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AND WHEN RECORDED MAIL TO:

BRYAN CAVE LEIGHTON PAISNER LLP  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 3300  
Dallas, TX 75201

Attention: Amy Simpson, Esq.

Loan No. 100037750

CTIA 139632-DME

ENT 71381:2021 PG 1 of 66  
**Andrea Allen**  
**Utah County Recorder**  
2021 Apr 15 03:15 PM FEE 40.00 BY SM  
RECORDED FOR Cottonwood Title Insurance Agency, Inc.  
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**For Tax Parcel I.D. Numbers, see Exhibit "A" attached hereto.**

**DEED OF TRUST  
AND  
SECURITY AGREEMENT  
AND  
FIXTURE FINANCING STATEMENT**

DATED AS OF

APRIL 15, 2021

GRANTED BY

**KAMAS FARMS, LLC,**  
a Wyoming limited liability company,  
**PETERBUILT 6M, LLC,**  
a Utah limited liability company,  
**RH MORINDA, LLC,**  
a Utah limited liability company, and  
**WALY INVESTMENT CO., LTD.,**  
a Utah limited partnership,  
as Tenants in Common

TO

**THRIVENT FINANCIAL FOR LUTHERANS,**  
a Wisconsin corporation

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WHEN RECORDED, MAIL TO:  
 Amy Simpson  
 Bryan Cave Leighton Paisner LLP  
 2200 Ross Ave, Suite 3300  
 Dallas, TX 75201

Loan No. 100037750

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(Space Above for Recorder's Use Only)

**DEED OF TRUST  
 AND  
 SECURITY AGREEMENT  
 AND  
 FIXTURE FINANCING STATEMENT**

THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT ("**Mortgage**") is made and delivered as of April 15, 2021 by **KAMAS FARMS, LLC**, a Wyoming limited liability company, having a mailing address of P.O. Box 900910, Sandy, Utah 84090, **PETERBUILT 6M, LLC**, a Utah limited liability company, having a mailing address of 6510 South Millrock Drive, #450, Salt Lake City, Utah 84121, **RH MORINDA, LLC**, a Utah limited liability company, having a mailing address of 2801 N. Thanksgiving Way, Suite 100, Lehi, Utah 84043, and **WALY INVESTMENT CO., LTD.**, a Utah limited partnership, having a mailing address of 4525 South Wasatch Boulevard, Suite 250, Salt Lake City, Utah 84124, as Tenants in Common (collectively referred to and jointly and severally obligated as "**Grantor**"), to Cottonwood Title Insurance Agency, Inc. ("**Trustee**") whose address is 1996 E. 6400 S, Suite 120, Salt Lake City, Utah 84121, for the benefit of **THRIVENT FINANCIAL FOR LUTHERANS**, a Wisconsin corporation ("**Beneficiary**"), having a mailing address of: Thrivent Financial for Lutherans, Attention: Loan Administration - Mortgage and Real Estate Investments, 901 Marquette Avenue, Suite 2500, Minneapolis, Minnesota 55402.

W I T N E S S E T H:

WHEREAS, Grantor is indebted to Beneficiary, as evidenced by that certain Promissory Note ("**Note**") of even date herewith, in the original principal sum of Ten Million and No/100ths Dollars (\$10,000,000.00) ("**Loan**"), both principal and interest of the Note being payable at the office of Beneficiary as more specifically set forth therein.

WHEREAS, Grantor and Beneficiary desire and intend that the Note be secured by: (1) this Mortgage; (2) an Assignment of Leases and Rents from Grantor, as assignor, in favor of Beneficiary, as assignee, of even date herewith; (3) Financing Statements; and (4) other and sundry documents and agreements. This Mortgage and all other documents and agreements given as security for the Note are referred to collectively as the "**Loan Documents**" and singularly as a "**Loan Document**".

NOW, THEREFORE, Grantor, in consideration of the sums advanced to Grantor under the Note, in hand paid by Beneficiary, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment of the principal, interest, and premium, if any, on the Note the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions or renewals thereof, due and payable with interest thereon as provided therein, the balance of said principal sum together with interest thereon being due and payable in any event on May 15, 2031 ("**Maturity Date**"), and shall repay to Beneficiary, its successors or assigns, at the times demanded and with interest thereon at the same rate specified in the Note, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the "**Premises**" (as that term is hereinafter defined), in payment of insurance premiums covering improvements thereon, in payment of principal and interest on prior liens, in payment of waste protection, in payment of expenses and actual attorneys' fees herein provided for and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, being hereinafter collectively referred to as the "**Indebtedness**") and to secure the performance by Grantor of each and every term, covenant, agreement and condition contained in the Note and the Loan Documents, Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY unto Trustee, in trust, with power of sale, for the benefit of Beneficiary, its successors and assigns, forever, AND GRANTS TO TRUSTEE, in trust for BENEFICIARY, A SECURITY INTEREST IN the following properties to secure payment of the Indebtedness (all of the following being hereafter collectively referred to as the "**Premises**"):

#### **GRANTING CLAUSES**

A. **Real Property.** All the tracts or parcels of real property lying and being in the County of Utah, State or Commonwealth of Utah ("**Real Property**") all as more fully described in **Exhibit "A"** attached hereto and which is hereby incorporated into this Mortgage by reference, together with all the estates and rights in and to the Real Property, and Grantor's interest in and to lands lying in streets, alleys and roads or gores of land adjoining the Real Property, all minerals, oil, gas and other hydrocarbon substances on, in and under the Real Property, as well as all development rights, air rights, water, water rights, water stock, mineral or oil rights, parking rights and general intangibles relating to, generated from, arising out of or incidental to the Real Property, its ownership, development or use.

B. **Improvements, Fixtures, Equipment and Personal Property.** Grantor's interest in all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the Real Property and all proceeds and products derived therefrom whether now owned or hereafter acquired; and all equipment (including Grantor's interest in any lease of such equipment), fixtures, improvements, building supplies and materials and personal property owned by Grantor now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the land including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and

plants, stoves, ranges, ovens, refrigerators, air conditioners, dishwashers, clothes dryers, washing machines, disposals and compactors (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Grantor in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Grantor at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

C. **Rents, Leases and Profits.** All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Grantor in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Grantor to collect the rents, income and other normal income benefits arising under any agreements. Beneficiary shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Beneficiary, at any time and from time to time, to notify any lessee of the rights of Beneficiary hereunder.

Together with all right, title and interest of Grantor in and to any and all contracts for sale and purchase of all or any part of the property described in these Granting Clauses A, B and C hereof, and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

D. **Judgments, Condemnation Awards, Insurance Proceeds, and Other Rights.** All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of Grantor against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of hazardous substances.

E. **Licenses, Permits, Equipment Leases and Service Agreements.** All right, title and interest of Grantor in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, tradenames, any and all other intangibles, including general intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.



F. **Proceeds.** All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the Premises described in Granting Clauses A through E herein.

TO HAVE AND TO HOLD THE SAME, together with the possession, right of possession of the Premises, and with full POWER OF SALE, unto Trustee, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if Grantor, Grantor's heirs, administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the full amount of the Indebtedness as and when due, and shall keep and perform all of the covenants and agreements herein contained, then this Mortgage shall become null and void, and shall be released at Grantor's expense, otherwise this Mortgage to remain in full force and effect.

## ARTICLE 1. **GENERAL REPRESENTATIONS AND WARRANTIES**

### SECTION 1.1. **Representations and Warranties.**

Grantor represents and warrants to Beneficiary, its successors and assigns, that, as of the date hereof:

(a) Grantor, for Grantor, Grantor's administrators, personal representatives, successors and assigns, covenants with Beneficiary, its successors and assigns, that Grantor is lawfully seized of the Premises and has good right to sell and convey the same.

(b) The Premises are free from all encumbrances except as may be set forth in Schedule B of that certain ALTA Beneficiary's Policy of Title Insurance issued to Beneficiary by Cottonwood Title Insurance Agency, Inc., as Agent for Old Republic National Title Insurance Company and insuring the first lien position of this Mortgage ("**Permitted Encumbrances**").

(c) Reserved.

(d) Grantor, its successors and assigns, will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Mortgage. As used herein the words "**successors and assigns**" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to the Mortgage.

(e) If Grantor is a corporation, partnership, limited liability company or trust, it is duly organized, validly existing and in good standing under the laws of the State or Commonwealth of its organization, is duly qualified to do business in all states in which it is required to be so qualified, and has all requisite power and authority to enter into this Mortgage and to perform its obligations hereunder; the execution, delivery and performance of this Mortgage by Grantor has been duly and validly authorized; and all

requisite action has been taken by Grantor to make this Mortgage valid and binding upon Grantor, enforceable in accordance with its terms.

(f) If Grantor is an individual, such individual is of legal age, is under no legal disability and is fully competent to make, execute and deliver this Mortgage.

(g) Neither Grantor nor any Guarantors or members of Grantor is or will become a "**Person**" described by Section 1 of The Anti-Terrorism Executive Order 13,224 of September 23, 2001 blocking property and prohibiting transactions with Persons who commit, threaten to commit, or support terrorism, 66 Fed. Reg. 49,049 (2001), or described in any rule or regulation implementing the same and, to the best knowledge and belief of the Grantor after due and adequate diligence, neither Grantor nor any Guarantors or members of Grantor engages or will engage in any dealings or transactions, or be otherwise associated with, any such Persons.

(h) Grantor and all Guarantors and members of Grantor are in compliance, and will remain in compliance, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("**USA Patriot Act**").

(i) If Grantor is a corporation, partnership, limited liability company, trust, or other form of business entity, neither the execution and delivery of this Mortgage nor the performance of the provisions of the agreements herein contained on the part of Grantor will contravene, violate or constitute a default under the organizational and other governing instruments of such Grantor or result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement or other instrument to which Grantor or the Premises is subject or result in the violation of any law, rule, regulation, order, judgment or decree to which Grantor or the Premises is subject.

(j) If Grantor is an individual, neither the execution and delivery of this Mortgage nor the performance of the provisions of the agreements herein contained on the part of such Grantor will result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement or other instrument to which Grantor or the Premises is subject or result in the violation of any law, rule, regulation, order, judgment or decree to which Grantor or the Premises is subject.

(k) There are no (i) bankruptcy proceedings involving Grantor; (ii) dissolution proceedings involving Grantor; (iii) unsatisfied judgments of record against Grantor; or (iv) tax liens filed against Grantor.

(l) The Loan Documents have been duly executed and delivered by Grantor and constitute the legal, valid and binding obligations of Grantor, enforceable in accordance with their terms, except as to enforcement of remedies, as may be limited by bankruptcy, insolvency or similar laws affecting generally the enforcement of creditor's remedies.

(m) There are no judgments, suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of Grantor's knowledge, threatened against Grantor or its properties, or both, nor has any judgment, decree or order been issued against Grantor or its properties, or both, which would have a material adverse effect on the Premises or the financial condition of Grantor or Grantor's properties.

(n) No consent or approval of any regulatory authority having jurisdiction over Grantor is necessary or required by law as a prerequisite to the execution, delivery and performance of the terms of the Loan Documents.

(o) Any and all balance sheets, net worth statements and other financial statements and data which have heretofore been given to Beneficiary with respect to Grantor fairly and accurately represent the financial condition of Grantor in all material respects as of the date thereof, and, since the effective date of such materials, there has been no material adverse change in the financial condition of Grantor.

(p) Grantor is not, as of the date hereof, in default in the payment of any of Grantor's obligations.

(q) The Premises are free from any mechanics' or materialmen's liens or claims. To Grantor's knowledge, there has been no labor or materials furnished to the Premises that has not been paid for in full.

(r) Grantor has no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation or restriction, or any judicial, administrative, governmental or quasi-governmental action, or any action by adjacent land owners, or natural or artificial condition existing upon the Premises which would limit, restrict or prevent the contemplated or intended use and purpose of the Premises.

(s) There is no pending condemnation or similar proceeding affecting the Premises, or any portion thereof nor, to the best knowledge of Grantor, is any such action being presently contemplated.

(t) No part of the Premises is being used or will be used principally, or at all, for agricultural or farming purposes.

(u) The Premises is undamaged by fire, windstorm or other casualty.

(v) Neither Grantor nor any affiliated entity has been the subject of foreclosure or insolvency proceedings.

(w) Grantor is neither an "**employee benefit plan**" as defined under ERISA nor a "**plan**" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the Premises do not constitute "**plan assets**" within the meaning of the Department of Labor Regulation Section 2510.3-101.

(x) Grantor has complied with all requirements of the Americans with Disabilities Act, 42 U.S.C. Sections 12101 and 12213, as the same may be amended from time to time.

(y) The Premises complies with all zoning ordinances, energy and environmental codes, building and use restrictions and codes, and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Premises.

(z) To Grantor's knowledge, the heating, electrical, sanitary sewer plumbing, storm sewer plumbing, potable water plumbing and other building equipment, fixtures and fittings are in good condition and working order, are adequate in quantity and quality for normal and usual use, and are fit for the purposes intended and the use contemplated.

#### **SECTION 1.2. Continuing Obligation.**

Grantor further warrants and represents that all statements made hereunder are true and correct and that all financial statements, data and other information provided to Beneficiary by Grantor relating to or provided in connection with this transaction has not and does not contain any statement which, at the time and in the light of the circumstances under which it was made, would be false or misleading with respect to any material fact, or would omit any material fact necessary in order to make any such statement contained therein not false or misleading in any material respect, and since such statement, data or information was provided there has been no material change thereto or to the condition of Grantor. Should Grantor subsequently obtain knowledge that such representation was or is untrue, Grantor shall immediately notify Beneficiary as to the untrue nature of said representation and agrees to take such action as may be necessary to cause such representation to become true.

### **ARTICLE 2. COVENANTS AND AGREEMENTS**

Grantor further covenants and agrees for the benefit of Beneficiary, its successors and assigns, as follows:

#### **SECTION 2.1. Payment of Indebtedness: Observance of Covenants.**

Grantor will duly and punctually pay each and every installment of principal, premium, if any, and interest on the Note, all deposits required herein, and all other Indebtedness, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other Loan Documents, as such instrument may be amended, modified, restated and in effect from time to time.

