 16.4 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 16.5 Number and Gender/Joint and Several. 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 16.6 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 and to the extent permitted by applicable law, 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 the Obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 16.7 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 16.8 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger, except to the extent of Lender's Acquisition of Title. Nothing herein contained shall be construed as constituting Lender a "lender in possession."

Section 16.9 Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, or all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly and specifically provided herein or in any of the other Loan Documents.

Section 16.10 Release or Assignment. Upon the repayment in full of the Debt, the security interests granted in favor of Lender under this Security Instrument shall terminate and, at Borrower's sole cost and expense, Lender shall delivery a customary form of satisfaction or termination of this Security Instrument (together with any applicable UCC-3 terminations).

## ARTICLE 17

### STATE SPECIFIC PROVISIONS

The following state-specific terms and conditions shall control over any inconsistent provisions of this Security Instrument:

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

Notwithstanding any other provision set forth herein, Lender's and Borrower's rights and remedies with respect to the assignment of rents set forth herein shall be governed by the provisions of the Utah Uniform Assignment of Rents Act, Utah Code Annotated Title 57, Chapter 26.

This Security Instrument constitutes a "construction mortgage" within the meaning of Section 70a-9a-334(8) of the Utah Code Annotated.

Borrower shall timely comply with all requirements of Utah Code Annotated Title 38, Chapter 1a of with regard to filings and notices. Borrower shall reasonably cooperate with

Lender in connection with Lender's filing of a request for notices under Section 38-1a-204(2) of the Utah Code Annotated. Borrower shall also provide to Lender, upon request, copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Borrower.

Borrower shall ensure that a notice of completion is filed in the State Construction Registry upon final completion of the Construction Work. Except as disclosed to Lender by Borrower or Trustee in writing or as otherwise disclosed in Lender's title commitment for the Loan, Borrower is not aware of any (i) current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien), or (ii) mechanic's lien claim, notice of lien, *lis pendens* or similar filing filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Real Property.

If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Borrower shall provide to Lender written evidence reasonably acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Section 38-1a-503(2)(b) of the Utah Code Annotated such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

Borrower shall reasonably cooperate with Lender and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Section 38-1a-601 of the Utah Code Annotated in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Lender's name, address and telephone number, Borrower's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the county in which the Real Property is located.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT** has been executed by  
Borrower as of the day and year first above written.

**BORROWER:**

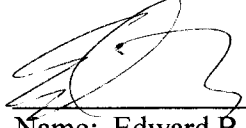
**200 SOUTH OWNER LLC,**  
a Delaware limited liability company


By: 200 SOUTH MEZZ BORROWER LLC,  
a Delaware limited liability company, as its  
Member

By: 200 SOUTH LLC, a Delaware limited  
liability company, as its Member

By: 200 SOUTH KIC MANAGER LLC,  
a Delaware limited liability  
company, as its Co-Managing  
Member

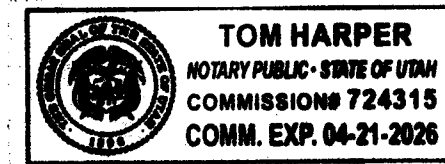
By: AEC 200 SOUTH LLC,  
a Delaware limited liability  
company, as its Manager

By:   
Name: Edward B.R. Lewis  
Title: Manager


By:   
Name: Alan E. Lewis  
Title: Manager

ACKNOWLEDGMENT

STATE OF Utah )  
COUNTY OF Salt Lake ) SS



*Edward B. R. Lewis* # On the 17<sup>th</sup> day of August in the year 2022 before me, the undersigned, personally appeared Ed Lewis personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Printed Name: Tom Harper

My Commission Expires:

4-21-2026

## ACKNOWLEDGMENT

STATE OF MASSACHUSETTS )  
SS  
COUNTY OF SUFFOLK )

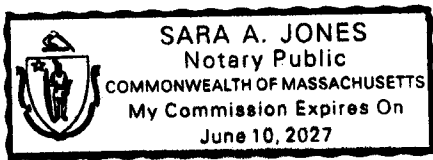
On the 11 day of August in the year 2022 before me, the undersigned, personally appeared Alan E. Lewis personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

Printed Name: Sara A. Jones

My Commission Expires:

June 10, 2027



SIGNATURE PAGE TO DEED OF TRUST



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Beginning at the Southeast corner of Lot 1, Block 70, Plat "A", Salt Lake City Survey, said point also being North 89°46'26" West 66.35 feet and North 0°34'49" East 62.40 feet from a Salt Lake City Brass Cap Monument at the intersection of State Street and 200 South Street, and running thence North 89°37'22" West 164.62 feet along the North right of way line of 200 South Street; thence North 0°08'45" East 181.18 feet; thence South 89°30'25" East 165.16 feet to a point on the West right of way line of State Street; thence South 0°18'52" West 180.85 feet along said West right of way line to the point of beginning.

Also being described by survey as follows:

A part of Lot 1, Block 70, Plat 'A', Salt Lake City Survey, Salt Lake City, Salt Lake County, Utah, also being a part of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian U.S. Survey:

Beginning at the Southeast corner of said Lot 1, said point being at the intersection of the Northerly Right-of-Way Line of 200 South Street and the Westerly Right-of-Way line of State Street; and running thence North 89°51'38" West 164.99 feet along said Northerly Right-of-Way Line to the Southwest corner of said Lot 1; thence North 0°03'20" East 181.13 feet along the Westerly line of said Lot 1; thence South 89°45'57" East 165.03 feet to the said Westerly line of State Street; thence South 0°04'01" West 180.85 feet to the Southeast corner of said Lot 1 and the point of beginning.

For Informational Purposes Only:

Street Address: 89 East 200 South, Salt Lake City, UT 84111

Parcel Identification No.: 16-06-151-030

Tax Id No.: 16-06-151-030