



W2327745

E# 2327745 PG 1 OF 41
ERNEST D ROWLEY, WEBER COUNTY RECORDER
13-MAR-08 4:22 PM FEE \$98.00 DEP SY
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

When Recorded, Return to:
Robert C. Hyde
Kirton & McConkie
60 E. South Temple, Suite 1800
Salt Lake City, Utah 84111

For information only:
Tax Parcel Numbers 06-305-0002, 06-305-0003,
06-305-0004, 06-028-0007, 06-028-0009, 06-274-0002,
06-305-0001, 06-274-0001 and 06-274-0003.

ALLSTATE LIFE INSURANCE COMPANY
LOAN NO. 123130

DEED OF TRUST, ASSIGNMENT OF LEASES,
RENTS AND CONTRACTS, SECURITY AGREEMENT

AND

FIXTURE FILING

BETWEEN

RIVERDALE CENTER IV, L.C., AS TRUSTOR,

LANDMARK TITLE COMPANY, AS TRUSTEE

AND

ALLSTATE LIFE INSURANCE COMPANY, AS BENEFICIARY

DATED: March 12th, 2008

LOAN AMOUNT: \$17,000,000.00

PROPERTY ADDRESS:

4300 Riverdale Road
Riverdale, Utah 84405

1013211

LTC 44533

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES, RENTS AND CONTRACTS, SECURITY AGREEMENT AND FIXTURE FILING (herein the "Deed of Trust") is made as of this ___ day of March, 2008, between RIVERDALE CENTER IV, L.C., a Utah limited liability company whose mailing address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101 (herein "Trustor"), LANDMARK TITLE COMPANY, a Utah corporation (herein "Trustee"), ALLSTATE LIFE INSURANCE COMPANY, an Illinois insurance corporation, whose mailing address is Allstate Plaza South, 3075 Sanders Road, Suite G5C, Northbrook, Illinois, 60062 (herein "Beneficiary").

TRUSTOR, in consideration of the indebtedness herein recited and the trust herein created, hereby irrevocably grants, conveys, transfers and assigns to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest in, to and under that certain real property located in Weber County, Utah, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Land");

TOGETHER with all of Trustor's now or hereafter acquired estate, right, title and interest in, to and under all buildings, structures, improvements and fixtures now existing or hereafter erected on the Land and all right, title and interest, if any, of Trustor in and to the streets and roads, opened or proposed, abutting the Land to the center lines thereof, and strips within or adjoining the Land, the air space and right to use said air space above the Land, all rights of ingress and egress on or within the Land, all easements, rights and appurtenances thereto or used in connection with the Land, including, without limitation, all lateral support, alley and drainage rights, all revenues, income, rents, cash or security deposits, advance rental deposits, and other benefits thereof or arising from the use or enjoyment of all or any portion thereof (subject however to the rights and authorities given herein to Trustor to collect and apply such revenues, and other benefits), all interests in and rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances thereon or therein, and water stock, all options to purchase or lease, all development or other rights relating to the Land or the operation thereof, or used in connection therewith, including all Trustor's right, title and interest in all fixtures, attachments, partitions, machinery, equipment, building materials, appliances and goods of every nature whatever now or hereafter located on, or attached to, the Land, all of which, including replacements and additions thereto, shall, to the fullest extent permitted by law and for the purposes of this Deed of Trust, be deemed to be real property and, whether affixed or annexed thereto or not, be deemed conclusively to be real property; and Trustor agrees to execute and deliver, from time to time, such further instruments and documents as may be required by Beneficiary to confirm the legal operation and effect of this Deed of Trust on any of the foregoing. All of the foregoing property described in this section (the "Improvements") together with the Land, shall be hereinafter referred to as the "Property".

TRUSTOR further hereby grants to Beneficiary a security interest in, and assigns, all of Trustor's now existing or hereafter acquired right, title and interest in the following:

(A) All equipment, fixtures, inventory, goods, instruments, appliances, furnishings, machinery, tools, raw materials, component parts, work in progress and materials, and all other tangible personal property of whatsoever kind, used or consumed in the improvement, use or enjoyment of the

Property now or any time hereafter owned or acquired by Trustor, wherever located and all products thereof whether in possession of Trustor or whether located on the Property or elsewhere;

(B) To the extent such general intangibles are assignable, all general intangibles relating to design, development, operation, management and use of the Property, including, but not limited to, (i) all names under which or by which the Property may at any time be owned and operated or any variant thereof, and all goodwill in any way relating to the Property and all service marks and logotypes used in connection therewith, (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals, consents, clearances, and rights obtained from governmental agencies issued or obtained in connection with the Property, (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the construction, use, occupation or operation of the Property, (iv) all materials prepared for filing or filed with any governmental agency, and (v) the books and records of Trustor relating to construction or operation of the Property;

(C) All shares of stock or partnership interest or other evidence of ownership of any part of the Property that is owned by Trustor in common with others, including all water stock relating to the Property, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property provided, however, that the foregoing shall not include any ownership interests in the Trustor;

(D) All accounts, deposit accounts, supporting obligations, letter-of-credit rights, tax and insurance escrows held pursuant to this Deed of Trust, accounts receivable, instruments, documents, documents of title, general intangibles, rights to payment of every kind, all of Trustor's rights, direct or indirect, under or pursuant to any and all construction, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, insurance policies, licenses and bonds now or anytime hereafter arising from construction on the Land or the use or enjoyment of the Property to the extent such are assignable;

(E) All condemnation proceeds (including payments in lieu thereof) and insurance proceeds related to the Property;

TOGETHER with all additions to, substitutions for and the products of all of the above, and all proceeds therefrom, whether cash proceeds or noncash proceeds, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily. Such proceeds shall include any of the foregoing specifically described property of Trustor acquired with cash proceeds. Together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper, Deposit Accounts, Letter-of-Credit Rights, Investment Property, Equipment and General Intangibles arising from or used in connection with the Property, as those terms are defined in the Uniform Commercial Code from time to time in effect in the state in which the Property is located. (All of the foregoing including such products and proceeds thereof, are collectively referred to as "Collateral".)

The personal property in which Beneficiary has a security interest includes goods which are or shall become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to the terms of the applicable provisions of the Uniform Commercial Code of the state in which the Property is located and the provisions of Exhibit B are, for that purpose, incorporated herein. This filing is to be recorded in the real estate records of the appropriate city, town or county in which the Property is located. In that regard, the following information is provided:

Name of Debtor: Riverdale Center IV, L.C.
 Organizational Number of Debtor: Utah State # 6088541-0160
 Address of Debtor: See section 4.03 hereof
 Name of Secured Party: Allstate Life Insurance Company, an Illinois insurance corporation
 Address of Secured Party: See section 4.03 hereof.

Trustor warrants and agrees that there is no financing statement covering the foregoing Collateral, the Property, or any part thereof, on file in any public office.

HOWEVER, THIS IS A DEED OF TRUST, AND THIS CONVEYANCE IS MADE IN TRUST FOR THE FOLLOWING USES AND TRUST, AND FOR NO OTHER PURPOSES, AND FOR THE PURPOSE OF SECURING, IN SUCH ORDER OF PRIORITY AS BENEFICIARY MAY ELECT:

(A) The repayment of the indebtedness evidenced by that certain Mortgage Note ("Note") of even date herewith with a maturity date of April 5, 2023 executed by Trustor and payable to the order of Beneficiary, in the principal sum of SEVENTEEN MILLION DOLLARS (\$17,000,000), with interest thereon, as provided therein and all late charges, loan fees, commitment fees, Prepayment Premiums (as described in the Note), and all extensions, renewals, modifications, amendments and replacements thereof;

(B) The payment of all other sums which may be advanced by or otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust or under any other instrument or document referred to in clause (C) below, with interest thereon at the rate provided herein or therein;

(C) The performance of each and every covenant and agreement of Trustor contained (i) herein, in the Note, or in any note evidencing a Future Advance (as hereinafter defined); (ii) in that certain Supplemental Agreement between Trustor and J.C. Penney Properties, Inc., dated February 14, 2007; (iii) in that certain Development Agreement between Trustor and Riverdale City, dated November 27, 2006; (iv) in that certain Agreement for the Development of Land (also referred to herein as the TIF Agreement) between Trustor and the Redevelopment Agency of the City of Riverdale, dated November 21, 2006 (the agreements referenced in clauses (ii), (iii) and (iv) above are collectively, the "Development Agreements"); (v) in that certain Declaration of Covenants, Conditions and Restrictions between Trustor and J.C. Penney Properties, Inc., dated February 14, 2007 (the "CC&Rs"); and (vi) in the obligations of Trustor upon any and all pledge or other security agreements, loan agreements, disbursement agreements, supplemental agreements, environmental indemnity agreements (the foregoing shall not include the Commitment Letter between Trustor and Beneficiary), assignments (both present and collateral) and all instruments of indebtedness or security now or hereafter executed by Trustor in connection with any indebtedness referred to in clauses (A), (B) or (D) of this section or for the purpose of supplementing or amending this Deed of Trust or any instrument secured hereby (all of the foregoing in this clause (C), as the same may be amended, modified or supplemented from time to time, being referred to hereinafter as "Related Agreements") and all costs and expenses, including reasonable attorneys' fees with respect to all

such documents, including, without limitation, the negotiation and drafting of any loan settlement or workout agreement; and

(D) The repayment of any other loans or advances, with interest thereon, hereafter made to Trustor (or any successor in interest to Trustor as the owner of the Property or any part thereof) by Beneficiary when the promissory note evidencing the loan or advance specifically states that said note is secured by this Deed of Trust, together with all extensions, renewals, modifications, amendments and replacements thereof (herein and in the Related Agreements "Future Advance").

ARTICLE I COVENANTS OF TRUSTOR

To protect the security of this Deed of Trust, Trustor covenants and agrees as follows:

1.01 **Performance of Obligations Secured** Trustor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, the principal of and interest on any Future Advance, any Prepayment Premium and late charges provided for in the Note or in any note evidencing a Future Advance, and shall further perform fully and in a timely manner all other obligations of Trustor contained herein or in the Note or in any note evidencing a Future Advance or in any of the Related Agreements.

1.02 **Insurance** For all times during the period there remains any indebtedness under the Note, or any and all other indebtedness (including without limitation Future Advances) secured by this Deed of Trust, Trustor shall keep the Property insured against all risks or hazards as Beneficiary may require. Such insurance shall be in policy form, amount and coverage satisfactory to Beneficiary, including, but not limited to:

(A) Fire and extended coverage on an "all risk" replacement cost basis, in an amount equal to the insurable value of the Improvements, without coinsurance or deducting for depreciation, containing a waiver of subrogation clause and a deductible amount acceptable to Beneficiary;

(B) General public liability insurance, in such form, amount and deductible satisfactory to Beneficiary, and naming Beneficiary c/o Beneficiary's servicing agent, if any, as additional insured covering Beneficiary's interest in the Property;

(C) Business interruption or rent loss insurance endorsement in an amount at least equal to 100% of the sum of: annual debt service on the Note, the annual debt service on any other financing permitted by Beneficiary, ground rents, if any, and operating expenses (without contribution from Trustor for a period of twelve (12) months), including, without limitation, real estate taxes and assessments and insurance, for the Property;

(D) Flood insurance (whether or not available through the National Flood Insurance Program) sufficient to cover any damage which may be anticipated in the event of flood unless Trustor has provided Beneficiary evidence satisfactory to Beneficiary that no portion of the Property is located within the boundaries of the 100 year flood plain (Flood Zone A);

- (E) "Dram shop" insurance if alcoholic beverages are sold on the Property;
- (F) Boiler and machinery insurance when risks covered thereby are present and Beneficiary requires such insurance; and
- (G) Earthquake insurance if Beneficiary requires such insurance.