#### **SECTION 2.2. Maintenance: Repairs.**

Grantor agrees that it will keep and maintain (or will cause to be kept and maintained) the Premises in good, first class condition, repair and operating condition free from any waste or

misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Premises and their use, and will promptly repair or restore (or cause to be replaced and restored) any buildings, improvements or structures now or hereafter on the Premises, which may become damaged or destroyed, to their condition prior to any such damage or destruction. Grantor further agrees that without the prior written consent of Beneficiary, it will not remove or expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, materially and adversely affect the market value or change the existing architectural character of the Premises, and agrees that any other buildings, structures and improvements now or hereafter constructed on or in the Premises or repairs made to the Premises shall be completed in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations, requirements and permits and in accordance with plans and specifications previously delivered to, and approved in advance and in writing by Beneficiary. Grantor agrees not to acquiesce in any rezoning classification, modification or restriction affecting the Premises without the written consent of Beneficiary. Grantor agrees that it will not abandon or vacate the Premises. Grantor agrees that it will provide, improve, grade, surface and thereafter maintain, clean, repair and adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways and curb cuts and sufficient paved areas for ingress and right-of-way to and from the adjacent public thoroughfare necessary or desirable for the use thereof and maintain all landscaping thereon or will cause the same to be performed.

**SECTION 2.3. Payment of Operating Costs; Liens; and Other Indebtedness.**

Grantor agrees that it will pay or cause to be paid all operating costs and expenses of the Premises; keep the Premises, or cause the Premises to be kept, free from mechanics' liens, materialmen's liens, judgment liens and other liens, executions, attachments or levies (hereinafter collectively referred to as "**Liens**"); and will pay when due all permitted indebtedness which may be secured by a mortgage, lien or charge on the Premises, whether prior to, subordinate to or of equal priority with the lien hereof, and upon request will exhibit to Beneficiary satisfactory evidence of such payment and discharge.

**SECTION 2.4. Payment of Impositions.**

Grantor will pay or cause to be paid when due and before any penalty or interest attaches because of delinquency in payment, all taxes, installments of assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or the Indebtedness (hereinafter collectively referred to as the "**Impositions**"); and will upon demand furnish to Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a Beneficiary the payment of the whole or any part of the Impositions herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a Beneficiary's interest in mortgaged premises, so as to impose such Imposition on Beneficiary or on the interest of Beneficiary in the Premises, then, in any such event, Grantor shall bear and pay, or cause to be paid, the full amount of such Imposition, provided that if for any reason payment by Grantor of any such Imposition would be unlawful, or

if the payment thereof would constitute usury or render the Indebtedness wholly or partially usurious, Beneficiary, at its option, may, upon no less than ninety (90) days' notice to Grantor, declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable, without payment of a Reinvestment Charge or Default Premium (as such terms are defined in the Note and hereinafter referred to as the "**Reinvestment Charge**" and the "**Default Premium**"), or Beneficiary, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness unlawful or usurious, in which event Grantor shall concurrently therewith pay, or cause to be paid, the remaining lawful and non-usurious portion or balance of said Imposition.

#### **SECTION 2.5. Contest of Liens and Impositions.**

Grantor shall have the right to contest in good faith the validity or amount of any tax assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same, (ii) Grantor giving Beneficiary written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within thirty (30) days after Grantor receives actual notice of the filing thereof, (iii) Grantor making and thereafter maintaining with Beneficiary or such other depository as Beneficiary may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Beneficiary's sole discretion, be acceptable to Beneficiary, and in either case having a present value equal to the amount herein specified) in an amount no less than One Hundred Fifty Percent (150%) of the amount which, in Beneficiary's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Grantor or in the event Grantor fails to prosecute such contest as herein required, or in lieu thereof, Grantor providing to Beneficiary title insurance over such matters in form and substance reasonably acceptable to Beneficiary, and (iv) Grantor diligently prosecuting such contest by appropriate legal proceedings. In the event Grantor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Beneficiary may, at its option, liquidate the securities deposited with Beneficiary, and apply the proceeds thereof and other monies deposited with Beneficiary in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

#### **SECTION 2.6. Protection of Security.**

Grantor agrees to promptly notify Beneficiary of and appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness or the rights or interest of Beneficiary hereunder. Beneficiary may elect to appear in or defend any such action or proceeding and Grantor agrees to indemnify and reimburse Beneficiary from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and actual attorneys' fees.

## **SECTION 2.7. Annual Statements.**

Within one hundred twenty (120) days after the end of each of its fiscal years during the term of this Mortgage, Grantor will furnish to Beneficiary (a) annual financial statements of Grantor, including a balance sheet and income statement, (b) annual financial statements of Grantor and Guarantors, including balance sheets and income statements, and (c) annual operating statements of the Premises, which shall include at least gross income itemized as to source, operating expenses (itemized), depreciation charges, and net income before and after federal income taxes and such additional information as Beneficiary may from time to time request. The financial statements of Grantor and Guarantors shall be personally certified by each respective individual or at Beneficiary's option, by a certified public accountant in the event there is an Event of Default, shall be satisfactory in form and content to Beneficiary and shall be prepared without expense to Beneficiary. The financial statements of Grantor and Guarantors shall be personally certified by each respective individual, shall be satisfactory in form and content to Beneficiary and shall be prepared without expense to Beneficiary. Grantor covenants that it shall keep true and accurate records of the operation of the Premises. All of the above required statements shall be prepared in adequate detail and shall conform to generally accepted accounting principles. In the event the Premises are conveyed to a corporate entity pursuant to the terms of **Section 2.9** below, such entity shall submit annual financial statements of the corporation and any supplemental schedules provided stockholders or officers, certified by an officer of the corporation, in addition to the operating statements described above. In the event that the Premises are conveyed to an individual pursuant to the terms of **Section 2.9** below, such individual shall submit annual statements certified by each individual or by an independent certified public accountant in good standing and shall include a balance sheet and a profit and loss statement in addition to the operating statements described above. In the event that the Premises shall be conveyed to a partnership, a trust or a limited liability company in accordance with the terms of **Section 2.9** below, the partnership, the trust or the limited liability company shall submit annual reports certified by an authorized partner, trustee or member in addition to the operating statements described above. In the event Grantor fails to furnish any of the above statements Beneficiary may cause an audit to be made of the respective books and records at the sole cost and expense of Grantor. Beneficiary also shall have the right to examine at their place of safekeeping all books, accounts and records relating to the operation of the Premises and make copies thereof or extracts therefrom and to discuss the affairs, finances or accounts with the Principal(s) (as such term is hereinafter defined) and employees of Grantor and its independent accountants. Said examination shall be at Beneficiary's expense unless Grantor's statements are found to contain significant discrepancies, in which case the examination shall be at Grantor's expense. Grantor shall also furnish a rent roll of all tenants having leases on the Premises, certified by Grantor, together with the rent schedules, expiration dates, and options to extend for such tenants, on an annual basis along with the operating statements provided for above or at such other times as requested by Beneficiary.

## **SECTION 2.8. Additional Assurances.**

Grantor agrees, and hereby authorizes Beneficiary to file on its behalf, upon request by Beneficiary to execute and deliver further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage and

without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. Grantor agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing, the issuance and delivery of the Note, the filing or recording of this Mortgage or the delivery and recording of such further assurances and instruments as may be required pursuant to the terms of this Section.

#### **SECTION 2.9. Due on Sale or Mortgaging, etc.**

In the event that without the written consent of Beneficiary being first obtained: (a) Grantor sells, conveys, transfers, further mortgages, changes the form of ownership, or encumbers or disposes of the Premises, or any part thereof, or any interest therein, or agrees to do so either directly or indirectly; or (b) any ownership or beneficial interest in Grantor is sold, conveyed, transferred, pledged or encumbered, including any bifurcation or division of Grantor into separate entities, whether through a right available at law or otherwise, or there is an agreement to do so either directly or indirectly; whether any such event described in (a) or (b) above is voluntary, involuntary or by operation of law, either directly or indirectly, then at Beneficiary's sole option, Beneficiary may declare the Indebtedness immediately due and payable in full and call for payment of the same at once, together with the Reinvestment Charge or Default Premium then in effect under the terms of the Note.

In the event Grantor shall request the consent of Beneficiary to any transfer in accordance with this **Section 2.9**, Grantor shall deliver a written request to Beneficiary together with all material information regarding such conveyance or encumbrance (including complete information concerning the person or entity to acquire the interest conveyed). Beneficiary shall be allowed thirty (30) days after receipt of all requested information for evaluation of such request. In the event that such request is not approved within such thirty (30) day period, it shall be deemed not approved. Beneficiary may charge an administrative fee to process any such sale, conveyance, transfer, mortgage or other encumbrance. Approval may be conditioned upon payment of a transfer fee and such modifications of the loan terms, interest rate, and maturity date as determined by Beneficiary in its sole discretion. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

If the Premises should be transferred to a partnership, to a trust, to a privately held corporation or to a limited liability company pursuant to the terms of this **Section 2.9** during the term of this Mortgage, thereafter a subsequent transfer of a partnership interest, a beneficial interest, a corporate stock interest or a member interest in either the successor entity or in any entity which holds an ownership interest in such successor entity shall constitute a conveyance for purposes of this **Section 2.9**, and the consent of Beneficiary shall be required.

Notwithstanding the above restrictions, and provided no default or Event of Default (as such term is hereinafter defined) has occurred and is continuing hereunder, Beneficiary shall not withhold consent to the following:

(a) a one-time transfer of the Premises at any time and will not require modification of the interest rate or maturity date stated in the Note, provided all of the following conditions have been met:



(1) Beneficiary shall have received a transfer fee equal to one percent (1%) of the outstanding principal balance of the Note at the time such request for transfer is approved by Beneficiary.

(2) The purchaser must acknowledge that future transfers and encumbrances will be subject to Beneficiary's approval, which may, at Beneficiary's sole discretion, be withheld or be conditioned upon payment of additional fees and/or modification of the terms of the Note and/or the other Loan Documents, including but not limited to a principal pay down of the Loan.

(3) Notice of such transfer together with such documentation regarding the transfer and the assuming person or entity as Beneficiary shall request shall be given to Beneficiary at least sixty (60) days prior to such transfer.

(4) The transferee or owner of the transferee or guarantor (the "**Creditworthy Party**") shall demonstrate a net worth determined in accordance with generally accepted accounting principles in an amount not less than twenty (20) times the original Loan amount ("**Net Worth**") with cash and cash equivalents after funding the equity needed to close the purchase of not less than Twenty Million and No/100 Dollars (\$20,000,000.00) ("**Liquidity**"); such Net Worth and Liquidity amounts shall be determined to be sufficient by Beneficiary in its sole and absolute judgment, discretion, and approval. Additionally, Beneficiary shall review and approve, pursuant to Beneficiary's then-current underwriting standards, the Creditworthy Party's financial condition with respect to its (and its affiliates') debt, loan maturities, credit history, and such other financial information of the Creditworthy Party as Beneficiary may require.

(5) The Creditworthy Party is determined by Beneficiary to be a competent creditworthy transferee who Beneficiary determines, in its sole and absolute judgment and discretion, has experience: (i) in the business of owning commercial real estate of similar type, size, and quality to the Property in the Salt Lake City, UT Core Based Statistical Area (as defined by the United States Office of Budget and Management) (such Core Based/Consolidated Statistical Area, the "**CBSA**"), and has a favorable reputation with respect to such business; and (ii) has retained a property management company with experience in the management of similar projects in the CBSA and which property management company is acceptable to Beneficiary.

(6) A substitute guarantor acceptable to Beneficiary, in its sole and absolute discretion shall have executed a Guaranty and Environmental Indemnity Agreement in the forms of those executed by original Guarantor. Thereafter, original Guarantor will have no liability under the Guaranty or Environmental Indemnity Agreement or otherwise for matters first occurring after execution by substitute guarantor of the applicable Guaranty and Environmental Indemnity Agreement. Such substitute guarantor must have and maintain at all times during the term of the Loan the Net Worth and Liquidity as reflected on the financial statements of such substitute guarantor. Failure of the substitute guarantor to maintain the Net Worth and Liquidity shall constitute an Event of Default under the terms of the Loan and shall entitle Beneficiary to exercise all remedies available to it hereunder.

(7) The (a) transferee, (b) substitute guarantor, (c) Creditworthy Party (to the extent a direct owner of a transferee or substitute guarantor), (d) any persons or entities owning twenty-five percent (25.0%) or more of such parties, and (e) any persons or entities controlling such parties: (i) are not (and never have been) subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, (ii) are not (and never have been) a litigant, plaintiff or defendant in any suit brought against or by Beneficiary, or (iii) have not (A) defaulted on a loan that resulted in a foreclosure or a deed in lieu thereof in the preceding twenty (20) years, or (B) otherwise been party to any loan agreement under which repayments of principal and/or interest were not made in accordance with and in full adherence to the original terms of such contact.

(8) Beneficiary must determine, in its sole and absolute judgment and discretion, that the loan-to-value ratio at the time of such transfer is not greater than (a) fifty percent (50%) based upon the ratio of outstanding principal balance of the Loan at the time of such request for transfer, as divided by the lesser of the (i) market value as determined by a then-current MAI appraisal or (ii) purchase price of the Property.

(9) A property condition report, dated no earlier than ninety (90) days prior to the date of transfer, is provided to Beneficiary at least thirty (30) days prior to the date of transfer and is satisfactory to Beneficiary at the time of transfer, which report is in conformance with the requirements of the most current version of the ASTM "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process", ASTM International, and which is prepared by an independent, licensed, qualified engineer. Said consultant must be acceptable to Beneficiary, and must be licensed, bonded and insured in accordance with applicable laws and regulations. Beneficiary may, at its sole and absolute discretion, require certain repair(s), upgrade(s), modification(s), and/or capital improvements to, on, or within the Property based upon the findings and/or recommendations of such property condition report prior to such transfer.

(10) A Phase I environmental report, dated no earlier than ninety (90) days prior to the date of transfer, is provided to Beneficiary at least thirty (30) days prior to the date of transfer and is satisfactory to Beneficiary in both form and substance at the time of transfer, in compliance with the most current ASTM Standard version of the "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process", ASTM International and Beneficiary's then-current requirements for such reports. Said consultant must be acceptable to Beneficiary, and must be licensed, bonded and insured in accordance with applicable laws and regulations. Grantor will also supply Beneficiary with any additional information that Beneficiary deems necessary after reviewing the Phase I to assure that the Property is in compliance with all OSHA regulations and environmental laws. In the event that the Phase I or other information discloses the presence of toxic, hazardous waste in the security or a violation of any environmental law, Beneficiary may, in its sole and absolute discretion, require further testing as appropriate, prior to such transfer, or may decline the transfer request.

(11) The Property shall have achieved Stabilization as determined from certified financial statements, and there are no junior liens on the Property.

(12) Grantor or the transferee shall pay all actual fees and out of pocket expenses incurred by Beneficiary in connection with reviewing and processing the proposed transfer, including, without limitation, all legal, recording and title insurance fees and expenses and the fees of any broker regardless of whether the proposed transfer occurs or not;

(13) Grantor, purchaser and any new guarantor(s) shall (A) execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements to the Loan Documents as Beneficiary may require, (B) deliver such searches and surveys as Beneficiary may require, and (C) shall deliver such endorsements to Beneficiary's title insurance policy (or a new policy if such endorsements are unavailable) as Beneficiary may require including a downdate endorsement to the title insurance policy insuring (i) the first lien position of the Security Instrument, subject to no liens or encumbrances other than those shown in the original title insurance policy and current taxes not yet due and payable, and (ii) the fact that the transferee person or entity is the fee owner of the Premises.

(14) Grantor and the transferee shall have satisfied all other requirements as Beneficiary shall reasonably require for providing its consent to such transfers.

The rights described in this Subsection 2.9(a) shall be available only with respect to a single transfer by the original Grantor and not with respect to subsequent transfers. (A transfer in accordance with such one-time right is hereinafter referred to as a "One-Time Third Party Transfer".) The right to make a One-Time Third Party Transfer by the original Grantor may be exercised only with Beneficiary's prior approval of the matters that require its approval, or as to which it is required to be satisfied, as provided above.

(b) transfers of ownership or beneficial interests in (i) the Premises by any Co-Owner Grantor, as hereinafter defined in **Section 10.25**, and (ii) any Co-Owner Grantor by any entity with an ownership interest in said Co-Owner Grantor for (A) estate or tax planning purposes, or (B) due to the death or incapacity of any such individual owner of a Co-Owner Grantor to (a) spouses or family members of lineal descendants of current owners of a Co-Owner Grantor, (b) trusts whose sole beneficiaries are lineal descendants or spouses of current owners of a Co-Owner Grantor, (c) other Co-Owner Grantors, so long as Steve Peterson and Nathan Ricks retain no less than 51% indirect interest in the Premises and retain their position as TIC Managers and maintain management and decision-making control of Grantor, or (d) to partnerships, corporations or subsidiaries of corporations which are owned solely by current owners of a Co-Owner Grantor, provided in each case the following conditions have been met:

(i) Grantor shall remain liable for all sums owing to Beneficiary under the Note and all sums due under the terms of this Mortgage and under the Environmental Indemnity.

(ii) Guarantors shall remain liable for all obligations under the terms of the Guaranty and the Environmental Indemnity.

(iii) Notice of each such transfer together with such documentation regarding the transfer and the transferee person or entity as Beneficiary shall request shall be given to Beneficiary at least thirty (30) days prior to such transfer.

(iv) Grantor shall pay all actual fees and expenses incurred by Beneficiary in connection with reviewing and processing the proposed transfer, including, without limitation, all legal, recording and title insurance fees and expenses and the fees of any broker. Grantor acknowledges and agrees that Grantor shall be liable to Beneficiary for such fees and expenses regardless of whether the proposed transfer actually occurs.

(v) Grantor and Guarantor shall execute, deliver and record (when necessary) such amendments, supplements, corrections, replacements, assumptions, and reaffirmations to the Loan Documents as Beneficiary may require.

(vi) Beneficiary shall have received a review fee equal to \$1,500.00 per transfer.

(vii) Grantor and the transferee shall have satisfied all other requirements of Beneficiary for providing its consent to such transfers.

(c) Notwithstanding the foregoing, if the consummation of any transfer will result in any one individual person or entity directly and/or indirectly owning twenty five percent (25%) or more in the aggregate of Grantor and/or otherwise controlling the activities of Grantor (“**New Owner**”), then such transfer will also be subject to the prior written verification by Beneficiary that the New Owner is someone with whom Beneficiary can engage in a business relationship in accordance with current laws and regulations (e.g. FinCEN CDD Rule; OFAC, CTR; and other AML requirements), and Beneficiary’s compliance policies (a “**Verified Customer**”). Notwithstanding anything to the contrary in the foregoing, “New Owner” excludes any person or entity who owned, directly and/or indirectly, twenty five percent (25%) or more in the aggregate of Grantor and/or controlled the activities of Grantor prior to the transfer. Within ten (10) business days of receipt from Grantor of such information as Beneficiary may require (e.g., address, date of birth, social security number) to assist Beneficiary in so verifying whether the New Owner is or is not a Verified Customer, Beneficiary shall provide to Grantor written notice of its verification. The transfer will not be permitted if the New Owner is determined to not be a Verified Customer.

(d) Prior to making any change which results in a single individual acquiring significant responsibility to control, manage, or direct the Grantor (“**New Responsible Individual**”), such change will be subject to the prior written verification by Beneficiary that the New Responsible Individual is a Verified Customer. Within ten (10) business days of receipt from Grantor of such information as Beneficiary may require (e.g., address, date of birth, social security number) to assist Beneficiary in so verifying whether the New Responsible Individual is or is not a Verified Customer, Beneficiary shall provide to Grantor written notice of its

verification. The change will not be permitted if the New Responsible Individual is determined to not be a Verified Customer.

#### **SECTION 2.10. Maintenance of Existence.**

Grantor agrees (a) to maintain its existence as a limited liability company and limited partnership, as applicable, in good standing under the laws of the State or Commonwealth of Utah and Wyoming, as applicable, (b) to remain duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Grantor, and (c) not to dissolve, liquidate, wind-up, consolidate or merge during the term hereof, without, in each instance, the prior written consent of Beneficiary.

#### **SECTION 2.11. Building Use.**

During the entire term of the Note and this Mortgage, Grantor agrees not to (a) convert the Premises to condominium units of any kind and (b) convert the Premises to any use other than as a bulk warehouse building. In that connection, Grantor covenants that the sale of units and/or recording of condominium documents on the Premises or any part thereof shall constitute an Event of Default hereunder.

#### **SECTION 2.12 Management Agreement.**

The Management Agreement (“**Management Agreement**”) between Grantor and MILLROCK DEVELOPMENT, LLC, a Utah limited liability company (“**Property Manager**”) pursuant to which Property Manager operates and manages the Premises (a true, correct and complete copy of which has been delivered to Beneficiary) is in full force and effect and there is no default or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Mortgage and Property Manager shall attorn to Beneficiary. The Management Agreement must be terminable by Beneficiary upon thirty (30) days’ notice in the event that Beneficiary takes title to the Premises. Grantor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Premises with Property Manager or any other party without the express written consent of Beneficiary, which consent shall not be unreasonably withheld. If at any time Beneficiary consents to the appointment of a new property manager, such new property manager and Grantor shall, as a condition of Beneficiary’s consent, execute a consent and subordination agreement in form acceptable to Beneficiary.

#### **SECTION 2.13 Compliance with Laws.**

The Premises and the Real Property shall comply with all applicable laws, ordinances, rules and regulations of federal, state, county, or municipal governments or agencies now in force or which may be enacted hereinafter, during the term of this Loan and any extensions thereof.

#### **SECTION 2.14 Compliance with Controlled Substances Laws.**

1. Grantor shall not enter into, consent to or permit any lease, sublease, license or other agreement relating to, or otherwise permit the use or occupancy of the Premises for a Controlled Substances Use, or in any manner that violates or could violate any Controlled Substance Laws, including, without limitation, any business, communications, financial transactions or other activities related to Controlled Substances or a Controlled Substance Use that violate or could violate any Controlled Substances Laws (collectively, “**Drug-Related Activities**”).

2. Grantor and its affiliates shall not engage in any Drug-Related Activities.

3. Grantor shall not make any payments to Beneficiary from funds derived from Drug-Related Activities.

4. Grantor shall provide to Beneficiary, from time to time, within ten (10) days after Beneficiary’s request therefor, any information that Beneficiary reasonably requests, relating to compliance with this Section.

5. Grantor shall include in all leases and other agreements for use and occupancy of the Premises entered into after the date hereof, provisions that (i) prohibit any controlled Substance Use or Drug-Related Activities on the Premises and (ii) permit the Beneficiary to make physical inspections of the Premises upon the request of the Beneficiary.

6. Beneficiary shall be permitted to make physical inspections of the Premises to assure compliance with the provisions of this Section from time to time upon three (3) days’ prior written notice to Grantor.

7. For purposes of this Section, (i) “**Controlled Substances Laws**” means the Federal Controlled Substances Act (21 U.S.C. §§ 801 *et seq.*) or any other similar or related federal, state or local law, ordinance, code, rule, regulation, or order; (ii) “**Controlled Substances**” means marijuana, cannabis, or other controlled substances as defined in the Federal Controlled Substances Act or that otherwise are illegal or regulated under any Controlled Substances Laws; and (iii) “**Controlled Substances Use**” means any cultivation, growth, creation, production, manufacture, sale, distribution, storage handling, possession, or other use of a Controlled Substance.

8. The provisions of this Section shall apply notwithstanding any state or local law permitting the Controlled Substances Use or Drug-Related Activities.

9. Notwithstanding any provision in any Loan Document to the contrary, no direct or indirect disclosure by Grantor to Beneficiary or any person affiliated with Beneficiary, and no knowledge of the Beneficiary or any person affiliated with the Beneficiary, of the existence of any Drug-Related Activities or Controlled Substance Use on, in or about the Premises shall estop Beneficiary or waive any right of Beneficiary to invoke any remedy under the Loan Documents for violation of any provision hereof related to the prohibition of any Drug-Related Activities or Controlled Substance Use on in or about the Premises. The foregoing shall apply notwithstanding the receipt or execution of an Estoppel Certificate or a Subordination, Non-Disturbance, or Attornment Agreement or other document from or with any tenant of Grantor engaged in such prohibited activity.

## ARTICLE 3.

### INSURANCE AND ESCROWS

#### SECTION 3.1. Insurance.

Grantor shall obtain and keep in full force and effect (or shall cause the tenant occupying the Premises to maintain in full force and effect) during the term of this Mortgage at its sole cost and expense the following insurance: (a) All Risk Insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, or all perils endorsements, all in the amount of not less than the full replacement cost of the improvements, pursuant to the appraisal submitted to and approved by Beneficiary, on the Premises, and together with an agreed-amount endorsement, a replacement cost endorsement and a waiver of subrogation endorsement; (b) Broad Form Boiler and Machinery Insurance on all equipment and pressure-fired vehicles or apparatus situate on the Premises, and providing for full repair and replacement cost coverage; (c) Flood Insurance in the maximum amount available at any time during the term of this Mortgage unless evidence is provided throughout the term of this Mortgage that the Premises are not within a flood plain as defined by the Federal Insurance Administration and the Premises is not designated as being within a flood plain during the term of this Mortgage; (d) Rental Insurance covering risk of loss due to the occurrence of any hazards insured against under the policies required in Subsections (a), (b) and (c) hereof in an amount equal to: (i) rental for a twelve (12) month period, plus (ii) real estate taxes, special assessments, insurance premiums and other expenses required to be paid by the tenants under each lease of the Premises for such twelve (12) month period, but in no event less than One Million Ninety-Seven Thousand Nine Hundred Forty-Two and No/100ths Dollars (\$1,097,942.00), including expense reimbursements, if any; (e) Comprehensive General Public Liability Insurance covering the legal liability of Grantor against claims for bodily injury, death or property damage occurring on, in or about the Premises in a minimum amount of Four Million and No/100ths Dollars (\$4,000,000.00) per occurrence and aggregate; (f) Sprinkler Insurance, if applicable; (g) Builder's Risk Insurance and Worker's Compensation Insurance during the making of any alterations or improvements to the Premises; and (h) such other forms of insurance as Beneficiary may require or as may be required by law, including, without limitation, earthquake sprinkler leakage coverage (EQSL), coverage for acts of terrorism, and special coverage of endorsements for mold and mold related damage to the Premises. Such insurance policies shall be written by insurance companies licensed to do business in the State where the Premises are located, having a minimum noncontingent rating in Best's Key Rating Guide of A, with a financial class size of X or better and shall otherwise be satisfactory to Beneficiary as to amount, form, deductibles and insurer, and must cover all risks Beneficiary requires. Such insurance policies and endorsements (i) shall be manually signed (unless waived by Beneficiary in writing), (ii) shall name as the insured parties Grantor and Beneficiary as their interests may appear, (iii) shall be in amounts sufficient to prevent Grantor from becoming a co-insurer of any loss thereunder, (iv) shall bear a satisfactory first Beneficiary clause in favor of Beneficiary with loss proceeds under any such policies to be made payable to Beneficiary, and (v) shall contain such other endorsements as Beneficiary may require. All required policies of insurance or acceptable certificates thereof, together with evidence of the payment of current premiums therefore, shall be delivered to Beneficiary and shall provide that Beneficiary shall receive at

least thirty (30) days' advance written notice prior to cancellation, amendment or termination of any such policy of insurance. Grantor shall, within thirty (30) days prior to the expiration of any such policy, deliver evidence of the renewal of such insurance together with evidence of the payment of current premiums therefore. Grantor shall at its expense furnish evidence of the replacement value of the improvements on the Premises in form satisfactory to Beneficiary on renewal of insurance policies or upon request of Beneficiary. Insurance coverage must at all times be maintained in proper relationship to such replacement value and must always provide for agreed amount coverage. Failure to maintain proper insurance shall be an Event of Default hereunder. In the event of a foreclosure of this Mortgage or any acquisition of the Premises by Beneficiary, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, Grantor empowers Beneficiary to effect insurance upon the Premises at Grantor's expense and for the benefit of Beneficiary in the amounts and types aforesaid for such period of time as Beneficiary deems appropriate, including a period of time covering the time of redemption from foreclosure sale, and if necessary therefore, to cancel any or all existing insurance policies. Grantor agrees to furnish Beneficiary copies of all inspection reports and insurance recommendations received by Grantor from any insurer. Beneficiary makes no representations that the above insurance requirements are adequate protection for a prudent company. If a tenant of Grantor is required to maintain insurance under any lease terms and provisions, Beneficiary will accept such policy or policies, provided the same meet the requirements hereinabove recited. In the event that the tenant fails to maintain such insurance, Grantor will obtain the policy or policies required herein.