The insurance coverages described in subsections (A), (C), (D), (F) and (G) above shall name Beneficiary c/o Beneficiary's servicing agent, if any, under a standard noncontributory mortgagee loss payable clause (and naming Beneficiary as loss payee for rent loss coverage) or otherwise directly insure Beneficiary's interest in the Property. All losses under said insurance shall be payable to Beneficiary in the manner provided in sections 1.04 and 1.05 hereof. All policies of insurance required under this section 1.02 shall be with a company or companies with a policy rating of A- and financial rating of at least Class X in the most current edition of Best's Key Rating Guide and authorized to do business in the state in which the Property is located. All policies of insurance shall provide that they will not be canceled or modified without thirty (30) days' prior written notice to Beneficiary. True copies of the above mentioned insurance policies or evidence of such insurance (in the form of Acord Form 28 [2003/10]) satisfactory to Beneficiary shall be delivered to and held by Beneficiary. True copies of all renewal and replacement policies or evidences of such insurance forms (Acord Form 28 [2003/10]) thereof shall be delivered to Beneficiary at least thirty (30) days before the expiration of the expiring policies. If any renewal or replacement policy is not obtained as required herein, Beneficiary is authorized to obtain the same in Trustor's name and at Trustor's expense. Beneficiary shall not by the fact of failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Trustor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

The above-referenced insurance may be obtained under a blanket policy subject to the requirement that Lender receive an original evidence of insurance ACORD 28 (2003/10) covering all of the above-referenced requirements. If the coverage is for the full limit of the policy (per occurrence), then that should be reflected on the ACORD 28 (2003/10). There should be no mention of any scheduled limits, such as those used in premium calculation. If the coverage amounts are specifically scheduled and not on a full blanket basis, then the amounts of coverage must meet Lender's insurable value and rent loss requirements set forth above. Furthermore, the scheduled coverages must appear on the ACORD 28 (2003/10) declarations.

1.03 Condemnation

(A) Immediately upon obtaining knowledge of the commencement or threat of any action in connection with (i) any condemnation, (ii) any other taking of the Property or any part thereof by any public authority or private entity having the power of eminent domain, or (iii) any conveyance in lieu of such condemnation or taking of the Property or any part thereof ("Condemnation"), Trustor shall notify Beneficiary in writing but in no event later than ten (10) days after Trustor obtains knowledge of the commencement of or threat of a Condemnation. Beneficiary shall have the right, but not the obligation, to participate in any proceedings relating to any Condemnation and may, in its sole discretion, consent or withhold its consent to any settlement, adjustment, or compromise of any claims arising from

the Condemnation and no such settlement, adjustment or compromise shall be final or binding upon Beneficiary without Beneficiary's prior consent.

(B) If all or part of the Property is taken by Condemnation and Beneficiary in its reasonable judgment determines that the remainder of the Property, if any, cannot be operated as an economically viable entity at substantially the same level of operations as immediately prior to such Condemnation, then all proceeds of the Condemnation ("Condemnation Proceeds") shall be paid over to Beneficiary and shall be applied first toward reimbursement of the costs and expenses (including reasonable attorneys' fees) of Beneficiary, if any, in connection with the recovery of such Condemnation Proceeds, and then, in the sole and absolute discretion of Beneficiary and without regard to the adequacy of its security under this Deed of Trust, shall be applied against all amounts due herein or under the Note and any remaining Condemnation Proceeds shall be released to the Trustor. Provided there is no Event of Default hereunder, full or partial prepayment of the Note under this section 1.03(B) shall not be subject to the Prepayment Premium; in addition, such partial prepayment shall entitle Trustor to prepay the entire portion of the Note remaining unpaid after application of the Condemnation Proceeds; provided such prepayment by Trustor occurs within thirty (30) days after application of the Condemnation Proceeds by Beneficiary. Otherwise, if not paid within said thirty (30) day period, prepayment of the balance of the Note remaining after application of the Condemnation Proceeds shall continue to be subject to the terms and conditions of the Note, including the No-Prepayment Period and the Prepayment Premium described therein.

(C) If less than all of the Property is taken by Condemnation and Beneficiary in its reasonable judgment determines that the remainder of the Property can be operated as an economically viable entity at substantially the same level of operations as immediately prior to such Condemnation, then Trustor shall diligently restore the Property to a condition and use as close as possible to its condition immediately prior to the Condemnation and all Condemnation Proceeds shall be made available to Trustor for such restoration. If the estimated cost of restoration, as reasonably determined by Beneficiary, is equal to or less than \$250,000.00, all Condemnation Proceeds shall be released directly to Trustor for restoration of the Property. If the estimated cost of restoration exceeds \$250,000.00, all Condemnation Proceeds shall be deposited into an escrow fund in accordance with section 1.05 below. Beneficiary shall have the right to obtain an opinion of an independent contractor or engineer satisfactory to Beneficiary, at Trustor's expense, to estimate the cost to restore the remaining portion of the Property. If the amount of the Condemnation Proceeds is not sufficient to restore the Property based on the opinion of an independent contractor or engineer, subject to revision as restorations are made, Trustor shall be obligated to pay the difference toward the restoration of the Property, prior to the disbursement of any Condemnation Proceeds to, or for the account of Trustor.

(D) If an Event of Default exists at any time from the time of a Condemnation through the completion of restoration and payment of any Condemnation Proceeds, the use of the Condemnation Proceeds shall be governed by the remedies set forth in Article III below. If an event has occurred which with notice, the passage of time, or both, could become an Event of Default, then, the Condemnation Proceeds shall be held by Beneficiary or in the Escrow Fund (as defined below), as applicable, pending cure of such event prior to the expiration of any applicable cure or grace period. The application of any Condemnation Proceeds to the indebtedness secured hereby shall not cure or waive any Event of Default hereunder, or invalidate any act done pursuant to any notice thereof.

1.04 Damage to Property

(A) Promptly upon obtaining knowledge of any damage to the Property or any part thereof with an estimated cost of restoration in excess of \$100,000.00, but in no event later than five (5) days after Trustor obtains such knowledge, Trustor shall notify Beneficiary of such damage in writing. Trustor shall diligently restore the Property to the same condition that existed immediately prior to the damage whether or not insurance proceeds are sufficient for such restoration. All proceeds of any insurance on the Property ("Insurance Proceeds") received by Trustor shall be applied to such restoration. Beneficiary shall have the right to obtain an opinion of an independent contractor or engineer satisfactory to Beneficiary, at Trustor's expense, to estimate the cost to restore the Property to its original condition, which opinion may be revised as restorations are made. If the amount of the Insurance Proceeds is not sufficient to restore the Property based on an independent contractor's or engineer's opinion, subject to revision as restorations are made, Trustor shall be obligated to pay the difference toward the restoration of the Property, prior to the application of any Insurance Proceeds to such restoration as provided herein.

(B) If the estimated cost of restoration is equal to or less than \$250,000.00, Trustor shall promptly settle and adjust any claims under the insurance policies which insure against such risks and, upon receipt of the Insurance Proceeds, Trustee and Beneficiary shall deliver such to Trustor for use in restoration of the Property.

(C) If the estimated cost of restoration is greater than \$250,000.00, Beneficiary shall have the right, but not the obligation, to participate in the settlement of the insurance claims and may, in its sole discretion, consent or withhold its consent to any settlement, adjustment, or compromise of such insurance claims and no such settlement, adjustment, or compromise shall be final or binding upon Beneficiary without its prior consent. Upon settlement of insurance claims, and if Trustor can demonstrate to the reasonable satisfaction of Beneficiary that the projected ratio of Net Operating Income, as defined below, to annual debt service due under the Note and any other notes secured by the Property ("Debt Coverage Ratio") will be at least 105% for the twelve months immediately following reconstruction of the Property, the Insurance Proceeds shall be deposited into an escrow fund in accordance with section 1.05 below.

As used in this Deed of Trust, "Net Operating Income" shall mean: (i) all gross operating revenues anticipated to be received during the following twelve-month period based on leases in effect as of the date of calculation and only for such time as those leases are contracted to remain in effect without expiration by their terms or optional termination by the tenant (unless the tenant has waived its termination rights in writing or the term of the lease has been extended in writing), including without limitation all amounts to be received from tenants as payment of operating expenses but not including refundable deposits, lease termination payments, excess tenant improvement and leasing commission payments included as additional rent, principal or interest payments received by Trustor on loans to tenants, and fees and reimbursements for work performed for tenants by Trustor, less: (ii) all amounts, calculated on a proforma basis, for the operation or maintenance of the Property for the following twelve-month period, including ground rents, the cost of property management (which shall be no less than 4% of gross revenues), maintenance, cleaning, security, landscaping, parking maintenance and utilities, and other costs and expenses approved in writing by Beneficiary and amounts reasonably estimated by Beneficiary for the payment of real estate taxes and assessments and other taxes related to the operation of the Property, insurance premiums, necessary repairs and future replacements of equipment; payments under the Note shall not be included in Net Operating Income. Notwithstanding the foregoing, if any of

the Related Agreements require a historical calculation of Net Operating Income, it shall be calculated on a cash basis for the previous twelve-month period as of the date of such calculation.

(D) If in the reasonable judgment of Beneficiary the conditions of section 1.04(C) cannot be satisfied, then at any time from and after the occurrence of the damage, but in any event within 180 days from and after the occurrence of the damage, upon written notice to Trustor, Beneficiary may declare the entire balance of the Note and/or any Future Advances then outstanding and accrued and unpaid interest thereon, and all other sums or payments required thereunder or under this Deed of Trust, without any Prepayment Premium (provided no Event of Default hereunder), to be immediately due and payable, and all Insurance Proceeds shall be applied by Beneficiary first to the reimbursement of any costs or expenses incurred by Beneficiary in connection with the damage or the determination to be made hereunder, and then to the payment of the indebtedness secured by this Deed of Trust in such order as Beneficiary may determine in its sole discretion.

(E) Notwithstanding any provision herein to the contrary, if an Event of Default exists at any time from the time of damage through the completion of restoration and the final release of any Insurance Proceeds to Trustor, the use of the insurance proceeds shall be governed by the remedies set forth in Article III below. If an event has occurred which with notice, the passage of time, or both, could become an Event of Default, then the Insurance Proceeds shall be held by Beneficiary or in the Escrow Fund, as applicable, pending cure of such event prior to the expiration of any applicable cure or grace period. The application of any Insurance Proceeds to the indebtedness secured hereby shall not cure or waive any Event of Default hereunder or invalidate any act done pursuant to any notice thereof.

1.05 Escrow Fund for Condemnation and Insurance Proceeds

(A) In the circumstances indicated above in subsections 1.03(C) and 1.04(C), all Condemnation Proceeds and Insurance Proceeds ("Proceeds") shall be deposited in an interest bearing escrow fund ("Escrow Fund"). The escrow agent and the form of the escrow agreement shall be satisfactory to Beneficiary and Trustor. The costs and fees of such escrow agent shall be paid by Trustor. If the amount of the Proceeds is not sufficient to restore the Property based on an independent contractor's or engineer's opinion obtained by Beneficiary at Trustor's expense, subject to revision as restorations are made, Trustor shall be obligated to deposit in the Escrow Fund the difference between the contractor's or engineer's estimate and the amount of the Proceeds or deliver to the escrow agent an irrevocable, unconditional letter of credit issued in the amount of such difference in a form and by a financial institution acceptable to Beneficiary or other cash equivalent acceptable to Beneficiary. The Trustor's funds, if necessary, and the Proceeds shall be deposited into the Escrow Fund and shall not be released by the escrow agent unless used to restore the Property to its original condition and unless a disbursement agent satisfactory to Beneficiary and Trustor approves such disbursements from time to time. The escrow agreement shall provide that the escrow agent shall only disburse funds to Trustor so long as the restoration work is being diligently performed by Trustor and only after: (i) Trustor has delivered to Beneficiary and Beneficiary has approved the plans and specifications for the restoration of the Property; (ii) Trustor has executed a contract acceptable to Beneficiary with a general contractor acceptable to Beneficiary for the restoration of the Property; (iii) the general contractor has submitted lien waivers and/or releases, executed by the general contractor and all subcontractors which may be partial to the extent of partial payments and which, in the case of releases, may be contingent upon payment if the escrow agent makes payment directly to such contractor or subcontractor; (iv) Trustor has furnished Beneficiary with an endorsement to its title policy showing no additional exceptions; and (v) Trustor has deposited its funds in the Escrow Fund as provided in this paragraph and has submitted such

other documents and information as may be requested by Beneficiary to determine that the work to be paid for has been performed in accordance with the plans and specifications approved by Beneficiary. If any requisition for payment of work performed is for an amount which would result in the remaining balance of the Escrow Fund to be insufficient to complete the remainder of the restoration, Trustor shall advance the requisite amount in cash to the Escrow Fund immediately upon written request from the disbursement agent or Beneficiary. Any failure by Trustor to satisfy any of the conditions to the disbursement of Proceeds set forth in this Paragraph upon demand by Beneficiary shall constitute a Performance Default, as hereinafter defined.