### SECTION 3.2. Escrows.

Grantor shall deposit with Beneficiary, or at Beneficiary's request, with its servicing agent, on the fifteenth 15th day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness, a deposit to pay the Impositions and insurance premiums (hereinafter collectively referred to as the "**Charges**") in an amount equal to:

(a) One-twelfth (1/12) of the annual Impositions next to become due upon the Premises; provided that, with the first such deposit, there shall be deposited in addition an amount as estimated by Beneficiary which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Beneficiary's satisfaction that there will be sufficient funds on deposit to pay the Impositions as they come due; plus

(b) One-twelfth (1/12) of the annual premiums on each policy of insurance required to be maintained hereunder; provided that with the first such deposit there shall be deposited, in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits shall be based upon Beneficiary's estimate as to the amount of Impositions and premiums of insurance next to be payable and may require that the full amount of such payment will be available to Beneficiary at least one month in advance of the



due date. Beneficiary, or its servicing agent will, upon timely presentation to Beneficiary by Grantor of the bills therefor, pay the Charges from such deposits. Grantor agrees to cooperate and assist in obtaining of tax bills when requested by Beneficiary or its servicing agent. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then Grantor shall immediately pay to Beneficiary, or its servicing agent, on demand, any amount necessary to make up the deficiency. The excess of any such deposits shall be credited towards subsequent Charges.

If an Event of Default shall occur under the terms of this Mortgage, Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the payment of Charges whether then due or not or to the Indebtedness, in such order and manner as Beneficiary may elect. When the Indebtedness has been fully paid any remaining deposits shall be returned to Grantor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent, shall be held without allowance of interest thereon and without fiduciary responsibility on the part of Beneficiary or its agents and shall not be subject to the direction or control of Grantor. Neither Beneficiary nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill, and any payment of taxes based on a larger parcel shall be paid by Grantor and Grantor shall expeditiously cause a tax subdivision to be made.

#### **ARTICLE 4.** **UNIFORM COMMERCIAL CODE**

##### **SECTION 4.1.    Security Agreement.**

This Mortgage shall constitute a security agreement as defined in the Uniform Commercial Code in effect in the State or Commonwealth wherein the Premises are located, as amended from time to time ("**Code**"), and Grantor hereby grants to Beneficiary a security interest within the meaning of the Code in favor of Beneficiary on its interest in the Improvements, Fixtures, Equipment and Personal Property, the Rents, Leases and Profits, the Judgments, Condemnation Awards and Insurance Proceeds and Other Rights, the Licenses, Permits, Equipment Leases and Service Agreements and the Proceeds described in Granting Clauses B, C, D, E, and F of this Mortgage ("**Collateral**").

##### **SECTION 4.2.    Fixture Filing.**

As to those items of Collateral described in this Mortgage that are, or are to become fixtures related to the real estate mortgaged herein, and all products and proceeds thereof, it is intended as to those items that THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Premises are situated. . This document covers goods

which are or are to become fixtures. The name of the record owner of said real estate is Grantor set forth in the preamble to this Mortgage. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at its address as set forth in Page 1 of this Mortgage. The address of Grantor, as debtor, is as set forth in Page 1 to this Mortgage. Grantor is a limited liability company or limited partnership, as applicable, organized under the laws of the State of Wyoming and State of Utah, respectively. Grantor's Federal Tax Identification Numbers are 88-0284931, 87-0553835, 86-1764152, and 87-0565853, respectively. If applicable, Grantor's organizational identification numbers are WY-993-000282315, UT-12096587-0160, UT-12132394-0160, and UT-2114061-0180, respectively. Except as specifically disclosed by Grantor to Beneficiary prior to the execution of this Mortgage, during the five (5) years and six months prior to the date of this Mortgage, Grantor has not been known by any legal name different from the one set forth in the first paragraph of this Mortgage, nor has Grantor been the subject of any merger, consolidation or other organizational reorganization during such period of time. Grantor hereby authorizes Beneficiary to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Grantor on such financing statement or fixture filing.

#### **SECTION 4.3. Representations and Agreements.**

Grantor represents and agrees: (a) Grantor is and will be the true and lawful owner of the Collateral, subject to no liens, Charges, security interest and encumbrances other than the lien hereof and the Permitted Encumbrances; (b) the Collateral is to be used by Grantor solely for business purposes being installed upon the Premises for Grantor's own use or as the equipment and furnishings leased or furnished by Grantor, as landlord, to tenants of the Premises; (c) the Collateral will not be removed from the Premises without the consent of Beneficiary except in accordance with **Section 4.4** hereof; (d) unless stated otherwise in this Mortgage the only persons having any interest in the Collateral are Grantor and Beneficiary and no financing statement covering any such property and any proceeds thereof is on file in any public office except pursuant hereto; (e) the remedies of Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Beneficiary including having such Collateral deemed part of the realty upon any foreclosure thereof; (f) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Beneficiary; (g) Grantor will from time to time provide Beneficiary on request with itemizations of all such Collateral on the Premises; (h) the filing of a financing statement pursuant to the Code shall never impair the stated intention of this Mortgage that all Improvements, Fixtures, Equipment and Personal Property described in Granting Clause B hereof are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement; (i) Grantor will on demand deliver all financing statements and/or continuations that may from time to time be required by Beneficiary to establish and perfect the priority of Beneficiary's security interest in such Collateral and all costs, including recording fees, shall be paid by Grantor; (j) Grantor shall give Beneficiary at least thirty (30)

days prior written notice of any proposed change in Grantor's name, identity, state of registration for a registered organization, principal place of business, or structure and authorizes Beneficiary to file prior to or concurrently with such change all additional financing statements that Beneficiary may require to establish and perfect the priority of Beneficiary's security interest in the Collateral; and (k) by signing this Mortgage, Grantor authorizes Beneficiary to file such financing statements, either before, on or after the date hereof, as Beneficiary determines necessary or desirable to perfect the lien of Beneficiary's security interest in the Collateral. Grantor further authorizes Beneficiary to file such amendments or continuation statements as Beneficiary determines necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Collateral.

#### **SECTION 4.4. Maintenance of Premises.**

Subject to the provisions of this Section, in any instance where Grantor in its discretion determines that any item subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Grantor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall be of comparable quality and shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of this Mortgage. Any amounts received or allowed Grantor upon the sale or other disposition of the removed items of property shall be applied only against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant or subtenant from removing from the Premises trade fixtures, furniture and equipment installed by it and removable by such tenant under its terms of the lease, on the condition, however, that all damages to the Premises resulting from or caused by the removal thereof be repaired at the sole cost of Grantor if such tenant shall fail to so repair.

#### **SECTION 4.5. Pledge of Monies Held.**

Grantor hereby pledges to Beneficiary any and all monies now or hereafter held by Beneficiary or its servicing agent or escrow agent, including, without limitation, any sums deposited in the account for Charges in accordance with Section 3.2 hereof, any net insurance proceeds or condemnation awards deposited with Beneficiary in accordance with Sections 5.1 and 5.2 hereof (collectively, "**Deposits**"), as additional security for the Indebtedness until expended or applied as provided in this Mortgage.

### **ARTICLE 5.**

#### **APPLICATION OF INSURANCE AND AWARDS**

#### **SECTION 5.1. Damage or Destruction of the Premises.**

Grantor will give Beneficiary prompt notice of damage to or destruction of the Premises, and in case of loss covered by policies of insurance, Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, if Grantor is not in default hereunder, Grantor may itself adjust and collect for any losses arising out of a

single occurrence aggregating not in excess of Twenty-Five Thousand and No/100ths Dollars (\$25,000.00). Any expense incurred by Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to Beneficiary first out of any such insurance proceeds. Except as specifically provided in Section 5.3 below, the insurance proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. In the event Beneficiary does not make insurance proceeds available for restoration and applies the insurance proceeds to payment of the Indebtedness no Reinvestment Charge or Default Premium shall be due on the insurance proceeds so applied.

## **SECTION 5.2. Condemnation.**

Grantor will give Beneficiary prompt notice of any action, actual or threatened, in Condemnation (as defined herein) or eminent domain and hereby assigns, transfers, and sets over to Beneficiary the entire proceeds of any award or claim for damages for all or any part of the Premises taken or damaged under the power of eminent domain or condemnation ("**Condemnation**"), Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Grantor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises unless prior written consent of Beneficiary is obtained. Any expenses incurred by Beneficiary in intervening in such action or collecting Condemnation proceeds (including the cost of any independent appraisal) shall be reimbursed to Beneficiary first out of the Condemnation proceeds prior to other payments or disbursements. Grantor shall deliver all Condemnation proceeds to Beneficiary within five (5) days of receipt thereof and shall at Beneficiary's request direct the condemning authority to deliver the Condemnation proceeds to Beneficiary. The Condemnation proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness then most remotely to be paid, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. In the event Beneficiary does not make Condemnation proceeds available for restoration and applies the Condemnation proceeds to payment of debt, no Reinvestment Charge or Default Premium shall be due on the Condemnation proceeds so applied.

## **SECTION 5.3. Beneficiary to Make Insurance Proceeds Available Under Certain Conditions.**

Notwithstanding the provisions of Section 5.1 above, in the event of insured damage to the improvements on the Premises, Beneficiary agrees to make the proceeds available to the restoration or repair of the improvements on the Premises in accordance with the provisions of Section 5.4 hereof, provided: (a) satisfactory evidence is delivered to Beneficiary that the buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same size, condition and character as those originally financed and with restoration and repair, can continue to be operated for the purposes utilized prior to such damage or destruction; (b) no Event of Default shall exist under this Mortgage, the Note, or other Loan Documents; (c) Beneficiary shall have received an M.A.I. Appraisal in form and content

acceptable to Beneficiary which indicates that the appraised value of the Premises after such restoration or repair shall not have been reduced from its appraised value prior to the date of such damage; (d) tenants under leases of the Premises which are acceptable to Beneficiary certify to Beneficiary their intention to occupy the Premises without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair); (e) no mechanics' or other liens of any nature shall exist or be created; (f) Grantor shall be responsible for and shall have deposited (or cause to be deposited) with Beneficiary funds to cover any shortfall between the actual cost to repair or restore and the amount of such insurance proceeds; and (g) all fees and expenses incurred by Beneficiary in connection with the disbursement of the insurance proceeds shall be paid by Grantor.

#### **SECTION 5.4. Disbursement of Insurance and Condemnation Proceeds.**

Should any insurance or condemnation proceeds be applied to the restoration or repair of the Premises in accordance with this Article 5, the restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to site and building plans and specifications approved by Beneficiary. The proceeds shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary through a title company or other servicing agent acceptable to Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may require and in accordance with standard construction loan procedures. All costs and expenses associated with the disbursement of such proceeds shall be paid by Grantor. Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises, Beneficiary shall be entitled to receive the following:

(a) Evidence that no Event of Default exists under any of the terms, covenants and conditions of this Mortgage, the Note, or other collateral security documents.

(b) Evidence that all leasing requirements for the Premises as established by Beneficiary have been met.

(c) Satisfactory proof that such improvements have been fully restored, or that the expenditure of money as may be received from such insurance proceeds or eminent domain award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, except the lien of this Mortgage. In the event such insurance proceeds or eminent domain award shall be insufficient to repair, restore or rebuild the said improvements, Grantor or its lessee shall deposit with Beneficiary, or a title company designated by Beneficiary, funds equaling such deficiency, which, together with the insurance proceeds or eminent domain award, shall be sufficient to restore, repair and rebuild the Premises.

(d) A statement of Grantor's architect, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date in conformity with the plans and specifications approved by Beneficiary, together with appropriate evidence of payment for labor or

materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(e) A waiver of subrogation from any insurer who claims that it has no claim as to Grantor or the then owner or other insured under the policy of insurance in question.

(f) Such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Beneficiary.

In the event Grantor shall fail to commence and diligently pursue the restoration, repair or rebuilding of the improvements upon the Premises, then Beneficiary, at its option, and upon not less than thirty (30) days written notice to Grantor, may commence to restore, repair or rebuild the said improvements for or on behalf of said Grantor, and its tenants, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or an eminent domain award shall exceed the amount necessary to complete the repair, restoration or the rebuilding of the improvements upon the Premises, such excess may, at Beneficiary's option, be applied on account of the last maturing installments of the Indebtedness, irrespective of whether such installments are then due and payable without application of a Reinvestment Charge or Default Premium, or be returned to Grantor. In the event Grantor shall fail to commence and diligently pursue the restoration, repair or rebuilding of the improvements upon the Premises, and if Beneficiary does not restore, repair or rebuild the said improvements as herein provided, then Beneficiary may, at its option, apply all or any part of the insurance proceeds or condemnation or eminent domain award on account of the last maturing installments of the Indebtedness whether then due or not, without application of a Reinvestment Charge, or return the same to Grantor.