(B) Any Proceeds and any interest thereon remaining in the Escrow Fund after payment of the costs to complete the restoration of the Property pursuant to the approved plans and specifications and the costs of the escrow agent shall be paid first, to Trustor to the extent of any funds of Trustor's contributed to the restoration pursuant to section 1.05, provided there is no Event of Default or an event which with notice, the passage of time, or both, could become an Event of Default, and thereafter at Beneficiary's option, any remaining Proceeds may be applied to the prepayment of the Note without payment of any Prepayment Premium. Full or partial prepayment of the Note under the preceding sentences of this section 1.05(B) shall not be subject to the Prepayment Premium; in addition, any such partial prepayment shall entitle Trustor to prepay the entire portion of the Note remaining unpaid after application of the Proceeds, provided such prepayment by Trustor occurs within thirty (30) days after application of the Proceeds by Beneficiary. Otherwise, if not paid within said thirty (30) day period, prepayment of the balance of the Note remaining after application of the Proceeds shall continue to be subject to the terms and conditions of the Note, including the No-Prepayment Period and the Prepayment Premium described therein. If an Event of Default exists, the use of the Proceeds shall be governed by Article III below. If, however, an event exists which with notice, the passage of time, or both, could become an Event of Default, the remaining balance in the Escrow Fund shall be held by the escrow agent pending cure of the event prior to the expiration of any applicable cure or grace period.

1.06 Taxes, Liens and other Items

(A) Trustor shall pay any and all taxes, bonds, assessments, fees, liens, charges, fines, and any accrued interest or penalty thereon, and any and all other items which are attributable to or affect the Property (collectively, "Impositions") by making payment prior to delinquency directly to the payee thereof and promptly furnish copies of paid receipts for these to Beneficiary. Trustor shall promptly discharge or bond any lien or encumbrance on the Property whether or not said lien or encumbrance has or may attain priority over this Deed of Trust. This Deed of Trust shall be the sole encumbrance on the Property and, if with the consent of Beneficiary it is not the sole encumbrance, then it shall be prior to any and all other liens or encumbrances on the Property. Trustor may in good faith and with due diligence protest the payment of any Imposition which it believes unwarranted or excessive and may defer payment of such Imposition pending conclusion of such contest if legally permitted to do so, provided that the priority of this Deed of Trust and Beneficiary's security is not adversely affected and that Trustor shall have furnished Beneficiary or the taxing authority such security as may be required.

(B) As further security for the payment of the Note and the payment of real estate taxes, regular or special assessments and insurance premiums, Trustor shall deposit 1/12 of the annual amounts of such items as estimated by Beneficiary, with each monthly payment on the Note, so that Beneficiary will hold a sufficient amount to pay all such charges not less than thirty (30) days prior to the date on which such items become due and payable. Beneficiary shall be furnished evidence to allow it to estimate such amounts, including paid receipts or annual insurance premium statements, assessment

notices and tax receipts. All funds so deposited shall, until applied to the payment of the aforesaid items, as hereinafter provided, be held by Beneficiary without interest (except to the extent required under applicable law) and may be commingled with other funds of Beneficiary. All funds so deposited shall be applied to the payment of the aforesaid items only upon the satisfaction of the following conditions: (i) No Event of Default or event, which with notice or the passage of time or both could become an Event of Default, shall have occurred; (ii) Beneficiary shall have sufficient funds to pay the full amounts of such items (which funds may include amounts paid solely for such purpose by Trustor in addition to the escrowed funds); and (iii) Trustor shall have furnished Beneficiary with prior written notification that such items are due and with the bills and invoices therefor in sufficient time to pay the same before any penalty or interest attaches and before policies of insurance lapse, as the case may be, and shall have deposited any additional funds as Beneficiary may determine as necessary to pay such items.

(C) Beneficiary expressly disclaims any obligation to pay the aforesaid items unless and until Trustor complies with all of the provisions set forth in subsections 1.06(A) and (B). Trustor hereby pledges and grants a security interest in any and all monies now or hereafter deposited pursuant to subsection 1.06(B) as additional security for the Note and Related Agreements. If any Event of Default shall have occurred, or if the Note shall be accelerated as herein provided, all funds so deposited may, at Beneficiary's option, be applied as determined solely by Beneficiary or to cure said Event of Default or as provided in this section 1.06. In no event shall Trustor claim any credit against the principal and interest due hereunder for any payment or deposit for any of the aforesaid items.

1.07 Assignment of Leases, Contracts, Rents and Profits

(A) Trustor hereby absolutely, presently and unconditionally grants, assigns, transfers, conveys and sets over to Beneficiary, subject to all of the terms, covenants and conditions set forth herein, all of Trustor's right, title and interest in and to the following whether arising under the Leases or Contracts (as hereinafter defined), by statute, at law, in equity, or in any other way:

(1) All of the leases and ground leases of the Property which are in effect on the date hereof and all leases and ground leases entered into or in effect from time to time after the date hereof, including, without limitation, all amendments, extensions, replacements, modifications and renewals thereof and all subleases, concession agreements, and all other agreements affecting the same (the "Leases") and all guaranties thereunder;

(2) All of the rents, income, profits, revenue, security deposits, judgments, Condemnation Proceeds, Insurance Proceeds, unearned insurance premiums, all termination and/or cancellation payments received by Trustor in connection with any Lease, proceeds from the surrender, sale or other disposition of any Lease, any other fees or sums payable to Trustor or any other person as landlord and any award or payment in connection with any enforcement action of any Lease, including, without limitation, any award to Trustor made hereafter in any court involving any of the tenants under the Leases in any bankruptcy, insolvency, or reorganization proceeding in any state or federal court, and Trustor's right to appear in any action and/or to collect any such award or payment, and all payments by any tenant in lieu of rent (collectively, "Rents and Profits");

(3) All management, operating, development and maintenance agreements and contracts (including, but not limited to, the Development Agreements defined above), warranties, licenses, permits, guaranties and sales contracts relating to the Property and the Collateral entered into by, or inuring to the benefit of, Trustor (the "Contracts"); and

(4) All benefits arising out of, or relating to, the Contracts, including, but not limited to, the benefits under that certain tax increment financing ("TIF") Agreement for the Development of Land, between Trustor and the Redevelopment Agency of the City of Riverdale, dated November 21, 2006 (the "TIF Agreement"), and any related documents or agreements, and any payments thereunder, including but not limited to, the annual TIF receivable cash payment of not less than \$170,000 per year, during the fifteen year TIF period, except for the first year of the TIF Agreement when the receivable, if any, is to be collected by the owner of the Property.

(B) Notwithstanding the provisions of subsection 1.07(A), so long as no Event of Default has occurred, and, subject to subsection 1.07 (F) and Article III, Trustor shall have a license to manage the Property; to collect, receive and use all Rents and Profits in accordance with the terms of the Leases; to let the Property subject to the terms hereof and to take all actions which a reasonable and prudent landlord would take in enforcing the provisions of the Leases and Contracts; provided, however, that all amounts so collected shall be applied toward operating expenses, real estate taxes and insurance relating to the Property, capital repair items necessary to the operation of the Property, and the payment of sums due and owing under the Note and this Deed of Trust prior to any other expenditure or distribution by Trustor. From and after the occurrence of an Event of Default (whether or not Beneficiary shall have exercised Beneficiary's option to declare the Note immediately due and payable), such license shall be automatically revoked without any action required by Beneficiary. Any amounts received by Trustor or its agents in the performance of any acts prohibited by the terms of this Deed of Trust, including but not limited to any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Deed of Trust and any amounts received by Trustor as rents, income, issues or profits from the Property from and after the occurrence of an Event of Default under this Deed of Trust, the Note, or any of the other Related Agreements, shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

(C) Upon the occurrence of an Event of Default, the Beneficiary shall have the right but not the obligation to perform as landlord under the Leases and as a party under the Contracts. The assignment of Rents and Profits set forth herein constitutes an irrevocable direction and authorization to all tenants under the Leases to pay all Rents and Profits to Beneficiary upon demand and without further consent or other action by Trustor. Trustor irrevocably appoints Beneficiary its true and lawful attorney, at the option of Beneficiary at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Trustor or in the name of Beneficiary, for all such Rents and Profits and apply the same to the indebtedness secured by this Deed of Trust.

(D) Neither the foregoing assignment of Rents and Profits, Leases and Contracts to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies under Article III shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property.

(E) In the event Beneficiary collects and receives any Rents and Profits under this section 1.07 pursuant to any Monetary or Performance Default as defined in section 2.01 hereof, such collection or receipt shall in no way constitute a curing of the Monetary or Performance Default.

(F) Trustor shall not, without the prior written consent of Beneficiary, (i) enter into any Lease, extend or renew any Lease (other than extensions or renewals in accordance with the terms of a lease approved by Beneficiary), or consent to or permit the assignment or subletting of any Leases (other than assignments or subleases in accordance with the terms of a lease approved by Beneficiary), or amend or terminate any Lease; (ii) alter, modify, change or terminate the terms of any guaranties of any Leases; (iii) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any such Leases or in any other manner impair Beneficiary's rights and interest with respect to the Rents and Profits; (iv) pledge, transfer, mortgage or otherwise encumber or assign the Leases, the Contracts or the Rents and Profits; or (v) collect rents more than 30 days prior to their due date. Notwithstanding the foregoing, so long as no Event of Default has occurred hereunder, Trustor may, without Beneficiary's prior written consent, enter into Leases, extend or renew Leases, and permit the assignment or sublease of Leases which demise 10,000 rentable square feet or less for a term of five (5) years or less ("Non-material Leases"), provided they are on rental rates, including rental concessions, at least equal to that charged for comparable properties within the Property's submarket area, have been negotiated at arm's length, and do not contain material modifications to the form of lease previously approved by Beneficiary. Trustor may also amend Non-material Leases without Beneficiary's prior written consent if, in Trustor's prudent business judgment, such amendments are necessary and do not impair the value of the Property. Beneficiary will not unreasonably withhold or delay its consent to any lease submitted to it for approval. Beginning after the property reaches "Stabilization" (as defined in that certain Guaranty of even date herewith), any consent to be given or denied with respect to any lease shall be given or denied as soon as possible but in no event later than 10 business days after the actual receipt by Lender of the materials to be approved and any other additional information reasonably requested by Lender, or such consent shall be deemed given; provided, however, the 10 business day period shall commence only upon Lender's receipt of all information reasonably necessary to make an informed decision on the request and a written notice accompanying such material and information, which notice includes a statement, in capitalized letters, substantially as follows: "PURSUANT TO SECTION 1.07(F) OF THE DEED OF TRUST OR MORTGAGE, LENDER HAS 10 BUSINESS DAYS FROM THE RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE THE MATERIALS ACCOMPANYING THIS NOTICE OR SUCH MATTERS SHALL BE DEEMED APPROVED." Any lease submitted for Beneficiary's consent shall, at Beneficiary's option, be accompanied by a Subordination, Nondisturbance and Attornment Agreement in Beneficiary's then current form.

(G) Trustor shall promptly give notice to Beneficiary of any default under any of the Leases meeting the criteria of a lease for which Beneficiary's consent would have been required pursuant to paragraph 1.07(F) regardless of whether such leases were executed before or after the date of this Deed of Trust, together with a complete copy of any notices delivered to or by the tenant as a result of such default. Beneficiary shall have the right, but not the obligation, to cure any default of Trustor under any of the Leases and all amounts disbursed in connection with said cure shall be deemed to be indebtedness secured hereby.

(H) Trustor shall, immediately upon receipt thereof, deliver to Beneficiary, any and all termination and/or cancellation payments, or other consideration paid to Trustor to permit any tenant to terminate its lease ("Lease Termination Funds"). Any such Lease Termination Funds shall be held by Beneficiary, or Beneficiary's agent in a reserve account as additional collateral security for the Loan.

Provided that no Event of Default shall have occurred and there is no event which with notice, the passage of time, or both, could become an Event of Default under the Deed of Trust or any documents relating thereto, such Lease Termination Funds shall be disbursed under guidelines satisfactory to Beneficiary to reimburse Trustor for the cost of tenant improvements and leasing commissions.

(I) Beneficiary shall have the right to approve any lease forms used by Trustor for lease of space in the Property.

(J) Trustor hereby represents, warrants and agrees that:

(1) Trustor has the right, power and capacity to make this assignment and that no person, firm or corporation or other entity other than Trustor has or will have any right, title or interest in or to the Leases or the Rents and Profits.

(2) Trustor shall, at its sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases, and as a party under the Contracts. Trustor shall enforce the performance of each obligation of the tenants under the Leases and will appear in and prosecute or defend any action connected with the Contracts, Leases or the obligations of the tenants thereunder.

(K) Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, Contracts or under or by reason of this assignment. Trustor shall and does hereby agree to indemnify Beneficiary for and to defend and hold Beneficiary harmless from any and all liability, loss or damage which Beneficiary may or might incur under the Leases, Contracts or under or by reason of this assignment, and from any and all claims whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases or Contracts, except to the extent arising out of Beneficiary's gross negligence or willful misconduct. Should Beneficiary incur any liability, loss or damage under the Leases, Contracts or under or by reason of this assignment, or in the defense of any of such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured by this Deed of Trust; and Trustor shall reimburse Beneficiary therefor immediately upon demand, and upon failure of Trustor to do so, Beneficiary may declare all sums so secured to be immediately due and payable.

(L) Beneficiary may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness, without prejudice to any of its rights hereunder.

(M) Nothing herein contained and no act done or omitted by Beneficiary pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Beneficiary of its other rights and remedies under the Note and this Deed of Trust, and this assignment is made and accepted without prejudice to any of the other rights and remedies possessed by Beneficiary under the terms thereof. The right of Beneficiary to collect said indebtedness and to enforce any other security therefor held by it may be exercised by Beneficiary either prior to, simultaneously with, or subsequent to any action taken by it hereunder. It is the intent of both Trustor and Beneficiary that this assignment be supplementary to, and not in substitution or derogation of, any other provision contained in this Deed of Trust giving Beneficiary any interest in or rights with respect to the Leases or Rents and Profits.

(N) Neither this assignment nor pursuit of any remedy hereunder by Beneficiary shall cause or constitute a merger of the interests of the tenant and the Trustor under any of the Leases such that any of the Leases hereby assigned are no longer valid and binding legal obligations of the parties executing the same.

(O) Trustor agrees, from time to time, to execute and deliver, upon demand, all assignments and any and all other writings as Beneficiary may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Beneficiary to enforce any right or rights hereunder.

1.08 **Due on Sale or Encumbrance** Neither Trustor nor any principal of Trustor shall, without the prior written consent of Beneficiary: (i) create, effect, consent to, suffer to exist, assume, incur, permit (voluntarily or involuntarily, by operation of law or otherwise) any direct or indirect conveyance, sale, assignment, transfer, grant, lien, pledge, mortgage, security interest or other encumbrance or disposition (each of the foregoing defined as "Transfer") of the Property or an interest therein; (ii) be divested of its title to the Property or any interest therein; (iii) enter into a contract to sell or grant any option to purchase that results in a transfer of possession or equitable title to the Property or any portion thereof prior to the payment of the Note in accordance with its terms; (iv) enter into any lease giving the tenant any option to purchase the Property or any portion thereof; (v) permit or suffer any Transfer of any direct or indirect ownership interest in the Trustor or any indemnitor or guarantor under this Deed of Trust or any Related Agreement; (vi) permit or suffer any Transfer of any ownership interest in any direct or indirect owner of a legal or beneficial interest in the Trustor (including, without limitation its partners, members, trustees, beneficiaries or shareholders); (vii) permit or suffer the merger, dissolution, liquidation, or consolidation of the Trustor or any of the direct or indirect owners of Trustor or the conversion of one type of legal entity into another type of legal entity. Except as expressly consented to in writing by Beneficiary, Borrower shall not incur any additional indebtedness (secured or unsecured, direct or contingent) other than unsecured debt or trade payables incurred in the ordinary course of business in connection with the operation of the Property. Upon the occurrence of any of the prohibited activities specified herein, Beneficiary shall have the right, at its option, to declare the indebtedness secured by this Deed of Trust immediately due and payable, irrespective of the maturity date specified in the Note.

1.09 **Preservation and Maintenance of Property** Trustor shall hire competent and responsible property managers who shall be reasonably acceptable to Beneficiary. Trustor, at its sole cost and expense, shall, subject to the provisions of Sections 1.04 and 1.05 hereof, keep the Property and every part thereof in good condition and repair, in such a fashion that the value and utility of the Property will not be diminished and shall promptly and faithfully comply with and obey all laws, ordinances, rules, regulations, requirements and orders of every duly constituted governmental authority or agent having jurisdiction with respect to the Property. All repairs, replacements and renewals shall be at least equal in quality to the original Improvements. Trustor shall not permit or commit any waste, impairment, or deterioration of the Property, nor commit, suffer or permit any act upon or use of the Property in violation of law or applicable order of any governmental authority, whether now existing or hereafter enacted, or in violation of any covenants, conditions or restrictions affecting the Property or bring or keep any article in the Property or cause or permit any condition to exist thereon which would be prohibited by or invalidate the insurance coverage required to be maintained hereunder. Trustor shall promptly bond or discharge any mechanics' liens against the Property.

1.10 **Use of Property** Except as may have been previously agreed in writing by Beneficiary, Trustor shall continue to operate the Property for the purposes for which it was used on the date hereof and for no other purpose. Trustor shall not make or suffer any improper or offensive use of the Property or any part thereof and will not use or permit to be used any part of the Property for any dangerous, noxious, offensive or unlawful trade or business or for any purpose which will reduce the value of the Property in any respect or will cause the Property or any part thereof or interest therein to be subject to forfeiture. Trustor at its expense will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Property and all instruments relating or evidencing the same, in each case, to the extent compliance therewith is required of Trustor under the terms thereof. Trustor will not take any action which results in a forfeiture or termination of the rights afforded to Trustor under any such instruments and will not, without the prior written consent of Beneficiary, amend in any material respect any of such instruments. Trustor shall at all times comply with all laws affecting the Property and comply with any instruments of record at the time in force affecting the Property or any part thereof and shall procure, maintain and comply with all permits, licenses, and other authorizations required for any use of the Property or any part thereof then being made, and for the proper erection, installation, operation and maintenance of the Improvements or any part thereof. Trustor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. In furtherance of the foregoing sentence, Trustor will not, by act or omission: (i) impair the integrity of the Property as a single zoning lot separate and apart from all other premises; or (ii) permit or suffer to permit the Property to be used by the public or any party in such manner as might make possible a claim of adverse usage or possession or any implied dedication or easement. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Trustor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Beneficiary.

1.11 **Alterations and Additions** Trustor shall not cause, suffer or permit:

A. Any material alterations of the Property except (i) as required by any law, statute, ordinance, order, rule, regulation, decree or other requirement of the United States, the applicable state or county in which the Property is located or any political subdivision of any of the foregoing, or any agency, department, commission, board, court, bureau or instrumentality of any of them ("Governmental Authority") or by any condition of any approval, consent, registration, franchise, permit, license, variance, certificate of occupancy or other authorization with regard to zoning, landmark, ecological, environmental, air quality, subdivision, planning, building or land use required by any Governmental Authority for the construction, lawful occupancy and operation of the Property and the actual and contemplated uses thereof, or (ii) as permitted or required to be made by the terms of any Leases approved by Beneficiary if approval is required (with respect to work in any space demised thereunder);

B. Any demolition or removal of any portion of the Property (except in connection with those acts required or permitted under subsection A above or in connection with repairs allowed by this Deed of Trust following a condemnation or a casualty to the Property);

C. Any change which would increase the risk of fire or other hazard;

D. Any zoning, reclassification with respect to the Property; or

E. Any unlawful use of, or nuisance to exist upon, the Property.

As used herein, the term "material alteration" shall mean any alteration, improvement or replacement (i) the cost of which (including any related alteration, improvement or replacement) shall exceed three percent (3%) of the principal amount of the indebtedness secured by this Deed of Trust (excluding tenant improvement work pursuant to Leases), or (ii) which materially and adversely affects the mechanical, electrical, heating, ventilating, air-conditioning or other building or operating systems of any of the Improvements, or materially and adversely affects the cost of operation or maintenance of any such building or operating systems, affects the structure or structural soundness of any of the improvements of the Property, or the exterior or appearance of the Property, or otherwise has a material adverse effect on the Property including the use and/or value thereof.

1.12 Offset Certificates Trustor, within five (5) days upon request in person or within ten (10) days upon request by mail, shall furnish a written statement duly acknowledged and notarized, of all amounts due on any indebtedness secured hereby or secured by any of the Related Agreements, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the indebtedness secured hereby and covering such other matters with respect to any such indebtedness as Beneficiary may reasonably require.

1.13 Trustee's Costs and Expenses Trustor shall pay all costs, fees and expenses of Trustee, its agents and counsel, in connection with the performance of its duties hereunder.

1.14 Protection of Security; Costs and Expenses

A. In addition to any other rights or remedies of Beneficiary hereunder, under any of the Related Agreements, or in law or in equity, upon the occurrence and during the continuance of an Event of Default (or prior thereto after notice to Trustor, when possible, if Trustor is not paying or performing the act itself and Beneficiary determines in its sole good faith judgment that the same is appropriate to preserve the Property or the lien of this Deed of Trust or any other collateral securing the indebtedness evidenced by the Note, either before or after acceleration of the indebtedness) Beneficiary may, but shall not be required to, make any payment or perform any act required to be performed by Trustor hereunder or under any of the Related Agreements in any form and manner deemed expedient to Beneficiary, including, without limitation, if applicable: (i) paying any Impositions where remain unpaid; (ii) procuring the release, discharge, compromise or settlement of any lien filed or otherwise asserted against the Property which has not been discharged or is not being contested by Trustor in accordance with the provisions of this Deed of Trust or any of the Related Agreements, and (iii) obtaining insurance policies where insurance coverage was required to be obtained hereunder and the required evidence that Trustor had obtained the same has not been delivered to Beneficiary as required hereunder. Nothing herein shall be construed to require Beneficiary to advance or expend monies for any purpose mentioned herein, or for any other purpose.

B. Trustor and its property manager, if applicable, shall appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or any additional or other security for the obligations secured hereby, or the rights or powers of the Beneficiary or Trustee, and shall pay all costs and expenses actually incurred, including, without limitation, cost of evidence of title and actual attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or to enforce or establish any other rights or remedies of Beneficiary hereunder or under any other security for the obligations secured

hereby. If Trustor fails to perform any of the covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Beneficiary's interest in the Property or any part thereof, including, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary may, but without obligation to do so and without notice to or demand upon Trustor, perform such covenant or agreement and compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto. Trustor shall further pay all expenses of Beneficiary actually incurred (including reasonable and actual fees and disbursements of counsel) incident to the protection or enforcement of the rights of Beneficiary hereunder, and enforcement or collection of payment of the Note or any Future Advance whether by judicial or nonjudicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Trustor, or otherwise.

C. Trustor shall pay to Beneficiary, immediately upon written notice from Beneficiary: (i) all recordation, transfer, stamp, documentary or other fees or taxes levied on Beneficiary (exclusive of Beneficiary's income taxes) by reason of the making or recording of the Note, this Deed of Trust or any Related Agreement, and (ii) all intangible property taxes levied upon any holder of the Note or Beneficiary under this Deed of Trust or secured party under the Related Agreements.

Any amounts disbursed by Beneficiary pursuant to this section or section 1.13, including, without limitation, reasonable attorneys' fees, whether or not the indebtedness as a result thereof shall exceed the face amount of the Note, shall be additional indebtedness of Trustor secured by this Deed of Trust and each of the Related Agreements as of the date of disbursement shall become immediately due and payable on demand and shall bear interest at the Default Rate set forth in the Note, from demand until paid. All such amounts shall be payable by Trustor immediately upon demand. Nothing contained in this section shall be construed to require Beneficiary to incur any expense, make any appearance, or take any other action.

1.15 Trustor's Covenants Respecting Collateral

(A) Trustor shall execute and deliver financing and continuation statements covering the Collateral from time to time and in such form as Beneficiary may require to perfect and continue the perfection of Beneficiary's security interest with respect to such property, and Trustor shall pay all reasonable costs and expenses of any record searches for financing statements. Beneficiary may require. Trustor hereby authorizes and empowers Beneficiary to file (and hereby irrevocably appoints Beneficiary its agent and attorney-in-fact, which shall be coupled with an interest, to execute and file, on Trustor's behalf) at any time and from time to time any financing statements, amendments thereto and continuation statements with or without signature of Trustor as authorized by applicable law, as applicable to the Collateral. For purpose of such filings, Trustor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary describing the Collateral. Trustor hereby ratifies and approves all filings of financing statements, amendments, and continuations applicable to the Collateral made or filed by Beneficiary prior to the date of this Deed of Trust.

(B) Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created any other security interest in the Collateral, including replacements and additions thereto.

(C) Without the prior written consent of Beneficiary or except in the ordinary course of business, Trustor shall not sell, transfer or encumber any of the Collateral, or remove any of the Collateral from the Property unless Trustor shall promptly substitute and replace the property removed with similar property of at least equivalent value on which Beneficiary shall have a continuing security interest ranking at least equal in priority to Beneficiary's security interest in the property removed.