## **ARTICLE 6.** **LEASES AND RENTS**

### **SECTION 6.1. Leases.**

Grantor will, at its own cost and expense, perform, comply with and discharge all of the obligations of Grantor under any leases and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Grantor's interest in any leases of the Premises. Grantor will not borrow against, pledge or assign any rentals due under the leases, nor consent to a subordination or assignment of the interest of the tenants thereunder to any party other than Beneficiary, nor anticipate the rents thereunder for more than one (1) month in advance or reduce the amount of rents and other payments thereunder without the prior written consent of Beneficiary. With respect to all leases of the Premises which either (i) demise twenty-eight thousand twenty (28,020) net rentable square feet or more or (ii) provide for a lease term of more than five (5) years ("**Major Leases**"), Grantor agrees that it will not modify, extend, renew, terminate, accept a surrender of or in any way alter the terms the Major Leases nor waive, excuse, condone or in any manner release or discharge the tenants of or from their obligations,

covenants and agreements to be performed without the prior written consent of Beneficiary. Grantor will not enter into any additional Major Leases of all or any portion of the Premises without the prior written consent of Beneficiary. With respect to Leases that are not Major Leases, Grantor may enter into new Leases which are not Major Leases without the prior consent of Beneficiary so long as the net operating income for the Property (including such proposed new Lease) as determined by Beneficiary is not less than 1.1 times the annual debt service payments due under the Note. If the net operating income is less than 1.1 times the annual debt service under the Note, Grantor shall notify Beneficiary in writing of such occurrence and Beneficiary shall have the right to require Grantor to provide a current market rental survey report to be prepared by a third party consultant acceptable to Beneficiary in its sole discretion, which shall be used to establish the then current market rent and as a basis for formulating a mutually agreeable marketing/leasing plan for the Premises. It shall be an Event of Default if Grantor fails to provide Beneficiary with such notice. In addition, Grantor covenants and agrees that, with respect to all leases: (a) it shall use the standard form lease which has been delivered to and approved by Beneficiary as the basis for all new leases or renewals of existing leases executed on the Premises without material modification unless such material modification (i) is needed to comply with local regulations, or (ii) has been approved in writing by Beneficiary; (b) it shall lease all space on the Premises at market rental rates unless approved in writing by Beneficiary; and (c) any action taken with respect to any lease shall be taken in the ordinary course of Grantor's business in conformance with commercially reasonable, prudent and sound business practice. Grantor will deliver copies of all lease amendments and new leases to Beneficiary within thirty (30) days after execution whether or not the prior written consent of Beneficiary was required for such amendment or new lease.

#### **SECTION 6.2. Beneficiary's Right to Perform Under Leases.**

Should Grantor fail to perform, comply with or discharge any obligations of Grantor under any lease of all or any part of the Premises or should Beneficiary become aware of or be notified by any tenant under any such lease of a failure on the part of Grantor to so perform, comply with or discharge its obligations under said lease, Beneficiary may, but shall not be obligated to, and without further demand upon Grantor and without waiving or releasing Grantor from any obligation contained in this Mortgage, remedy such failure, and Grantor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure including, without limitation, Beneficiary's attorneys' fee together with interest at the Default Rate. All such sums, together with interest as aforesaid shall become so much additional Indebtedness, but no such advance shall be deemed to relieve Grantor from any default hereunder.

#### **SECTION 6.3. Assignment of Leases and Rents.**

Grantor does hereby unconditionally and absolutely sell, assign and transfer unto Beneficiary all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement or license for the use or occupancy of the Premises, whether now existing or entered into at any time during the term of this Mortgage, all guaranties of any lessee's obligations under any such lease and all security deposits, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such leases and agreements and all of the rents and profits from the Premises and/or Grantor's operation or ownership thereof unto Beneficiary and Grantor does

hereby appoint irrevocably Beneficiary as Grantor's true and lawful attorney in Grantor's name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Grantor is hereby given a license by Beneficiary to collect and retain such rents and profits unless and until an Event of Default exists under this Mortgage. Grantor assigns to Beneficiary all guarantees of lessee's obligation under leases and all proceeds from settlements relating to terminations of leases and all claims for damages arising from rejection of any lease under the bankruptcy laws. Upon the occurrence of an Event of Default and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder or during any period of redemption existing by law, forthwith, upon demand of Beneficiary, Grantor shall surrender to Beneficiary and Beneficiary shall be entitled to enter upon and take and maintain possession of the Premises and any leases thereunder and collect and retain any rents and profits from the Premises and hold, operate, manage and control the Premises and any such leases and to do such things in its discretion as may be deemed proper or necessary to enforce the payment or security of the rents and profits of the Premises and the performance of the tenants' obligations under any leases of the Premises, with full power to cancel or terminate any lease for any cause or on any grounds which would entitle Grantor to cancel the same and to elect to disaffirm any lease made subsequent to this Mortgage or subordinated to the lien hereof. All rents and payments received by Grantor after Beneficiary has exercised any of its rights under this assignment shall be held by Grantor in trust for Beneficiary and shall be delivered to Beneficiary immediately without demand.

Beneficiary shall not be obligated to perform or discharge any obligation or liability of the landlord under any of said leases and Grantor shall and does hereby agree to indemnify and hold Beneficiary harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or under or by reason of this Mortgage. Any amounts incurred by Beneficiary in connection with its rights hereunder, including costs, expenses and actual attorneys' fees, shall bear interest thereon at the Default Rate, shall be additional Indebtedness and Grantor shall reimburse Beneficiary therefor immediately upon demand. Beneficiary may apply any of said rents and profits received to the costs and expenses of collection, including receivers' fees and actual attorneys' fees, to the payment of taxes, assessments and insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligations under the lease, to the performance of any of Grantor's covenants hereunder, and to any Indebtedness in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any Event of Default under this Mortgage nor in any way operate to prevent Beneficiary from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage nor shall it in any way be deemed to constitute Beneficiary a Beneficiary-in-possession. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Indebtedness. Grantor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by Grantor. Grantor waives any right of set off against any person in possession of any portion of the Premises. Grantor further agrees that Grantor will not execute or agree to any subsequent assignment of any of the rents or profits from the Premises without the prior written consent of



Beneficiary. The rights contained herein are in addition to and shall be cumulative with the rights given in that certain Assignment of Leases and Rents ("**Assignment of Leases**") dated of even date herewith from Grantor to Beneficiary, assigning any leases, rents and profits of the Premises. To the extent inconsistent with the terms of this Article 6, the terms of the Assignment of Leases shall control.

## **ARTICLE 7.**

### **RIGHTS OF BENEFICIARY**

#### **SECTION 7.1.    No Claim Against Beneficiary.**

Nothing contained in this Mortgage shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Grantor or any party in interest with Grantor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

#### **SECTION 7.2.    Inspection.**

Beneficiary or its authorized representatives shall have the right to enter the Premises at all times during normal business hours for the purpose of inspecting the same; provided Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

#### **SECTION 7.3.    Dishonored Payments.**

In the event any funds for any two (2) or more monthly payments in any twelve (12) month period are not paid to Beneficiary when due, Beneficiary shall have the right, at its sole option, to require that all future payments be made in a form other than as is presently prescribed in the Note. For example, Beneficiary may at any time require payment by preauthorized Automated Clearinghouse transaction, by certified check, by wire transfer or other method of delivering immediately available funds.

#### **SECTION 7.4.    Waivers; Releases; Resort to Other Security.**

Without affecting the liability of any party liable for payment of any Indebtedness or performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary shall have the right, at any time and without notice to or the consent of Grantor or any party in interest with respect to the Premises or the Note, to: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness or

modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

#### **SECTION 7.5. Waiver of Appraisement, Homestead, Marshaling.**

Grantor hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisement, evaluation, stay and extension laws now or hereinafter in force. Grantor hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require Beneficiary to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel. To the extent permitted by applicable law, Grantor, on behalf of Grantor and all other persons or entities acquiring any interest in the Premises subsequent to the date of this Mortgage, also hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure pursuant to rights herein granted.

### **ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES**

#### **SECTION 8.1. Events Of Default.**

The occurrence of any of the following shall be deemed an event of default under this Mortgage (each hereinafter referred to as an "**Event of Default**"):

(a) Any principal, interest, Reinvestment Charge, or Default Premium payable under the terms of the Note is not paid on the date the same is due or within ten (10) days of its due date (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or

(b) Any other sum of money required to be paid pursuant to the terms of the Note, this Mortgage or any other Loan Document is not paid on the date the same is due and such default is not remedied within five (5) business days after notice thereof by Beneficiary; or

(c) Grantor shall fail to comply with any non-monetary term, covenant or condition of the Note, this Mortgage or any other Loan Document other than a default described in **Sections 8.1(a), 8.1(b) and 8.1(d)** through **8.1(i)** and such default shall continue for a period of thirty (30) days after written notice to Grantor from Beneficiary specifying the nature of such default; provided, however, that if such default is of a nature that it cannot be cured, in Beneficiary's good faith reasonable discretion, within such thirty (30) day period, then Grantor shall not be in default hereunder if it commences good faith efforts to cure the default within such thirty (30) day period, demonstrates continuous diligent efforts to cure the default in a manner satisfactory to

Beneficiary and, within a reasonable time, not to exceed ninety (90) days after the date of the original written notice of default, completes the cure of such default; or

(d) Grantor shall fail to comply with any term, covenant or condition contained in Sections 2.9, 2.10 or 3.1 of this Mortgage; or

(e) Any representation or warranty made to Beneficiary by or on behalf of Grantor, any person or entity holding an ownership interest in Grantor (individually and collectively, if more than one, "**Principal**") or any person or entity guaranteeing any portion of the obligations of Grantor (individually and collectively, if more than one, "**Guarantor**") in connection with the Loan secured hereby proves to be untrue; or

(f) If (i) Grantor, any Principal or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or Grantor, any Principal or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Grantor, any Principal or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of sixty (60) days; or (iii) there shall be commenced against Grantor, any Principal or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Grantor, any Principal or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Grantor, any Principal or any Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) Any judgment in excess of Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) is entered in any court against Grantor, any Principal or any Guarantor and is not satisfied in full within thirty (30) days after all rights to appeal from the same have expired, or any writ of execution or attachment or similar process is issued or levied against any part of the Premises or any interest therein; or

(h) Any Guarantor shall fail to comply with any term, covenant or condition of the Environmental Indemnity or the Guaranty, which default shall have extended beyond any period of grace provided therein; or

(i) Any Guarantor shall die and Grantor either (i) has failed to notify Beneficiary of such death within sixty (60) days thereof or (ii) has failed to provide Beneficiary with an acceptable substitute guarantor, in the sole judgment of Beneficiary, who shall have executed a Guaranty and an Environmental Indemnity in the forms of those executed by the Guarantors, before the earlier to occur of (A) one hundred eighty (180) days from the date of such person's death or (B) the date on which the first distribution of assets has been made from such person's estate to any devisee, heir or other beneficiary; provided that in the event one Guarantor dies during the term of the Loan and the surviving three Guarantors collectively satisfy the minimum net worth and liquidity requirements as set forth under **Section 10.22**, the death of said Guarantor shall not result in an Event of Default and no substitute guarantor shall be required. Grantor shall provide written evidence of the remaining Guarantors net worth and liquidity as required by Beneficiary, in its sole discretion, within sixty (60) days of said death.

## **SECTION 8.2. Remedies.**

Upon the occurrence of any Event of Default, Grantor agrees that Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, but in all cases not in violation with applicable laws, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) declare the entire unpaid principal balance of the Note together with all other Indebtedness to be immediately due and payable, which unpaid sums shall bear interest at the Default Rate from the due date until paid; and/or

(b) with or without entry, institute proceedings, by judicial action, advertisement or such other statutory procedures as are available in the state where the Premises is located, for the complete or partial foreclosure of this Mortgage under any applicable provision of law in which case the Premises or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Mortgage for the balance of the Indebtedness not then due, unimpaired and without loss of priority; and/or

(c) sell for cash or upon credit the Premises or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale, judicial decree or otherwise, at one or more sales, as an entirety or in one or more parcels; and/or

(d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; and/or

(e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents; and/or

(f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Premises, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Grantor, any principal or any Guarantor or of any other person, firm or other entity liable for the payment of the Indebtedness in accordance with and in the manner prescribed by applicable law in the state where the Premises is located and in accordance with the terms of **Section 8.5** below; and/or

(g) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Premises and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may exercise all rights and powers of Grantor with respect to the Premises including, without limitation:

(1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; and/or

(2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Premises as Beneficiary deems advisable; and/or

(3) the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Premises and every part thereof;

(h) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be occupied by Grantor; and/or

(i) require Grantor to vacate and surrender possession of the Premises to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and/or

(j) apply the receipts from the Premises, any Charges and interest thereon and/or any unearned Insurance Premiums paid to Beneficiary upon the surrender of any insurance policies maintained pursuant to **Section 3.1** hereof (it being agreed that Beneficiary shall have the right to surrender such insurance policies upon the occurrence of an Event of Default), to the payment of the Indebtedness, in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion; and/or

(k) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code in accordance with the terms of **Section 8.6** below, including, without limiting the generality of the foregoing:

(1) the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral, and

(2) request Grantor at its expense to assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor. Upon any foreclosure or other sale of the Premises pursuant to the terms hereof, Beneficiary may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a credit against the purchase price.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Premises, this Mortgage shall continue as a lien and security interest on the remaining portion of the Premises unimpaired and without loss of priority. Notwithstanding the provisions of this Section 8.2 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 8.1(f) shall occur, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or other action by Beneficiary.

### **SECTION 8.3. Application of Proceeds.**

The proceeds and avails of any disposition of the Premises, or any part thereof, or any other sums collected by Beneficiary pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Beneficiary to the payment of the Indebtedness in such priority and proportions as Beneficiary in its discretion shall deem proper.