(D) Trustor shall (i) upon reasonable notice and during normal business hours (unless an emergency or Event of Default exists) permit Beneficiary and its representatives to enter upon the Property to inspect the Collateral and Trustor's books and records relating to the Collateral and make extracts therefrom and to arrange for verification of the amount of Collateral, under procedures acceptable to Beneficiary, directly with Trustor's debtors or otherwise at Trustor's expense; (ii) promptly notify Beneficiary of any attachment or other legal process levied against any of the Collateral and any information received by Trustor relative to the Collateral, Trustor's debtors or other persons obligated in connection therewith, which may in any way affect the value of the Collateral or the rights and remedies of Beneficiary in respect thereto; (iii) reimburse Beneficiary within five (5) days of Trustor's receipt of written demand for any and all costs actually incurred, including, without limitation, reasonable and actual attorneys' and accountants' fees, and other expenses incurred in collecting any sums payable by Trustor under any obligation secured hereby, or in the checking, handling and collection of the Collateral and the preparation and enforcement of any agreement relating thereto; (iv) notify Beneficiary of each location at which the Collateral is or will be kept, other than for temporary processing, storage or similar purposes, and of any removal thereof to a new location, including, without limitation, each office of Trustor at which records relating to the Collateral are kept; (v) provide, maintain and deliver to Beneficiary originals or certified copies of the policies of insurance and certificates of insurance insuring the Collateral against loss or damage by such risks and in such amounts, form and by such companies as Beneficiary may require and with loss payable to Beneficiary, and in the event Beneficiary takes possession of the Collateral, the insurance policy or policies and any unearned or returned premium thereon shall at the option of Beneficiary become the sole property of Beneficiary; and (vi) do all acts necessary to maintain, preserve and protect all Collateral, keep all Collateral in good condition and repair and prevent any waste or unusual or unreasonable depreciation thereof, subject to reasonable wear and tear.

(E) Until Beneficiary exercises its right to collect proceeds of the Collateral pursuant hereto, Trustor will collect with diligence any and all proceeds of the Collateral. If an Event of Default exists, any proceeds received by Trustor shall be held in trust for Beneficiary, and Trustor shall keep all such collections separate and apart from all other funds and property so as to be capable of identification as the property of Beneficiary and shall deliver to Beneficiary such collections at such time as Beneficiary may request in the identical form received, properly endorsed or assigned when required to enable Beneficiary to complete collection thereof.

(F) Beneficiary shall have all of the rights and remedies granted to a secured party under the Uniform Commercial Code of the state in which the Collateral is located, as well as all other rights and remedies available at law or in equity. During the continuance of any Event of Default hereunder or under the Note, Beneficiary shall have the right to take possession of all or any part of the Collateral, to receive directly or through its agent(s) collections of proceeds of the Collateral (including notification of the persons obligated to make payments to Trustor in respect of the Collateral), to release persons liable on the Collateral and compromise disputes in connection therewith, to exercise all rights, powers and remedies which Trustor would have, but for the security agreement contained herein, to all of the Collateral and proceeds thereof, and to do all other acts and things and execute all documents in the

name of Trustor or otherwise, deemed by Beneficiary as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder; and

(G) After any Event of Default hereunder or under the Note, Trustor shall, at the request of Beneficiary, assemble and deliver the Collateral and books and records pertaining to the Property at a place designated by Beneficiary, and Beneficiary may, with reasonable notice to Trustor (unless an emergency exists), enter onto the Property and take possession of the Collateral. It is agreed that public or private sales, for cash or on credit to a wholesaler or retailer or investor, or user of collateral of the types subject to the security agreement, or public auction, are all commercially reasonable since differences in the sales prices generally realized in the different kinds of sales are ordinarily offset by the differences in the costs and credit risks of such sales. The proceeds of any sale of the Collateral shall be applied first to the expenses of Beneficiary actually incurred in retaking, holding, preparing for sale, or selling the Collateral or similar matters, including reasonable and actual attorneys' fees, and then, as Beneficiary shall solely determine.

(H) Upon the request of Beneficiary, Trustor will cooperate with Beneficiary in obtaining control with respect to those items of Collateral consisting of deposit accounts, investment property, letter-of-credit rights or any other Collateral as to which "control" is required under the applicable Uniform Commercial Code for perfection of a security interest.

1.16 Covenants Regarding Financial Statements

(A) Trustor shall keep true books of record and account in which full, true and correct entries in accordance with sound accounting practice and principles applied on a consistent basis from year to year shall be made of all dealings or transactions with respect to the Property.

(B) (1) Trustor shall deliver to Beneficiary:

(a) Within one hundred twenty (120) days after the last day of each fiscal year of the Trustor during the term of the Note, unaudited annual financial reports prepared on an accrual basis, including balance sheets, income statements and cash flow statements covering the operation of the Property, the financial condition of Trustor, any indemnitors, and any guarantors under the Loan Documents, for the previous fiscal year, all certified to Beneficiary to be complete, correct and accurate by the individual, manager or chief financial officer of the party whom the report concerns; and

(b) if available, within thirty (30) days after receipt by Trustor, original annual audit reports of an independent certified public accountant prepared in accordance with generally accepted accounting principles containing an unqualified opinion, including balance sheets, income statements and cash flow statements covering the operation of the Property and the financial condition of the Trustor, Trustor's general partner(s), shareholder(s), member(s) and such principals of the Trustor as Beneficiary may from time to time designate, for the previous fiscal year;

(2) If, in Beneficiary's reasonable opinion, the loan to value ratio is then seventy-five percent (75%) or greater, Trustor shall also deliver, at Beneficiary's request from time to time (but no more often than once in each fiscal quarter of the Trustor during the term of the Note), unaudited financial reports prepared on an accrual basis, including balance sheets, income statements and cash flow statements covering the operation of the Property and the financial condition of the Trustor, Trustor's general partner(s), shareholder(s), member(s) and such principals of the Trustor as Beneficiary

may from time to time request, for the previous fiscal quarter, a portfolio analysis report covering the operation of all properties of which Trustor or any of Trustor's general partners, shareholder(s), member(s) or principals designated by Beneficiary is the owner or a general partner of the owner, setting out a cash flow statement (including debt service payments) for each such property, and a current rent roll of the Property, all certified to Beneficiary to be complete, correct and accurate by the individual, managing general partner or chief financial officer of the party whom the report concerns.

(3) All reports shall include, without limitation, balance sheets and statements of income and of partner's equity, if applicable, setting forth in each case in comparative form the figures for the previous fiscal quarter or year, as the case may be. The interim quarterly reports shall also include a breakdown of all categories of revenues and expenses, and any supporting schedules and data requested by Beneficiary. Each set of annual or quarterly financial reports or quarterly rent rolls delivered to Beneficiary pursuant to this section 1.16 shall also be accompanied by a certificate of the chief financial officer or the managing general partner of Trustor, stating whether any condition or event exists or has existed during the period covered by the annual or quarterly reports which then constituted or now constitutes an Event of Default under the Note or this Deed of Trust, and if any such condition or event then existed or now exists, specifying its nature and period of existence and what Trustor did or proposes to do with respect to such condition or event.

(4) An annual certification of the accuracy of the covenants set forth in Section 13 of the Nonrecourse Exception Indemnity Agreement of even date herewith.

(C) In the event such statements are not in a form reasonably acceptable to Beneficiary or Trustor fails to furnish such statements and reports, then Beneficiary shall have the immediate and absolute right to audit the respective books and records of the Property and Trustor at the expense of Trustor.

1.17 Environmental Covenants Trustor covenants:

(A) That no Hazardous Materials (as defined below) shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, in, on or under the Property other than Hazardous Materials in quantities and of types reasonably and customarily associated with general office use and retail use (provided that, notwithstanding the second and third sentences of Section 1.07(F), Trustor shall not enter into any lease, or amendment to lease changing the use, for the use of the demised premises for a dry cleaning plant or facility onsite without the prior written consent of Beneficiary), which have been and are stored, used and disposed of in compliance with Hazardous Material Laws (as defined below) and the presence of which do not require compliance with any reporting requirements under any Hazardous Material Laws;

(B) That no activity shall be undertaken by Trustor or permitted by Trustor on the Property which would cause:

(1) the Property to become a hazardous waste treatment, storage or disposal facility under any Hazardous Material Law,

(2) a release or threatened release of Hazardous Material from the Property in violation of any Hazardous Material Law, or

(3) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law and for which no such permit has been issued;

(C) That no activity shall be undertaken or permitted to be undertaken, by the Trustor on the Property which would result in a violation under any Hazardous Material Law;

(D) To obtain and deliver to Beneficiary, within a reasonable time following completion of actions required by an appropriate governmental agency, certifications of engineers or other professionals reasonably acceptable to Beneficiary, in form and substance satisfactory to Beneficiary, certifying that all necessary and required actions to clean up, remove, contain, prevent and eliminate all releases or threats of release of Hazardous Materials on or about the Property to the levels required by the appropriate governmental agencies have been taken and, to the knowledge of such professional, the Property is then in compliance with applicable Hazardous Material Laws as then in effect and applicable to such actions. For purposes of this Deed of Trust, "Hazardous Materials" means and includes asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste under any Hazardous Material Law, or any material which shall be removed from the Property pursuant to any administrative order or enforcement proceeding or in order to place the Property in a condition that is suitable for ordinary use. "Hazardous Material Laws" means all federal, state and local laws (whether under common law, statute or otherwise), ordinances, rules, regulations and guidance documents now in force, as amended from time to time, in any way relating to or regulating human health or safety, industrial hygiene or environmental conditions, protection of the environment, pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Clean Water Act, 33 U.S.C. §1251 et seq., the Clean Air Act, as amended, 42 U.S.C. §7401 et seq., the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1321 et seq., and the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.

1.18 **Further Assurances** Trustor, from time to time, will execute, acknowledge, subscribe and deliver to or at the direction of Beneficiary such documents and further assurance as Beneficiary may reasonably require for the purpose of evidencing, perfecting or confirming the lien and security interest created by this Deed of Trust or the security to be afforded by the Related Agreements, or both. Without limiting the foregoing and notwithstanding anything in this Deed of Trust or the Related Agreements to the contrary, Trustor will defend, indemnify and hold Beneficiary harmless with respect to any suit or proceeding in which the validity, enforceability or priority of any such lien or security interest, or both, is endangered or contested, directly or indirectly. If Trustor fails to undertake the defense of any such claim in a timely manner, or, in Beneficiary's sole determination, fails to prosecute such defense with due diligence, then Beneficiary is authorized to take, at the sole expense of Trustor, all necessary and proper action in defense of any such claim, including, without limitation, the retention of legal counsel, the prosecution or defense of litigation and the compromise or discharge of claims, including payment of all costs and attorneys' and paralegals' fees. All costs, expenses and losses, if any, so incurred by Beneficiary, including all attorneys' and paralegals' fees, regardless of whether suit is brought, for all

administrative, trial and appellate proceedings, if any, will constitute advances by Beneficiary as provided in section 1.14 hereinabove.

1.19 **Trustor's Continued Existence** Trustor shall at all times during the term of the Loan maintain its legal existence and qualification to do or transact business in the state in which the Property or any of the Collateral is located. Trustor's exact legal name, state of organization and chief executive office are as set forth respectively in the initial paragraph of this Deed of Trust. So long as any of the indebtedness secured hereby remains outstanding, Trustor will provide Beneficiary with thirty (30) days prior written notice of any change in Trustor's name, organizational identification number, state of organization or, if any individual, principal residence.

1.20 **Compliance with Laws** Trustor covenants that Trustor and the Property are presently in compliance with all Laws. Trustor further covenants that at all times during the term of the Loan, (i) Trustor shall promptly and faithfully comply with and obey all Laws affecting or otherwise pertaining to Trustor or the Property and (ii) Trustor shall not commit, suffer or permit any act upon, or use of, the Property in violation of any Laws. As used in this Deed of Trust, the term "Laws" shall mean, collectively, any federal, state or local laws, statutes, rules, regulations, ordinances, orders, decrees, directives, requirements or codes, and any judicial or administrative interpretation thereof by a Governmental Authority or otherwise, now or hereafter in effect and, in each case, as the same may have been and may hereafter be amended from time to time, including, but not limited to (a) the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957 and the Bank Secrecy Act, 31 U.S.C. Sections 5311 et seq. and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 et seq., (b) the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, (c) regulations of the Office of Foreign Asset Control of the Department of the Treasury, (d) Executive Order No. 13224 and the USA Patriot Act (Public Law 107-56), (e) the Americans with Disabilities Action of 1990, Pub. Law 101-336, U.S.C. §12101, et seq., (f) the Occupational Safety and Health Act of 1970, and (g) all applicable restrictive covenants, zoning codes and ordinances, building codes, fire codes and subdivision ordinances. "Governmental Authority" shall mean any and all applicable courts, boards, agencies, commissions, offices, or duly constituted authorities for any governmental unit, now or hereafter existing having jurisdiction over the Property and/or Trustor.

ARTICLE II EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

2.01 **Monetary and Performance Defaults**

(A) Failure to make any payment due under the Note or any note evidencing a Future Advance, other than the final payment and Prepayment Premium, or to make any payment due under this Deed of Trust to Beneficiary or any other party, including without limitation, payment of escrow deposits, real estate taxes, insurance premiums and ground rents, if any, on or before the fifth day after such payment is due (or if such date is not a business day, then on the next succeeding business day); or,

(B) Failure to make the final payment or the Prepayment Premium due under the Note or any note evidencing a Future Advance when such payment is due whether at maturity, by reason

of acceleration, as part of a prepayment or otherwise (the defaults in (A) and (B) hereinafter "Monetary Default"); or

(C) Breach or default in the performance of any of the covenants or agreements of Trustor contained herein or in any Related Agreement, or a termination of the Development Agreements or the CC&Rs without the express written consent of Lender, which consent may be granted or withheld in Lender's sole and absolute discretion ("Performance Default"), if such Performance Default shall continue for thirty (30) days or more after written notice to Trustor from Beneficiary specifying the nature of the Performance Default; provided, however, that if such Performance Default is of a nature that it cannot be cured within the 30 day period, then Trustor shall not be in default if it commences good faith efforts to cure the Performance Default within the 30 day period, demonstrates continuous diligent efforts to cure the Performance Default in a manner satisfactory to Beneficiary and, within a reasonable period, not to exceed 180 days after the date of the original written notice of the Performance Default, completes the cure of such Performance Default. Notwithstanding the foregoing, if the breach or default is one which is defined as an Event of Default elsewhere in this Article II or in the default definition of any Related Agreement, then Trustor shall not be entitled to any notice or cure period upon the occurrence of such breach or default except for such notice and cure periods, if any, as may be expressly granted in such other defined Event of Default.

2.02 Bankruptcy, Insolvency, Dissolution

(A) Any court of competent jurisdiction shall sign an order (i) adjudicating Trustor, or any person, partnership or corporation holding an ownership interest in Trustor or in any partnership comprising Trustor, any indemnitor, or any guarantor (which term when used in this Deed of Trust shall mean guarantor of payment of the indebtedness) bankrupt or insolvent, (ii) appointing a receiver, trustee or liquidator of the Property or of a substantial part of the property of Trustor, or any person, partnership or corporation holding an ownership interest in Trustor, or in any partnership comprising Trustor, or any indemnitor or guarantor, or (iii) approving a petition for, or effecting an arrangement in bankruptcy, or any other judicial modification or alteration of the rights of Beneficiary or of other creditors of Trustor, or any person, partnership or corporation holding an ownership interest in Trustor, or in any partnership comprising Trustor or any indemnitor or guarantor; or

(B) Trustor, any person, partnership or corporation holding an ownership interest in Trustor, or in any partnership comprising Trustor, or any indemnitor or guarantor shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or for any of its property, (ii) as debtor, file a voluntary petition in bankruptcy, or petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it and any proceeding under such law, (iii) admit in writing an inability to pay its debts as they mature, or (iv) make a general assignment for the benefit of creditors; or

(C) An involuntary petition in bankruptcy is filed against Trustor, or any person, partnership or corporation holding an ownership interest in Trustor or in any partnership comprising Trustor and the same is not vacated or stayed within 90 days of the filing date.

2.03 Misrepresentation Trustor makes or furnishes a representation, warranty, statement, certificate, schedule and/or report to Beneficiary in or pursuant to this Deed of Trust or any of the Related Agreements which is false or misleading in any material respect as of the date made or furnished.

2.04 **Default under Subordinate Loans** An occurrence of a default under any loan subordinate to this Deed of Trust which is not an independent default under this Deed of Trust which results in the commencement of foreclosure proceedings or the taking of any other remedial action under such subordinate loan.

2.05 **Breach of Due on Sale or Encumbrance Provision** Any occurrence of a prohibited Transfer under section 1.08 hereof.

ARTICLE III REMEDIES

Upon the occurrence of any Event of Default, Trustee and Beneficiary shall have the following rights and remedies set forth in sections 3.01 through 3.08:

3.01 **Acceleration** Notwithstanding the stated maturity date in the Note, or any note evidencing any Future Advance, Beneficiary may without notice or demand, declare the entire principal amount of the Note and/or any Future Advances then outstanding and accrued and unpaid interest thereon, and all other sums or payments required thereunder including, but not limited to the Prepayment Premium described in the Note, to be due and payable immediately.

3.02 **Entry; Appointment of a Receiver** Irrespective of whether Beneficiary exercises the option provided in section 3.01 above, Beneficiary in person or by agent or by court-appointed receiver may, at its option, without any action on its part being required, without in any way waiving such Event of Default, with or without the appointment of a receiver, or an application therefor:

(A) Take possession of the Property and conduct tests of, manage or hire a manager to manage, lease and operate the Property or any part thereof, on such terms and for such period of time as Beneficiary may deem proper, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary;

(B) With or without taking possession of the Property, collect and receive all Rents and Profits, notify tenants under the Leases or any other parties in possession of the Property to pay Rents and Profits directly to Beneficiary, its agent or a court-appointed receiver and apply such Rents and Profits to the payment of:

(1) all costs and expenses incident to taking and retaining possession of the Property (including the cost of any receivership), management and operation of the Property, keeping the Property properly insured and all alterations, renovations, repairs and replacements to the Property;

(2) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment to this Deed of Trust or the Note, and premiums for insurance, with interest on all such items; and

(3) the indebtedness secured hereby together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding;

(C) Exclude Trustor, its agents and servants, wholly from the Property;

(D) Have joint access with Trustor to the books, papers and accounts of Trustor relating to the Property, at the expense of Trustor;

(E) Commence, appear in and/or defend any action or proceedings purporting to affect the interests, rights, powers and/or duties of Beneficiary hereunder, whether brought by or against Trustor or Beneficiary; and

(F) Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of Beneficiary may affect or appear to affect the interest of Beneficiary or the rights, powers and/or duties of Beneficiary hereunder.

Trustee or Beneficiary, as a matter of right without notice to Trustor or anyone claiming under it and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers to take charge of the Property or any portion thereof. Any such receiver or receivers shall have all of the usual and customary powers and duties of receivers in like or similar cases and all of the powers and duties of Beneficiary in case of entry as provided hereinabove, including without limitation, the right to collect and receive Rents and Profits. All such Rents and Profits paid to Trustee or Beneficiary or collected by such receiver shall be applied as provided for in subparagraph 3.02(B) above. Trustor for itself and any subsequent owner of the Property hereby waives any and all defenses to the application for such receiver and hereby irrevocably consents to such appointment without notice of any application therefore.

The receipt by Beneficiary of any Rents and Profits pursuant to this Deed of Trust after the institution of foreclosure or other proceedings under the Deed of Trust shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto. After deducting the expenses and amounts set forth above in this section 3.02, as well as just and reasonable compensation for all Beneficiary's employees and other agents (including, without limitation, reasonable and actual attorneys' fees and management and rental commissions) engaged and employed, the moneys remaining, at the option of Beneficiary, may be applied to the indebtedness secured hereby. Whenever all amounts due on the Note and under this Deed of Trust shall have been paid and all Events of Default have been cured and any such cure has been accepted by Beneficiary, Beneficiary shall surrender possession to Trustor. The same right of entry, however, shall exist if any subsequent Event of Default shall occur; provided, however, neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this section 3.02.

3.03 **Judicial Action** Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants and agreements hereof. The Property may be foreclosed in parts or as an entirety.

3.04 **Power of Sale** Beneficiary may elect to cause the Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. Should Beneficiary

elect to sell the Property, or any part thereof, which is real property as provided above, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell the Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor or by giving notice of the time and place of the postponed sale in the manner required by law. If the Property consists of several lots, parcels or items of property, Beneficiary may designate the order in which such lots, parcels or items shall be offered for sale or sold. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured plus interest, late charges, prepayment fees, and reasonable attorneys' fees and trustees' fees, as herein provided. Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property not sold until all indebtedness secured hereby has been fully paid. In the event of default of any purchaser, Trustee shall have the right to resell the Property as set forth above. Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals of facts in any such deed or deeds such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

3.05 Rescission of Notice of Default Beneficiary, from time to time before Trustee's sale, public sale or deed in lieu of foreclosure, may rescind any such notice of breach or default and of election to cause the Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale or such documents as may be required by the laws of the state in which the Property is located to effect such rescission. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or Event of Default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause the Property to be sold to satisfy the obligations hereof, nor otherwise affect any provision, agreement, covenant or condition of the Note and/or of this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder.

3.06 Beneficiary's Remedies Respecting Collateral Beneficiary may realize upon the Collateral, enforce and exercise all of the Trustor's rights, powers, privileges and remedies in respect of the Collateral, dispose of or otherwise deal with the Collateral in such order as Beneficiary may in its discretion determine, and exercise any and all other rights, powers, privileges and remedies afforded to a secured party under the laws of the state in which the Property is located as well as all other rights and remedies available at law or in equity.

3.07 Proceeds of Sales The proceeds of any sale made under or by virtue of this Article III, together with all other sums which then may be held by Trustee or Beneficiary under this Deed of Trust, whether under the provisions of this Article III or otherwise, shall be applied as follows:

(A) To the payment of the costs, fees and expenses of sale and of any judicial proceedings wherein the same may be made, including the cost of evidence of title in connection with the sale, compensation to Trustee and Beneficiary, and to the payment of all expenses, liabilities and advances made or incurred by Trustee under this Deed of Trust, together with interest on all advances made by Trustee at the interest rate applicable under the Note, but limited to any maximum rate permitted by law to be charged by Trustee;

(B) To the payment of any and all sums expended by Beneficiary under the terms hereof, not then repaid, with accrued interest at the Default Rate set forth in the Note, and all other sums (except advances of principal and interest thereon) required to be paid by Trustor pursuant to any provisions of this Deed of Trust, or the Note, or any note evidencing any Future Advance, or any of the Related Agreements, including, without limitation, all expenses, liabilities and advances made or incurred by Beneficiary under this Deed of Trust or in connection with the enforcement thereof, together with interest thereon as herein provided; and

(C) To the payment of the entire amount then due, owing or unpaid for principal and interest upon the Note, any notes evidencing any Future Advance, and any other obligation secured hereby, with interest on the unpaid principal at the rate set forth therein from the date of advancement thereof until the same is paid in full; and then

(D) The remainder, if any, to the person or persons, including the Trustor, legally entitled thereto.

3.08 Condemnation and Insurance Proceeds All Proceeds and any interest earned thereon shall be paid over either by the condemning authority, insurance company or escrow agent to Beneficiary and shall be applied first toward reimbursement of the costs and expenses of Beneficiary (including reasonable attorneys' fees), if any, in connection with the recovery of such Proceeds, and then shall be applied in the sole and absolute discretion of Beneficiary and without regard to the adequacy of its security under this Deed of Trust:

(A) to the payment or prepayment of all or any portion of the Note including the Prepayment Premium described in the Note;

(B) to the reimbursement of expenses incurred by Beneficiary in connection with the restoration of the Property; or

(C) to the performance of any of the covenants contained in this Deed of Trust as Beneficiary may determine. Any prepayment of the Note or portion thereof pursuant to Beneficiary's election under this section shall be subject to the Prepayment Premium described in the Note.

3.09 **Waiver of Marshalling, Rights of Redemption, Homestead and Valuation**

(A) Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Deed of Trust or of any other security for any of said indebtedness.

(B) To the fullest extent permitted by law, Trustor, for itself and all who may at any time claim through or under it, hereby expressly waives, releases and renounces all rights of redemption from any foreclosure sale, all rights of homestead, exception, monitoring reinstatements, forbearance, appraisement, valuation, stay and all rights under any other laws which may be enacted extending the time for or otherwise affecting enforcement or collection of the Note, the debt evidenced thereby, or this Deed of Trust.