### **SECTION 8.4. Right to Cure Defaults.**

Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Premises for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Premises or to foreclose this Mortgage or collect the Indebtedness, and the cost and expense thereof (including actual attorneys' fees to the extent permitted by law), with interest as provided in this **Section 8.4**, shall constitute a portion of the Indebtedness and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by

this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

**SECTION 8.5. Receiver.**

Upon the occurrence of an Event of Default, Beneficiary shall be entitled as a matter of right without notice and without regard to the solvency or insolvency of Grantor, or the existence of waste of the Premises or adequacy of the security of the Premises, and without giving bond to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Premises so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Premises and perform the terms of this Mortgage and apply the rents, issues, income and profits to the costs and expenses of the receivership, including actual attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Premises, including payment of taxes on the Premises and payments of premiums of insurance on the Premises and any other rights permitted by law. Grantor does hereby irrevocably consent to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove Grantor or any other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Premises, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

**SECTION 8.6. Rights Under Uniform Commercial Code.**

In addition to the rights available to a Beneficiary of real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Code including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Mortgage which may be included on the Premises or which may be deemed nonrealty in a foreclosure of this Mortgage or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

**SECTION 8.7. Right to Discontinue Proceedings.**

In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness in which case this Mortgage and all rights, remedies and recourse of Beneficiary shall continue as if such action or exercise of a right had not been invoked.

**SECTION 8.8. Waivers.**

Grantor also waives the benefit of all laws now existing or that may hereinafter be enacted providing for (i) any appraisal before sale of any portion of the Premises, and (ii) in any way extending the time for the enforcement and collection of the Note or this Mortgage or creating or extending a period of redemption from any sale made in collecting said debt. To the

full extent Grantor may do so under applicable law, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, evaluation, stay, extension or redemption and Grantor, to the extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of this Mortgage and marshaling in the event of foreclosure of the liens hereby created.

Acceptance by Beneficiary of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Beneficiary's right to demand payment of the balance due, or any other rights of Beneficiary at that time or any subsequent time.

**SECTION 8.9. Default Interest and Late Charges.**

Grantor acknowledges that, without limitation to any of Beneficiary's rights or remedies set forth in this Mortgage, Beneficiary has the right following an Event of Default to demand interest on the principal amount of the Note at the Default Rate and late payment charges in accordance with the terms of the Note.

**SECTION 8.10. Rights Cumulative.**

The rights and remedies of Beneficiary as provided in this Mortgage, the Note and any other Loan Document and the warranties contained herein or therein shall be cumulative and concurrent, may be pursued singly, successively or together at the sole discretion of Beneficiary, may be exercised as often as occasion for their exercise shall occur and in no event shall the failure to exercise any such right or remedy be construed as a waiver or release of such right or remedy. No remedy under this Mortgage, the Note or any other Loan Document conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy provided in this Mortgage, the Note or any other Loan Document or provided by law, but each shall be cumulative and shall be in addition to every other remedy given under this Mortgage, the Note or any other Loan Document or now or hereafter existing at law or in equity or by statute.

**SECTION 8.11. Grantor Not Released.**

No delay or omission by Beneficiary in the exercise of any rights or remedies arising under this Mortgage, the Note or any other Loan Document at any time following the happening of an Event of Default shall constitute a waiver of the right of Beneficiary to exercise such rights and remedies at a later time by reason of such Event of Default or by reason of any subsequently occurring Event of Default.



**ARTICLE 9.**  
**HAZARDOUS MATERIALS**

**SECTION 9.1. Definition.**

As used in this Mortgage, the following terms shall have the following meanings:

(a) The term "**Hazardous Substances or Wastes**" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, mold, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives and mold (to the extent the presence of such mold may adversely affect human health or the environment, or impair occupancy or materially adversely affect the value or utility of the Premises or any adjacent property).

(b) The term "**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances or Wastes, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or Wastes or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "**Environmental Law**" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "**Environmental Law**" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law which conditions transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property, requires notification or disclosure of Releases of Hazardous Substances or Wastes or other environmental condition of the Premises to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property, imposes conditions or requirements in connection with permits or other authorization for lawful activity, relates to nuisance, trespass or other causes of action related to the existence of Hazardous Materials or Wastes located on the Premises, and relates to wrongful death, personal injury, or

property or other damage as a result of the existence of any Hazardous Materials or Wastes on the Premises.

(c) The term "**Release**" with respect to any Hazardous Substances or Wastes includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances or Wastes.

(d) The term "**Remediation**" includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substances or Wastes; any actions to prevent, cure or mitigate any Release of any Hazardous Substances or Wastes; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or Wastes or to anything referred to herein.

(e) The term "**Legal Action**" means any claim, suit or proceeding, whether administrative or judicial in nature.

(f) The term "**Indemnified Parties**" includes Beneficiary, any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by the Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, including, but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties.

(g) The term "**Losses**" includes any losses, damages, costs, actual fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, actual attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

## **SECTION 9.2. Environmental Representations and Warranties.**

To the best of Grantor's knowledge, after due inquiry, (a) there are no Hazardous Substances or Wastes or underground storage tanks in, on, or under the Premises, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto and (ii) fully disclosed to Beneficiary in writing pursuant to the written report(s) resulting from the environmental assessment(s) of the Premises delivered to Beneficiary (such report(s) are identified in Exhibit "B" attached hereto and are referred to below collectively as the

"**Environmental Report**"; (b) there are no past, present or threatened Releases of Hazardous Substances or Wastes in, on, under or from the Premises except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Substances or Wastes migrating to the Premises except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises, except as described in the Environmental Report; (e) Grantor does not know of, and has not received, any written notice or other communication from any person or entity (including, but not limited to, a governmental entity) relating to Hazardous Substances or Wastes or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Grantor has truthfully and fully provided to Beneficiary, in writing, any and all information relating to conditions in, on, under or from the Premises that is known to Grantor and that is contained in files and records of Grantor including, but not limited to, any reports relating to Hazardous Substances or Wastes in, on, under or from the Premises and/or to the environmental condition of the Premises.

### **SECTION 9.3. Environmental Covenants.**

Grantor covenants and agrees that: (a) all uses and operations on or of the Premises by Grantor or any other person or entity shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances or Wastes in, on, under or from the Premises by Grantor or anyone controlled by, controlling or under common control with Grantor in violation of any Environmental Law; (c) Grantor shall keep the Premises free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Grantor or any other person or entity ("**Environmental Liens**"); (d) Grantor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Premises, pursuant to any written request of Beneficiary (provided that such request is made based upon Beneficiary's reasonable belief that there are Hazardous Substances or Wastes in, or under the Premises which are not in compliance with Environmental Laws), and share with Beneficiary the reports and other results thereof, and Beneficiary and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (e) Grantor shall, at its sole cost and expense, comply with all written requests of Beneficiary to (i) effectuate Remediation of any condition (including, but not limited to, a Release of a Hazardous Substance) in, on, under or from the Premises; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other action necessary or appropriate for protection of human health or the environment; (f) Grantor shall not do or allow any tenant or other user of the Premises to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), impairs or may impair the value of the Premises, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Premises; and (g) Grantor shall promptly notify Beneficiary in writing of (i) any presence or Releases or threatened Releases of Hazardous Substances or Wastes in, on, under, from or migrating towards the Premises; (ii) any non-compliance with any Environmental Laws related in any way to the Premises; (iii) any actual or potential Environmental Lien; (iv) any required or proposed Remediation of environmental

conditions relating to the Premises; and (v) any written or oral notice or other communication of which Grantor becomes aware from any source whatsoever (including, but not limited to, a governmental entity) relating in any way to Hazardous Substances or Wastes or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Mortgage.

#### **SECTION 9.4. Beneficiary's Right to Inspect and Conduct Testing.**

The Indemnified Parties and any other person or entity designated by Indemnified Parties (including, but not limited to, any receiver, any representative of a governmental entity and any environmental consultant), shall have the right but not the obligation to enter upon the Premises at all reasonable times and upon reasonable notice to assess any and all aspects of the environmental condition of the Premises and its use including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Beneficiary's sole and absolute discretion) and taking samples of soil, groundwater or other water, air or building materials, and conducting other invasive testing. Grantor shall cooperate with and provide access to the Indemnified Parties and any such person or entity designated by the Indemnified Parties. All such investigations shall be performed at Grantor's sole cost and expense.

#### **SECTION 9.5. Indemnification.**

Grantor covenants and agrees at its sole cost and expense, to protect, defend, indemnify, release and hold Indemnified Parties harmless from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) the past, present or future presence, Release or threatened Release of any Hazardous Substances or Wastes in, on, above, or under the Premises; (b) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Laws) in connection with the Premises or operations thereon; (c) any legal or administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Mortgage; (d) any personal injury, wrongful death, or property or other damage arising under any statutory or common law or tort law theory concerning Hazardous Substances or Wastes; and (e) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations in this Mortgage or any covenants which are related to Hazardous Substances or Wastes or Environmental Law (except to the extent the same relate solely to Hazardous Substances or Wastes Indemnitor can prove were first introduced to the Premises by anyone other than Grantor or its agents or employees following (i) transfer of the Premises and assumption of the Loan by a third party strictly in accordance with the terms of the Security Instrument, or (ii) the foreclosure of the Mortgage (or the delivery and acceptance of a deed in lieu of such foreclosure), the expiration of any applicable right of redemption and the obtaining of possession of the Premises by the purchaser at such foreclosure sale or grantee under such deed in lieu of foreclosure; provided, however, notwithstanding the foregoing, if any Hazardous Substances are discovered in, on, under or about the Premises after such applicable date that are consistent with the ownership, occupancy, use or operation of the Premises which occurred during Grantor's ownership, occupancy, use or operation of the Premises, then there is a presumption that the use, generation, manufacture, storage, disposal of, transportation or

presences of any of said Hazardous Substances in, on, under, about or migrating from, the Premises occurred during Grantor's ownership, occupancy, use or operation of the Premises, and Grantor shall continue to be obligated to indemnify hereunder unless Grantor overcomes said presumption by a preponderance of the evidence as determined in a final, unappealable order by a court of competent jurisdiction).

## **ARTICLE 10.** **MISCELLANEOUS**

### **SECTION 10.1. Release of Mortgage.**

When all Indebtedness has been paid, this Mortgage and all assignments herein contained shall, except as otherwise provided herein, terminate and shall be released by Beneficiary at Grantor's expense.

### **SECTION 10.2. Time of the Essence.**

Time is of the essence with regard to the performance of the obligations of Grantor in this Mortgage and each and every term, covenant and condition herein by or applicable to Grantor.

### **SECTION 10.3. Governing Law.**

This Mortgage and the rights and obligations of all parties hereunder shall be governed by and construed in accordance with the laws of the State or Commonwealth in which the Premises are located.

### **SECTION 10.4. Jurisdiction.**

The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Mortgage may be brought in a court of record in the state or commonwealth in which the Premises is located or in the courts of the United States of America located in such state or commonwealth, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained herein shall prevent Beneficiary from bringing any action or exercising any rights against any security given to Beneficiary by Grantor, or against Grantor personally, or against any property of Grantor, within any other state. Commencement of any such action or proceeding in any other state or commonwealth shall not constitute a waiver of the agreement as to the laws of the state which shall govern the rights and obligations of Grantor and Beneficiary hereunder.

### **SECTION 10.5. Interest Limitation.**

All agreements between Grantor and Beneficiary are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Indebtedness or otherwise, shall the amount paid or agreed to be paid to Beneficiary for the use, forbearance, loaning or detention of the Indebtedness exceed the maximum permissible under

applicable law. If from any circumstances whatsoever, fulfillment of any provisions of this Mortgage, the Note or of the other Loan Documents at any time given shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to an amount which complies with applicable law, and if from any circumstances Beneficiary should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Grantor and Beneficiary and shall also be binding upon and available to any subsequent holder of the Note. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding.

#### **SECTION 10.6. Use of Loan and Premises.**

Grantor represents and warrants to Beneficiary that the Indebtedness evidenced by the Note is a business loan transacted solely for the purpose of carrying on the business of Grantor and not a consumer transaction, that the Premises does not constitute the homestead of Grantor, and that the Premises are not used for agricultural purposes.

#### **SECTION 10.7. Captions.**

The captions to the sections of this Mortgage are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Mortgage.

#### **SECTION 10.8. Notices.**

Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and either (a) mailed by certified mail, return receipt requested, or (b) sent by an overnight carrier which provides for a return receipt. Any such notice shall be sent to the respective party's address as set forth in the introductory paragraph of this Mortgage or to such other address as such party may, by notice in writing, designate as its address. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail or one (1) day after the sending thereof by overnight carrier.

#### **SECTION 10.9. Severability.**

The parties hereto intend and believe that each provision of this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Mortgage is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein,

and the rights, obligations and interests of Grantor and Beneficiary under the remainder of this Mortgage shall continue in full force and effect.

**SECTION 10.10. Successors and Assigns.**

This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Grantor and its successors and assigns, including, without limitation each and every person or entity that may, from time to time, be record owner of the Premises or any other person having an interest therein, shall run with the land and shall inure to the benefit of Beneficiary and its successors and assigns. As used herein the words "**successors and assigns**" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Mortgage. Nothing in this Section shall be construed to constitute consent by Beneficiary to assignment of this Mortgage by Grantor.

**SECTION 10.11. No Oral Modification.**

This Mortgage may not be modified or discharged orally, but only by an agreement in writing signed by Grantor and Beneficiary.

**SECTION 10.12. Indemnity.**

Grantor agrees to indemnify, protect, hold harmless and defend Beneficiary from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including actual attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against Beneficiary by reason or on account of, or in connection with, (i) the construction, reconstruction or alteration of the Premises, (ii) any negligence of Grantor or any tenant of any portion of the Premises or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licensees or invitees, or (iii) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the willful misconduct of Beneficiary. Any amount payable to Beneficiary under this Section shall be due and payable upon demand therefor and receipt by Grantor of a statement from Beneficiary setting forth in reasonable detail the amount claimed and the basis therefor. Grantor's obligations under this Section shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Beneficiary which is subject to the indemnity set forth in this Section, Grantor shall resist or defend against the same, in its own name or, if necessary, in the name of Beneficiary, by attorneys for Grantor's insurance carrier (if the same is covered by insurance) approved by Beneficiary or otherwise by attorneys retained by Grantor and approved by Beneficiary. Notwithstanding the foregoing, Beneficiary, in its discretion, if it disapproves of the attorneys provided by Grantor or Grantor's insurance carrier, may engage its own attorneys to resist or defend, or to assist therein, and Grantor shall pay or, on demand, shall reimburse Beneficiary for the payment of, all actual fees and disbursements of said attorneys.

**SECTION 10.13. Representations of Grantor.**

Grantor affirmatively represents and warrants that the written terms of the Loan Documents, and each of them, accurately reflect the mutual understanding of Grantor and Beneficiary, as to all matters addressed therein, and Grantor further represents and warrants that there are no other agreements or understandings, written or oral, which exist between Grantor and Beneficiary relating to the matters addressed in the Loan Documents.

**SECTION 10.14. Beneficiary's Expenses.**

Should Beneficiary make any payments hereunder or under the Note or under any other Loan Documents or incur any liability, loss or damage under or by reason of this Mortgage, the Note or any other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Indebtedness, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, actual attorneys' fees, and any and all costs and expenses incurred in connection with making, performing, or collecting the Indebtedness or exercising any of Beneficiary's rights under the Note, this Mortgage or any other Loan Documents, including actual attorneys' fees, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, together with interest thereon, at the Default Rate, shall become part of the Indebtedness and shall be secured by this Mortgage and the other Loan Documents and Grantor hereby agrees to reimburse Beneficiary therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and Beneficiary shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by Grantor, for an accounting for the proceeds of a foreclosure sale or of insurance proceeds or for apportionment of an eminent domain damage award.

**SECTION 10.15. Beneficiary's Right to Counsel.**

If Beneficiary retains attorneys to enforce any of the terms of the Loan Documents or because of the breach by Grantor of any of the terms hereof or of any of the other Loan Documents, or for the recovery of any Indebtedness, Grantor shall pay to Beneficiary actual attorneys' fees and all costs and expenses, whether or not an action is actually commenced and the right to such actual attorneys' fees and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation, bankruptcy and/or administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Mortgage include all paralegal, electronic research, legal specialists and all other costs in connection with that performance of Beneficiary's attorneys.

If Beneficiary is, by reason of being the holder of this Mortgage, made a party defendant of any litigation, action, proceeding, (including without limitation condemnation or insurance loss matters) concerning this Mortgage or the Premises or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by Grantor, then Grantor



shall indemnify, defend and hold Beneficiary harmless from and against all liability by reason of said litigation, including actual attorneys' fees and all costs and expenses incurred by Beneficiary in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

**SECTION 10.16. Other Representations and Warranties.**

All statements contained in the Commitment or in any loan application, certificate or other instrument delivered by or on behalf of Grantor to Beneficiary or Beneficiary's representatives in connection with the Indebtedness shall constitute representations and warranties made by Grantor hereunder. Such representations and warranties made hereunder and thereunder shall survive the delivery of this Mortgage, and any misrepresentations thereunder shall be deemed as misrepresentations hereunder.

**SECTION 10.17. Survival of Representations Warranties and Covenants.**

All representations, covenants and warranties contained herein or in any of the other Loan Documents shall survive the delivery of the Note, this Mortgage and all other Loan Documents executed in connection herewith and the provisions hereof shall continue to inure to the benefit of Beneficiary, its successors and assigns.

**SECTION 10.18. Waiver of Jury Trial.**

**BENEFICIARY BY ITS ACCEPTANCE HEREOF AND GRANTOR HEREBY VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS MORTGAGE OR CONCERNING THE INDEBTEDNESS AND/OR ANY COLLATERAL SECURING SUCH INDEBTEDNESS, REGARDLESS OF WHETHER SUCH ACTION OR PROCEEDING CONCERNS ANY CONTRACTUAL OR TORTIOUS OR OTHER CLAIM. GRANTOR ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO BENEFICIARY IN EXTENDING CREDIT TO GRANTOR, THAT BENEFICIARY WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT GRANTOR HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.**

**SECTION 10.19. Minimum Requirement.**

Grantor recognizes that the requirements imposed upon Grantor hereunder, including, without limitation, insurance requirements, are minimum requirements as determined by Beneficiary and do not constitute a representation that the requirements are complete or adequate. Grantor understands that it is Grantor's duty and responsibility to act prudently and responsibly at all times for Grantor's protection and for the protection of the Premises.

**SECTION 10.20. Reproduction of Documents.**

This Mortgage 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. Grantor 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.

#### **SECTION 10.21. Partial Non-Recourse to Grantor.**

Notwithstanding anything to the contrary contained in this Mortgage, the liability of Grantor for the Indebtedness and for the performance of the other agreements, covenants and obligations contained in the Note, this Mortgage and the other Loan Documents shall be limited as set forth in Section 28 (but subject to Section 29) of the Note. Nothing contained herein shall be deemed to release any entity or person from their obligations under the terms of any separate Environmental Indemnity or Guaranty executed in connection with the Loan secured by this Mortgage.

#### **SECTION 10.22 Financial Covenants Regarding Guarantor.**

Grantor shall cause Guarantors to maintain, as of each fiscal year-end of Guarantors, (a) a combined net worth of not less than \$100,000,000.00 and (b) combined liquid assets of not less than \$10,000,000.00 (collectively the "**Guarantor Financial Covenants**"), as evidenced by annual financial statements submitted by Guarantors in accordance with (and complying with all requirements of) **Section 2.7** hereof. The failure to maintain the Guarantor Financial Covenants will constitute an Event of Default unless within thirty (30) days of such occurrence, Grantor provides a replacement guarantor satisfactory to Beneficiary in its sole discretion. In the event a satisfactory replacement guarantor is not provided within thirty (30) days of such occurrence, Beneficiary shall have the right to declare the Loan due and payable, which shall be subject to the applicable Reinvestment Charge (as defined in the Note), if any, or take any other remedies available to it under the Loan Documents. Such financial covenants are specific to this Grantor and Guarantors only, and Beneficiary reserves the right to amend or adjust such covenants in the event of an approved One-Time Third Party Transfer.

#### **SECTION 10.23 Financial Covenants Regarding Grantor.**

Grantor shall maintain, as of each fiscal year-end of Grantor, liquid assets of not less than \$1,000,000.00 (the "**Grantor Financial Covenants**"), as evidenced by annual financial statements submitted by Grantor in accordance with (and complying with all requirements of) **Section 2.7** hereof. The failure to maintain the Grantor Financial Covenants will constitute an Event of Default and Beneficiary shall have the right to declare the Loan due and payable, which shall be subject to the applicable Reinvestment Charge (as defined in the Note), if any, or take any other remedies available to it under the Loan Documents. Such financial covenants are

specific to this Grantor, and Beneficiary reserves the right to amend or adjust such covenants in the event of an approved One-Time Third Party Transfer.

#### **SECTION 10.24 Release of Unimproved Portion of Premises.**

Beneficiary will release from the lien of this Instrument ("**Partial Release**") that portion of the Premises which is legally described and depicted on **Exhibit "C"** to this Instrument ("**Release Property**"), provided that each of the following conditions is satisfied:

- (a) The Partial Release occurs within the two (2) years from the date hereof.
- (b) The One Time Third Party Transfer rights have not been exercised.
- (c) Grantor shall deliver written notice to Beneficiary specifying the date of the Partial Release at least 60 days prior to the proposed effective date of the Partial Release,
- (d) Grantor shall be in receipt of the review fee in the amount of \$1,500.00.
- (e) No Event of Default has occurred and is continuing.
- (f) The actual dimensions of the Release Property do not materially deviate from the proposed dimensions of the Release Property as depicted on Exhibit C.
- (g) The Release Property and the remaining Premises shall be separate tax parcels.
- (h) The remainder of the Premises after the Partial Release shall comply with all applicable zoning, building, subdivision, land use, parking and other requirements of any governmental authority that are applicable to the Premises.
- (i) The remainder of the Premises shall have direct access to a public right-of-way and easements for all public utilities servicing the Premises, which may be evidenced by an access endorsement to the Beneficiary's title insurance policy. In the event the remaining Premises will not have direct access to a public right-of-way or will lose any public utility easements, Grantor shall provide easement agreements, in form and substance acceptable to Beneficiary in its sole discretion, granting access over and across the Release Property to allow access to a public right-of-way or public utility easement.
- (j) Beneficiary shall receive the following endorsements to the Beneficiary's title insurance policy, each effective as of the date of the Partial Release:
  - (i) An endorsement indicating that the Release Property has been legally subdivided from the remainder of the Premises.
  - (ii) An endorsement indicating that the Release Property and the balance of the Premises each constitute a separate tax parcel.
  - (iii) An endorsement insuring Beneficiary's interest in any easements created in connection with the Partial Release.

(iv) An endorsement extending the effective date of the policy to the effective date of the Partial Release, and confirming no change in the priority of the lien of this Instrument on the balance of the Premises or in the amount of the insurance or the coverage under the policy.

(k) Grantor and Guarantors shall execute, deliver and record (when necessary) such amendments, supplements, corrections, replacements, assumptions, and reaffirmations to the Loan Documents as Beneficiary may reasonably require.

(l) Grantor shall comply with such other requirements as Beneficiary may then reasonably require to maintain its security interest in the Premises.

#### **SECTION 10.25 Tenants in Common.**

(a) Grantor represents and warrants to Beneficiary as follows as of the effective date herein:

(i) The Premises is subject to a written tenancy-in-common agreement (“**TIC Agreement**”) dated on or prior to the date of this Instrument that satisfies each of the following requirements:

(A) It is executed by each entity constituting Grantor (each, a “**Co-Owner Grantor**”).

(B) It provides that there can be no termination, cancellation, amendment, or waiver of the TIC Agreement without Beneficiary’s prior written consent and that any termination, cancellation, amendment, or waiver of the TIC Agreement without Beneficiary’s prior written consent will not be effective.

(C) It specifies that any termination, cancellation, amendment, or waiver of the TIC Agreement must be in writing and signed by all of the Co-Owner Grantors to be effective.

(D) It provides that each Co-Owner Grantor waives and relinquishes any right to partition of the Premises, whether by physical division or by sale of the entire Premises and division of the sale proceeds (“**Partition**”).

(E) It provides that each Co-Owner Grantor that is an individual waives his/her right to residency at the Premises.

(F) It names Beneficiary as a third-party beneficiary and confirms that Beneficiary may enforce the provisions of the TIC Agreement against any party to the TIC Agreement.

(ii) The TIC Agreement is in full force and effect and has not been amended or modified, except as disclosed to Beneficiary in writing.

(iii) There is no default under the TIC Agreement, and there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default under the TIC Agreement.

(b) Additional Covenants.

(i) Each Co-Owner Grantor will satisfy its obligations under the TIC Agreement.

(ii) Each Co-Owner Grantor will promptly provide Beneficiary with a copy of any notice it receives from any other Co-Owner Grantor asserting any default under the TIC Agreement, alleging to terminate or abandon the TIC Agreement, requesting arbitration or appraisal proceedings pursuant to the TIC Agreement, or citing any other matter that could impact the continued validity of the TIC Agreement.

(iii) Each Co-Owner Grantor waives any right it holds to Partition the Premises, and if an individual, any right it holds to residency at the Premises.

(iv) No Co-Owner Grantor will take any of the following actions:

(A) Amend the TIC Agreement without the prior written consent of Beneficiary.

(B) Terminate or cancel the TIC Agreement.

(C) Surrender the Co-Owner Grantor's estate and interest in the TIC Agreement or the Premises.

(D) In connection with a bankruptcy, reject the TIC Agreement or allow the TIC Agreement to be deemed rejected by inaction or lapse of time.

(E) In connection with a bankruptcy, elect to treat the TIC Agreement as terminated by any other party's rejection of the TIC Agreement.

(F) File any legal proceedings intended in whole or in part to cause a Partition.

(G) File any legal proceeding claiming a right of residency at the Premises.

(v) No release or forbearance of any Co-Owner Grantor's obligations under the TIC Agreement, whether pursuant to the TIC Agreement or otherwise, will release any Co-Owner Grantor from any of its obligations under this Instrument.

(vi) Following the occurrence of a bankruptcy, each Co-Owner Grantor assigns to Beneficiary all rights, privileges, and prerogatives of the Co-Owner Grantor

and any bankruptcy trustee for the Co-Owner Grantor to deal with the TIC Agreement in such bankruptcy (including related to matters of rejection, termination, or extensions of time). Any action with respect to the TIC Agreement by the Co-Owner Grantor or its bankruptcy trustee without the prior written consent of Beneficiary will be void and of no force and effect.

(c) Additional Estoppel Certificate. Within 15 days after a request from Beneficiary, each Co-Owner Grantor will deliver to Beneficiary a certificate signed and acknowledged by the Co-Owner Grantor certifying to Beneficiary that as of the date of the certificate all of the following are true:

(i) The TIC Agreement is in full force and effect.

(ii) The TIC Agreement has not been modified since the Effective Date of this Instrument, or if it has been modified, identifying any modifications and providing a copy of Beneficiary's consent for such modification.

(iii) No notice of termination of the TIC Agreement has been served on Grantor.

(iv) There are no defaults under the TIC Agreement, or if there are defaults, specifying the nature of such defaults.

(d) Transfers between Co-Owner Grantors. The Transfer of any interest in the Premises between Co-Owner Grantors constitutes a prohibited Transfer, except as provided under Section 2.9 herein.

(e) Notices. All Co-Owner Grantors will share one address for Notice for the term of the Loan. No permitted change of Grantor's address will change this requirement.