3.10 **Remedies Cumulative** No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein. Every power and remedy given by this Deed of Trust to Trustee or Beneficiary may be exercised separately, successively or concurrently from time to time as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the performance of the obligations secured hereby, Beneficiary, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Beneficiary at any time as additional security or otherwise, to any indebtedness secured hereby shall not extend or postpone the due dates of any payments due from Trustor to Beneficiary hereunder or under the Note, any Future Advance, or under any of the Related Agreements, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

3.11 **Nonrecourse** Except as otherwise set forth in this section or the Guaranty of even date herewith, the liability of Trustor and the general partners of Trustor, if any, under the Note, this Deed of Trust and the Related Agreements shall be limited to and satisfied from the Property and the proceeds thereof, the Rents and Profits and all other income arising therefrom, the other assets of Trustor arising out of the Property which are given as collateral for the Note, and any other collateral given in writing to Beneficiary as security for repayment of the Note (all of the foregoing collectively referred to as the "Loan Collateral"). Notwithstanding the preceding sentence:

(A) Beneficiary may, in accordance with the terms of the Note, this Deed of Trust or any Related Agreement: (i) foreclose the lien of this Deed of Trust; (ii) take appropriate action to enforce the Note, this Deed of Trust and the Related Agreements to realize upon and/or protect the Loan Collateral; (iii) name Trustor as a party defendant in any action brought under the Note, this Deed of Trust or any Related Agreement so long as the exercise of any remedy is limited to the Loan Collateral; (iv) pursue all of its rights and remedies against any guarantor or surety or master tenant, whether or not

such guarantor or surety or master tenant is a partner, member or other owner of Trustor; (v) pursue all of its rights and remedies against Trustor and the indemnitors under that certain Environmental Indemnity Agreement of even date herewith;

(B) Beneficiary may seek damages or other monetary relief to the extent of actual monetary loss, or any other remedy at law or in equity against Trustor, any general partner of Trustor and the indemnitors/guarantors under that certain Nonrecourse Exception Indemnity Agreement of even date herewith ("Nonrecourse Indemnitors") by reason of or in connection with (i) the failure of Trustor to pay to Beneficiary upon demand, all Rents and Profits of the Property to which Beneficiary is entitled pursuant to this Deed of Trust or the Related Agreements following an Event of Default; (ii) any waste of the Property or any willful act or omission by Trustor which damages or materially reduces the value of the Property; (iii) the failure to apply all Rents and Profits from the Property to the payment of operating expenses, real estate taxes, insurance, capital repair items, and the payment of sums due and owing under the Note, this Deed of Trust or the Related Agreements prior to any other expenditure or distribution by Trustor; (iv) the failure to account for and to turn over security deposits (and interest required by law or agreement to be paid thereon) or prepaid rents following the occurrence of an Event of Default under the Note, this Deed of Trust or any Related Agreement, after the expiration of any applicable notice and cure period; (v) the failure to timely pay real estate taxes or any regular or special assessments affecting the Property (except to the extent that Trustor has deposited sufficient funds for the payment of such taxes into a tax reserve account pursuant to the Note, this Deed of Trust or the Related Agreements), (vi) the failure to account for and to turn over real estate tax accruals following the occurrence of a default under this Deed of Trust or any Related Agreements, (vii) the failure to maintain casualty and liability insurance as required under this Deed of Trust or the Related Agreements or to apply Insurance Proceeds or Condemnation Proceeds relating to the Property or other collateral in the manner required under applicable provisions of this Deed of Trust or any Related Agreement, (viii) any modification, termination or cancellation of any Lease of all or any portion of the Property without Beneficiary's prior written consent, if and to the extent such consent is required under this Deed of Trust or the Related Agreements and if and to the extent such modification, termination or cancellation has a material adverse effect on the value of the Property, or (ix) a default by Trustor under any lease of all or any portion of the Property, after the expiration of any applicable notice and cure period; and, (x) costs and expenses, including, without limitation, attorney's fees and transfer taxes, incurred by Beneficiary in connection with the enforcement of the Note, this Deed of Trust or the Related Agreements or a deed-in-lieu of foreclosure; (xi) the failure of Trustor to pay any required tax increment monies (under the TIF Agreement) owed to the applicable municipality on an ongoing basis; (xii) any damages resulting from Trustor's failure to fulfill the necessary requirements to continue to qualify for the TIF status and related TIF receivable(s) of not less than \$170,000 per year for the entire fifteen (15) year term of the TIF Agreement; and (xiii) any losses, diminution in value, or other damages resulting from the termination of, Beneficiary's assumption of, or Borrower's default or failure to comply with any of the terms, provisions, covenants, conditions and obligations under, the Development Agreements, the CC&Rs and related documents.

(C) Trustor, any general partners of Trustor and the Nonrecourse Indemnitor(s) shall become personally liable for payment of the indebtedness evidenced by the Note and performance of all other obligations of Trustor under the Note, this Deed of Trust and the Related Agreements upon the occurrence of any of the following: (i) fraud or intentional misrepresentation of a material fact by Trustor, any general partners of Trustor, or the Nonrecourse Indemnitor(s) in connection with the Note, this Deed of Trust or the Related Agreements or any request for any action or consent by Beneficiary, (ii) a Transfer of any interest in the Trustor or all or any portion of the Property or any interest therein in

violation of the terms of the Note, this Deed of Trust or any Related Agreement, (iii) the incurrence by Trustor of any indebtedness in violation of the terms of the Note, this Deed of Trust or any Related Agreement (whether secured or unsecured, direct or contingent), other than unsecured debt or routine payables incurred in the ordinary course of business in connection with the operation of the Property, or (iv) if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law or any similar federal or state law, shall be filed by, consented to, or acquiesced in by Trustor, any general partner of Trustor, or any Nonrecourse Indemnitor(s).

In addition, Trustor, any general partners of Trustor and the Nonrecourse Indemnitor(s) shall be responsible for any costs and expenses incurred by Beneficiary in connection with the collection of any amounts for which Trustor, its general partners, if any, and the Nonrecourse Indemnitor(s) are personally liable under this section, including attorneys' fees and expenses, court costs, filing fees, and all other costs and expenses incurred in connection therewith.

ARTICLE IV MISCELLANEOUS

4.01 **Severability** In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent that it is invalid, illegal or unenforceable.

4.02 **Certain Charges and Brokerage Fees**

(A) Trustor agrees to pay Beneficiary for each written statement requested of Beneficiary as to the obligations secured hereby, furnished at Trustor's request. Trustor further agrees to pay the charges of Beneficiary for any other service rendered Trustor, or on its behalf, connected with this Deed of Trust or the indebtedness secured hereby, including, without limitation, the delivery to an escrow holder of a request for full or partial release or reconveyance of this Deed of Trust, transmittal to an escrow holder of moneys secured hereby, changing its records pertaining to this Deed of Trust and indebtedness secured hereby to show a new owner of the Property, and replacing an existing policy of insurance held hereunder with another such policy.

(B) Trustor agrees to indemnify and hold Beneficiary harmless from any responsibility and/or liability for the payment of any commission charge or brokerage fees to anyone which may be payable in connection with the funding of the loan evidenced by the Note and this Deed of Trust or refinancing of any prior indebtedness, if applicable, based upon any action taken by Trustor. It is understood that any such commission charge or brokerage fees shall be paid directly by Trustor to the entitled parties.

4.03 **Notices**

(A) All notices expressly provided hereunder to be given by Beneficiary to Trustor and all notices, demands and other communications of any kind or nature whatever which Trustor may be

required or may desire to give to or serve on Beneficiary shall be in writing and shall be (i) hand-delivered, effective upon receipt, (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, to the appropriate address set forth below, or at such other place as the Trustor, Beneficiary or Trustee, as the case may be, may from time to time designate in writing by ten (10) days prior written notice thereof. Any such notice or demand served by certified mail, return receipt requested, shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served at its address above stated or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any such notice or demand so made shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is the earlier in time. Any notice required to be given by Beneficiary shall be equally effective if given by Beneficiary's agent, if any.

(B) Trustor hereby requests that any notice, demand, request or other communication (including any notice of an Event of Default and notice of sale as may be required by law) desired to be given or required pursuant to the terms hereof be addressed to Trustor as follows:

Riverdale Center IV, L.C.
c/o The Boyer Company, L.C.
90 South 400 West, Suite 200
Salt Lake City, Utah 84101
Attention: Brian Gochnour

With a copy to:

Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Attn: David Gee, Esq.

All notices and other communications to Beneficiary shall be addressed as follows:

Allstate Life Insurance Company
Allstate Plaza South, Suite G5C
3075 Sanders Road
Northbrook, Illinois 60062
Attention: Commercial Mortgage Loan Servicing Manager

With a copy to:

Allstate Insurance Company
Investment Law Division
Allstate Plaza South, Suite G5A
3075 Sanders Road
Northbrook, Illinois 60062

All notices to Trustee shall be addressed as follows:

Landmark Title Company
675 East 2100 South, Suite 200
Salt Lake City, Utah 84106
Attention: Jeff Jensen

4.04 **Trustor Not Released; Certain Trustee Acts**

(A) Extension of the time for payment or modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor. Beneficiary shall not be required to: commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Deed of Trust, by reason of any demand made by Trustor. Without affecting the liability of any person, including Trustor, but subject to the terms and provisions of section 3.11, for the payment of any indebtedness secured hereby, or the legal operation and effect of this Deed of Trust on the remainder of the Property for the full amount of any such indebtedness and liability unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice (i) release any person liable for the payment of any of the indebtedness; (ii) extend the time or otherwise alter the terms of payment of any of the indebtedness; (iii) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or (iv) alter, substitute or release any property securing the indebtedness.

(B) Beneficiary may, at any time, and from time to time, (i) consent to the making of any map or plan of the Property or any part thereof; (ii) join in granting any easement or creating any restriction thereon; (iii) join in any subordination or other agreement affecting this Deed of Trust or the legal operation and effect or charge hereof; or (iv) release or reconvey, without any warranty, all or part of the Property from the lien of this Deed of Trust.

4.05 **Inspection** Upon reasonable prior notice and subject to the rights of tenants under the Leases, Beneficiary may at any reasonable time make or cause to be made entry upon and make inspections, reappraisals, surveys, construction and environmental testing of the Property or any part thereof in person or by agent, and if Beneficiary has a reasonable basis to believe that Trustor is in breach of any covenant of this Deed of Trust in regard to the Property, the cost of any such inspection shall be borne by the Trustor.

4.06 **Release or Reconveyance or Cancellation** Upon the payment in full of all sums secured by this Deed of Trust, Beneficiary shall cancel this Deed of Trust or request Trustee to release this Deed of Trust or reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust, Trustee shall release this Deed of Trust or reconvey the Property without warranty to the person or persons legally entitled thereto. The duly recorded release or reconveyance of the Property shall constitute a reassignment of the Leases by the Beneficiary to the Trustor. Such person or persons shall pay all fees of Trustee and costs of recordation, if any. The recitals in such release or reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

4.07 **Statute of Limitations** Trustor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust.

4.08 **Interpretation** Wherever used in this Deed of Trust, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include both Trustor and any subsequent owner or owners of the Property, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Note or other obligations secured hereby. In this Deed of Trust, the Note and the Related Agreements, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural. In this Deed of Trust, the Note and the Related Agreements, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto.

4.09 **Captions** The captions and headings of the Articles and sections of this Deed of Trust, the Note and the Related Agreements are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

4.10 **Consent** The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Trustor covenants and agrees to reimburse Beneficiary promptly on demand for all legal and other expenses incurred by Beneficiary or its servicing agent in connection with all requests by Trustor for consent or approval under this Deed of Trust.

4.11 **Delegation to Subagents** Wherever a power of attorney is conferred upon Beneficiary hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Beneficiary may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more subagents.

4.12 **Successors and Assigns** All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Trustor (but this shall not permit any assignment prohibited hereby) and the successors in trust of Trustee and the endorsees, transferees, successors and assigns of Beneficiary. In the event Trustor is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein and in the Related Agreements as well as the obligations arising therefrom are and shall be joint and several as to each such party.

4.13 **Governing Law** THIS DEED OF TRUST AND THE RELATED AGREEMENTS IS INTENDED TO BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. TRUSTOR HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.

4.14 **Substitution of Trustee** Beneficiary may remove Trustee at any time or from time to time and appoint a successor trustee, and upon such appointment, all powers, rights, duties and authority

of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the real property covered hereby is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

4.15 **Changes in Taxation** If, after the date of this Deed of Trust, any law is passed by the state in which the Property is located or by any other governing entity, imposing upon Beneficiary any tax against the Property, or changing in any way the laws for the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust so that an additional or substitute tax is imposed on Beneficiary or the holder of the Note, Trustor shall reimburse Beneficiary for the amount of such taxes immediately upon receipt of written notice from Beneficiary. Provided, however, that such requirement of payment shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to Beneficiary and if Trustor in fact pays such tax prior to the date upon which payment is required by such notice.