(f) Pledge, Assignment, and Subordination.

(i) Each Co-Owner Grantor pledges and assigns to Beneficiary all its rights and privileges as a party to the TIC Agreement as further security for the repayment of the Loan and for the performance of the covenants, agreements, obligations and conditions of this Instrument, including all of the following:

(A) All rights of first refusal (including those which arise under Section 363(i) of the Bankruptcy Code).

(B) Any options to purchase and similar rights.

(C) Any rights to terminate, cancel, amend, or waive the TIC Agreement;

(ii) The TIC Agreement is subject and subordinate to the lien of this Instrument and the other Loan Documents. All payments under the Loan Documents will have priority over all payments and distributions to the Co-Owner Grantors pursuant to the TIC Agreement. In addition, each Co-Owner Grantor subjects and subordinates each of the following to the lien of this Instrument and all the other Loan Documents:

(A) All of its rights and remedies under the TIC Agreement, including any rights to indemnification.

(B) All options to purchase or rights of first refusal and any other similar rights with respect to another Co-Owner Grantor's interest in the Premises it holds under the TIC Agreement.

(C) All of its Transfer rights under the TIC Agreement.

## **ARTICLE 11.**

### **STATE SPECIFIC PROVISIONS**

#### **SECTION 11.1. Incorporation of State Law Provisions.**

Certain provisions/sections of this Security Instrument and certain additional provisions/sections that are required by laws of the State or Commonwealth in which the Premises are located may be amended, described and/or otherwise set forth in more detail on **Exhibit "D"** attached hereto, which such Exhibit by this reference, is incorporated into and made a part of this Security Instrument. In the event of any conflict between such state law provisions and any provision herein, the state law provisions shall control.

***[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURES ARE CONTAINED ON THE FOLLOWING PAGE.]***

Grantors have caused this Mortgage to be executed as of the date first above written.

**KAMAS FARMS, LLC,**  
a Wyoming limited liability company

By: *Craig S. Tillotson*  
Craig S. Tillotson, Manager

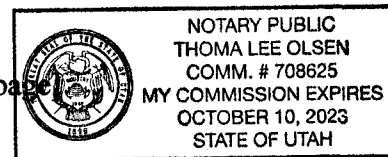
STATE OF Utah )  
COUNTY OF Salt Lake ) ss.  
)

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2021, by Craig S. Tillotson, the Manager of Kamas Farms, LLC, a Wyoming limited liability company, on behalf of the limited liability company.

*Thoma Lee Olsen*  
Notary Public

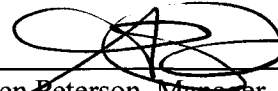
My Commission Expires: Oct 10, 2023

[Signatures continued on next page]





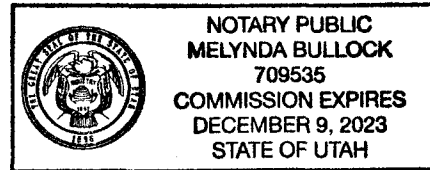
**PETERBUILT 6M, LLC,**  
a Utah limited liability company

By:   
Steven Peterson, Manager


STATE OF UTAH

COUNTY OF SALT LAKE

)  
) ss.  
)



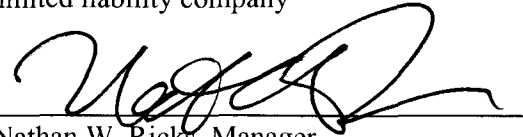
The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 2021, by Steven Peterson, the Manager of Peterbuilt 6M, LLC, a Utah limited liability company, on behalf of the limited liability company.

  
Notary Public

My Commission Expires: December 9, 2023

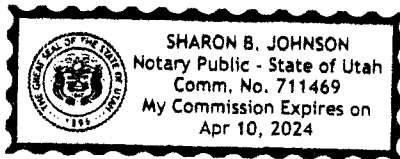
[Signatures continued on next page]

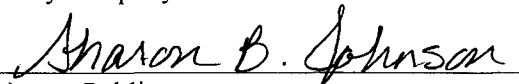
**RH MORINDA, LLC,**  
a Utah limited liability company

By:   
Nathan W. Ricks, Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF ~~SALT LAKE~~ Utah )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 2021, by Nathan W. Ricks, the Manager of RH Morinda, LLC, a Utah limited liability company, on behalf of the limited liability company.



  
Notary Public

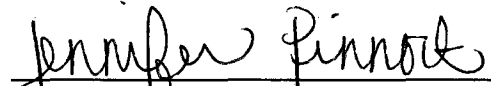
My Commission Expires: 4/10/2024

[Signatures continued on next page]

**WALY INVESTMENT CO., LTD.,**  
a Utah limited partnership

By: Marcus Pinnock and Jennifer Pinnock,  
Trustees of The MJP Family Trust, dated April 12,  
1995, its General Partner

By:   
\_\_\_\_\_  
Marcus Pinnock, Trustee

By:   
\_\_\_\_\_  
Jennifer Pinnock, Trustee

STATE OF Utah

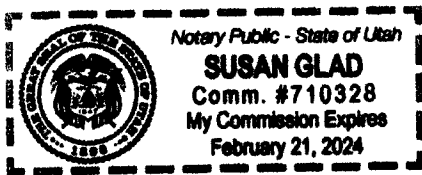
)

COUNTY OF Salt Lake

) ss.

)

The foregoing instrument was acknowledged before me this 8 day of April, 2021, by Marcus Pinnock, as Trustee of The MJP Family Trust, dated April 12, 1995, the General Partner of Waly Investment Co., LTD., a Utah limited partnership, on behalf of the limited partnership.



Susan Glad

Notary Public

My Commission Expires: 2-21-2024

STATE OF Utah

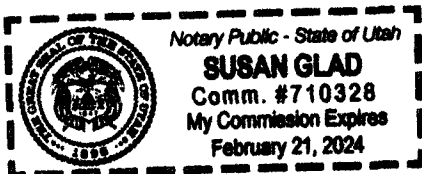
)

COUNTY OF Salt Lake

) ss.

)

The foregoing instrument was acknowledged before me this 8 day of April, 2021, by Jennifer Pinnock, as Trustee of The MJP Family Trust, dated April 12, 1995, the General Partner of Waly Investment Co., LTD., a Utah limited partnership, on behalf of the limited partnership.



Susan Glad

Notary Public

My Commission Expires: 2-21-2024

**EXHIBIT "A"****LEGAL DESCRIPTION****PARCEL 1:**

COMMENCING AT A POINT LOCATED SOUTH 00°25'09" EAST ALONG THE SECTION LINE 78.94 FEET AND WEST 2148.10 FEET FROM THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00°00'14" WEST 111.05 FEET; THENCE NORTH 89°23'22" EAST 47.36 FEET; THENCE NORTH 77°58'05" EAST 285.69 FEET; THENCE NORTH 76°13'17" EAST 68.01 FEET; THENCE NORTH 89°54'38" EAST 354.90 FEET; THENCE SOUTH 64°27'14" EAST 110.95 FEET; THENCE SOUTH 50°05'30" EAST 127.84 FEET; THENCE SOUTH 49°38'50" EAST 264.15 FEET; THENCE SOUTH 40°08'13" WEST 389.97 FEET; THENCE NORTH 49°51'47" WEST 164.57 FEET; THENCE ALONG AN ARC OF A 260.00 FOOT RADIUS CURVE TO THE LEFT 182.14 FEET (CHORD BEARS NORTH 69°55'54" WEST 178.43 FEET); THENCE WEST 706.12 FEET; THENCE ALONG AN ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 23.56 FEET (CHORD BEARS NORTH 45°00'00" WEST 21.21 FEET); THENCE NORTH 53.19 FEET; THENCE ALONG AN ARC OF A 233.00 FOOT RADIUS CURVE TO THE LEFT 93.53 FEET (CHORD BEARS NORTH 11°30'00" WEST 92.91 FEET); THENCE NORTH 23°00'00" WEST 81.28 FEET; THENCE ALONG AN ARC OF A 350.00 FOOT RADIUS CURVE TO THE RIGHT 140.50 FEET (CHORD BEARS NORTH 11°30'00" WEST 139.56 FEET); THENCE NORTH 79.06 FEET; THENCE ALONG AN ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 23.47 FEET (CHORD BEARS NORTH 44°49'37" EAST 21.15 FEET); THENCE NORTH 89°39'14" EAST 181.93 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

A TRACT OF LAND, SITUATE IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID TRACT OF LAND ARE DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY HIGHWAY RIGHT OF WAY LINE OF INTERSTATE-15 AND THE NORTHEASTERLY CORNER OF THE GRANTEE'S PROPERTY AS RECORDED IN ENTRY NO. 157226:2002 ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER; SAID POINT IS 151.23 FEET SOUTH 00°25'09" EAST ALONG THE SECTION LINE AND 1,301.78 FEET SOUTH 89°34'51" WEST FROM THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 64°27'14" WEST (NORTH 67°32'00" WEST BY RECORD) 110.30 FEET; THENCE SOUTH 89°54'38" WEST (WEST BY RECORD) 354.90 FEET; THENCE SOUTH 76°13'17" WEST (SOUTH 77°17'00" WEST BY RECORD) 68.01 FEET; THENCE SOUTH 77°58'05" WEST, (SOUTH 77°17'00" WEST BY RECORD) 285.69 FEET; THENCE SOUTH 89°23'22" WEST (WEST BY RECORD) 47.36 FEET; THENCE NORTH 00°00'14" EAST (NORTH BY RECORD) 106.28 FEET TO THE BEGINNING OF A 1,550.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE ALONG THE SOUTHERLY TOE OF SLOPE OF SAM WHITE BRIDGE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES: NEXT EASTERLY 166.29 FEET ALONG THE ARC OF SAID CURVE (NOTE: CHORD TO SAID CURVE BEARS NORTH 81°51'21" EAST FOR A DISTANCE OF 166.21 FEET) TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 800.00 FEET; THENCE (2) EASTERLY 157.87 FEET ALONG THE ARC OF SAID CURVE (NOTE: CHORD TO SAID CURVE BEARS NORTH 84°26'08" EAST FOR A DISTANCE OF 157.62 FEET); THENCE (3) SOUTH 89°54'40" EAST 103.33 FEET TO THE BEGINNING OF A

800.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE (4) EASTERLY 107.40 FEET ALONG THE ARC OF SAID CURVE (NOTE: CHORD TO SAID CURVE BEARS SOUTH 86°03'54" EAST FOR A DISTANCE OF 107.32 FEET); THENCE (5) SOUTH 82°13'08" EAST 39.79 FEET TO THE BEGINNING OF A 800.00-FOOT RADIUS CURVE TO THE LEFT; THENCE (6) EASTERLY 95.43 FEET ALONG THE ARC OF SAID CURVE (NOTE: CHORD TO SAID CURVE BEARS SOUTH 85°38'11" EAST FOR A DISTANCE OF 95.38 FEET); THENCE (7) SOUTH 89°03'14" EAST 68.80 FEET; THENCE SOUTH 49°51'08" EAST 146.67 FEET TO THE POINT OF BEGINNING.

Tax Id No.: 13-063-0026 and 13-063-0101

EXHIBIT "A"

**EXHIBIT "B"**

**ENVIRONMENTAL REPORTS**

Phase I Environmental Site Assessment, dated February 18, 2021, prepared by Partner Engineering and Science, Inc., Project No. 21-307362.1, for Beneficiary

**EXHIBIT "C"**  
**RELEASE PARCEL**

EXHIBIT "C"



**EXHIBIT "D"****APPLICABLE STATE LAWS****(Utah)**

1. Additional Remedies. In addition to those remedies described in Section 8.2 hereof, Beneficiary shall have the following remedies upon the occurrence of an Event of Default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Premises, or any part thereof, to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Premises or some part or parcel thereof is situated. If Beneficiary invokes the power of sale, Trustee and Beneficiary shall take such action regarding notice of sale and shall give such notices to Grantor and to other persons as applicable law may require. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Grantor, shall sell such portion of the Premises on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale, unless otherwise required by law. Trustee shall execute and deliver to the purchaser a deed conveying said property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale in the following order: (1) reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps or similar taxes on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the Note secured hereby from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place. In the event of exercise of the power of sale, or in the event of a sale under a judicial foreclosure of this Mortgage, Grantor agrees to surrender possession of the Premises to the purchaser at said sale, immediately after said sale, in the event such possession has not previously been surrendered by Grantor. Notwithstanding any other provision set forth herein, Beneficiary's rights and remedies shall be governed by applicable Utah statutes, laws, rules, and regulations, including, without limitation, Utah Code Annotated, Title 57, Chapter 1, as amended and in effect from time to time.

2. Trustee Provisions. Beneficiary may appoint a successor trustee at any time by complying with the statutory requirements therefor. The new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Trustee accepts this Trust when this Mortgage, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any

other trust deed or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

3. Request for Notice of Default. Grantor requests that one copy of any notice of default and of any notice of sale required hereunder or by applicable law be mailed to Grantor at its address hereinbefore set forth, and notice of any change of Grantor's address shall only be effective if given by Grantor to both the Trustee and to the Beneficiary in the manner required by Section 10.8 of this Mortgage.

4. Environmental Indemnity Agreement Not Secured. Notwithstanding anything to the contrary in this Mortgage or in any other the other Loan Agreements, the obligations under the Environmental Indemnity and any similar indemnity provisions contained in the Loan Documents and relating to the subject matter contained in the Environmental Indemnity are not secured by this Mortgage.

5. Integration. PURSUANT TO *UTAH CODE ANNOTATED* § 25-5-4, GRANTOR IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6. Utah Uniform Assignment of Rents Act. Notwithstanding any other provision set forth herein, Beneficiary's and Grantor's rights and remedies with respect to the assignment of leases and rents set forth in Section 6.3 hereof shall be governed by the provisions of the Utah Uniform Assignment of Rents Act, Utah Code Annotated Chapter 57, Title 26.