4.16 **Maximum Interest Rate** No provision of this Deed of Trust or of the Note or of any note evidencing a Future Advance shall require the payment or permit the collection of interest in excess of the maximum non-usurious rate permitted by applicable law. In the event such interest does exceed the maximum legal rate, it shall be canceled automatically to the extent that such interest exceeds the maximum legal rate and if theretofore paid, credited on the principal amount of the Note or, if the Note has been prepaid, then such excess shall be rebated to Trustor.

4.17 **Time of Essence** Time is of the essence of the obligations of Trustor in this Deed of Trust and Related Agreements and each and every term, covenant and condition made herein or therein by or applicable to Trustor.

4.18 **Reproduction of Documents** This Deed of Trust and all documents relating thereto, specifically excluding the Note but including, without limitation, consents, waivers and modifications which may hereafter be executed, financial and operating statements, certificates and other information previously or hereafter furnished to Beneficiary, may be reproduced by Beneficiary by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Beneficiary may destroy any original document ("Master") so reproduced. Trustor agrees and stipulates that any such reproduction is an original and shall be admissible in evidence as the Master in any judicial or administrative proceeding (whether or not the Master is in existence and whether or not such reproduction was made or preserved by Beneficiary in the regular course of business) and any enlargement, facsimile or further reproduction of such a reproduction shall be no less admissible.

4.19 **No Oral Modifications** This Deed of Trust may not be amended or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment or modification is sought.

4.20 **Trustee Provisions** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged is made a public record as provided by law. The Trust created hereby is irrevocable by Trustor. Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary, setting forth any facts showing a default by Trustor under any of the terms or conditions of this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon. Trustee shall be under no obligation to notify any party hereof of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be a party, unless brought by

Trustee, or of any pending sale under any other deed of trust. The necessity of Trustee's making oath, filing inventory or giving bond as security for the execution of this Deed of Trust, as may now be or hereafter required by the laws of the state in which the Property is located, is hereby expressly waived.

IN WITNESS WHEREOF, the undersigned have executed this Deed of Trust as of the day and year first hereinabove written.

TRUSTOR:

**RIVERDALE CENTER IV, L.C.,
a Utah limited liability company**


By: The Boyer Company, L.C.,
a Utah limited liability company
Its: Manager

By: 

Name: Steven B. Ostler

Its: manager

By: Gardner Property Holdings, L.C.,
a Utah limited liability company
Its: Manager

By: 

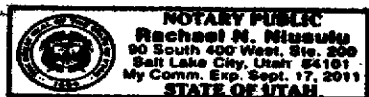
Name: Ken C. Gardner

Its: manager

[Notary acknowledgments on following page]

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

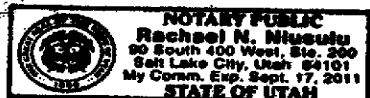
The foregoing document was executed this 7th day of March, 2008, by Sтивен B. Oster, the Manager of The Boyer Company, L.C., a Utah limited liability company, Manager of Riverdale Center IV, L.C., a Utah limited liability company.



Rachael Mizusaki
Notary Public for the State of Utah

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing document was executed this 7th day of March, 2008, by Kem C. Gardner, the Manager of Gardner Property Holdings, L.C., a Utah limited liability company, Manager of Riverdale Center IV, L.C., a Utah limited liability company.



Rachael Mizusaki
Notary Public for the State of Utah

EXHIBIT A

[Description of Land]

Real property located in Weber County, State of Utah, and more particularly described as follows:

PARCEL 1:

06 - 305 - 0002, 0003, 0004

All of Lots 2, 3 and 4, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof, filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats, at Page 47 of the Official Records of the Weber County Recorder.

PARCEL 2:

The non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Easements, Covenants And Conditions, by and between **MARTHA M. CRAIG, TRUSTEE OF THE MARTHA M. CRAIG REVOCABLE LIVING TRUST, RIVERDALE CENTER II, L.C.**, a Utah limited liability company, and **RIVERDALE CENTER IV, L.C.**, a Utah limited liability company, recorded February 1, 2007, as Entry No. 2239510, of the Official Records of the Weber County Recorder, on, over and across the following described properties (as provided for in said instrument), to-wit:

06 - 028 - 0007 ✓

(A) A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the Westerly right of way line of Riverdale Road, said point being 1323.18 feet South 1°00'35" West along the Section line and 598.14 feet South 88°59'25" East from the Northwest Corner of said Section 8; and running thence South 38°44'02" West 75.15 feet along said Westerly right of way; thence North 79°50'28" West 4.02 feet to the new Westerly right-of-way line of Riverdale Road (SR-26), which is 56.5 feet perpendicularly distant Northwesterly from the existing centerline of said road; thence South 38°25'10" West 48.95 feet along said new right-of-way line; thence North 51°35'37" West 91.09 feet; thence North 79°50'28" West 36.56 feet; thence Northerly along the arc of a 13.73 foot radius curve to the left 21.45 feet (Central Angle equals 89°30'19" and Long Chord bears North 6°26'33" West 19.33 feet); thence North 51°11'42" West 35.56 feet; thence North 38°48'08" East 63.03 feet; thence South 78°05'28" East 31.02 feet; thence South 89°41'28" East 14.21 feet; thence South 68°22'35" East 16.93 feet; thence South 51°29'55" East 42.85 feet; thence South 78°05'28" East 87.20 feet to the point of beginning.

06 - 274 - 0001

(B) A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at the Southwest Corner of Lot 2, Riverdale Center II Subdivision, Riverdale City, Weber County, Utah; said point being 1111.12 feet South 1°00'35" West along the Section line and 261.52 feet South 78°05'28" East from the Northwest Corner of said Section 8; and running thence North 13°35'10" East 268.96 feet; thence South 76°24'50" East 158.53 feet; thence North 13°35'10" East 36.33 feet; thence North 25°21'26" East 38.51 feet; thence South 66°49'12" East 41.48 feet; thence South 51°31'42" East 302.37 feet to the Westerly line of Riverdale Road; thence two (2) courses along said Westerly line as follows: South 38°24'20" West 217.50 feet and South 78°05'28" East 18.52 feet to the New Westerly right-of-way line of Riverdale Road (SR-26), which is 56.5 feet perpendicularly distant Northwesterly from the existing centerline of said road at UDOT Project No. SP-0026(4)0 engineering station

145+80.13; thence South 38°25'10" West 106.32 feet; thence North 78°05'28" West 82.78 feet; thence North 51°29'55" West 42.85 feet; thence North 68°22'35" West 16.93 feet; thence North 89°41'28" West 14.21 feet; thence North 78°05'28" West 67.15 feet; thence North 11°03'04" East 75.97 feet to the South line of Lot 2 of said Riverdale Center II Subdivision; thence North 78°05'28" West 141.52 feet along said South line of Lot 2 of said subdivision to the point of beginning.

06-305-0001 ✓

- (C) Lot 1, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats, at Page 47 of the Official Records of the Weber County Recorder.

PARCEL 3:

The non-exclusive rights-of-way and easements for pedestrian and vehicular ingress and egress, and for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Easements, Covenants And Restrictions, by and between **LOWE'S HIW, INC.**, a Washington corporation, **RIVERDALE CENTER II, L.C.**, a Utah limited liability company, and **RIVERDALE CENTER IV, L.C.**, a Utah limited liability company, recorded February 1, 2007, as Entry No. 2239512, of the Official Records of the Weber County Recorder, on, over, across, through and/or under the following described properties (as provided for in said instrument), to-wit:

06-274-0001, 0003 ✓

- (A) Lots 1 and 3, **RIVERDALE CENTER II SUBDIVISION**, according to the official plat thereof filed on July 3, 2000, as Entry No. 1714139, in Book "52" of Plats, at Page 52 of the Official Records of the Weber County Recorder.

06-305-0001 ✓

- (B) Lot 1, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats, at Page 47 of the Official Records of the Weber County Recorder.

PARCEL 4:

The non-exclusive Easements for Use of Common Area, for Access Roads, Utility Facilities, Construction, Exterior Lights and Drainage, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Covenants, Conditions And Restrictions, by and between **RIVERDALE CENTER IV, L.C.**, a Utah limited liability company, and **J.C. PENNEY PROPERTIES, INC.**, a Delaware corporation, recorded February 15, 2007, as Entry No. 2242510, of the Official Records of the Weber County Recorder, over, across and through the following described property (as provided in said instrument), to-wit:

06-305-0001 ✓

Lot 1, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats, at Page 47 of the Official Records of the Weber County Recorder.

EXHIBIT "B"
(Fixture Filing)

Pursuant to the security agreement contained in this Deed of Trust ("Security Agreement") and the appropriate Uniform Commercial Code ("UCC") sections in the State in which the Fixtures are located, as amended and recodified from time to time, this Deed of Trust shall constitute a Fixture Filing.

1. **Description of Fixtures** "Fixtures" shall include all articles of personal property now or hereafter attached to, placed upon for an indefinite term or used in connection with said real property, appurtenances and improvements together with all goods and other property which are or at any time become so related to the Property that an interest in them arises under real estate law.

2. **Description of Collateral** The Collateral, as defined in the Security Agreement, includes, without limitation, the following items and types of Collateral as well as certain other items and types of Collateral:

All equipment, fixtures, goods, inventory and all present and future accessions and products thereof and thereto as defined in the UCC, now or at any time acquired, used, or to be used for or in connection with the construction, use or enjoyment of the Property by Trustor, whether in the possession of Trustor, warehousemen, bailees or any other person and whether located at the Property or elsewhere, including without limitation:

(A) all building, maintenance or service equipment; building, maintenance or raw materials or supplies; component parts or work in process; appliances; furnishings; machinery; and tools; and

(B) all goods and property covered by any warehouse receipts, bills of lading and other documents evidencing any goods or other tangible personal property of any kind (including any Collateral) in which Trustor now or at any time hereafter has any interest in connection with any or all of the Property or Collateral; and

(C) any and all products of any accessions to any such Collateral which may exist at any time.

Part of the above described goods are or are to become Fixtures on the Property. As used in this Exhibit to qualify the scope of Beneficiary's security interest in any of the Collateral, the phrase "in connection with any or all of the Property or Collateral" shall be used in its broadest and most comprehensive sense and shall include without limitation property used or acquired (or to be used or acquired) in connection with the improvement, development, construction, repair or remodeling of any or all of the Property, property arising from or in connection with the operation, use, maintenance, occupancy, sale, lease or disposition of any or all of the Property or Collateral, property used or acquired (or to be used or acquired) in connection with Trustor's performance of any of its obligations to Beneficiary, and property acquired with any loan proceeds. If any property is used (or to be used) for multiple or different purposes, and one such purpose relates to any aspect of the Property or collateral, such property shall constitute Collateral hereunder, unless Beneficiary shall release such property from this Fixture Filing and Beneficiary's security interest in a duly executed written instrument.

3. **Relation of Fixture filing to Deed of Trust:** Some or all of the Collateral described in section 2 above may be or become Fixtures in which Beneficiary has a security interest under the Security Agreement. However, nothing herein shall be deemed to create any lien or interest in favor of the Trustee under this Deed of Trust in any such Collateral which is not a fixture, and the purpose of this Exhibit B is to create a fixture filing under the appropriate Uniform Commercial Code sections in the State in which the Fixtures are located, as amended or recodified from time to time. The rights, remedies and interests of Beneficiary under this Deed of Trust are independent and cumulative, and there shall be no merger of any lien hereunder with any security interest created by the Security Agreement. Beneficiary may elect to exercise or enforce any of its rights, remedies, or interests under this Deed of Trust as Beneficiary may from time to time deem appropriate.

4. **Name and Address of Beneficiary:**

Allstate Life Insurance Company
Allstate Plaza South, Suite G5C
3075 Sanders Road
Northbrook, Illinois 60062
Attention: Commercial Mortgage Loan Servicing Manager

5. **Other Fixture Financing and Removal of Fixtures**

(A) Beneficiary has not consented to any other security interest of any other person in any Fixtures and has not disclaimed any interest in any Fixtures; and

(B) Beneficiary has not agreed or consented to the removal of any Fixtures from the Property, and any such consent by Trustor shall not be binding on Beneficiary. Beneficiary reserves the right to prohibit the removal of any Fixtures by any person with the legal right to remove any Fixtures from the Property unless and until such person makes arrangements with (and satisfactory to) Beneficiary for the payment to Beneficiary of all costs of repairing any physical injury to the Property which may be caused by the removal of such Fixtures. Any such payment shall be made directly to Beneficiary at its request, and Beneficiary may hold such payment as additional collateral under this Deed of Trust. Failure by Trustor to cause the delivery to Beneficiary of any such payment shall constitute both: (i) waste under (and breach of) this Deed of Trust; and (ii) conversion of Collateral under (and a breach of) the Security Agreement.