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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

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PREPARED BY AND UPON  
RECORDATION RETURN TO:

Bogal & Kahn LLP  
810 Seventh Avenue, Suite 505  
New York, New York 10019  
Attn: Thomas J. Bogal, Esq.

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

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**2100 AND 2100, LLC**, as grantor

to

**COTTONWOOD TITLE INSURANCE AGENCY, INC.**, as trustee

for the benefit of

**DPI-ACRES CAPITAL LLC**, as beneficiary

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Dated as of November 7, 2024  
Location: 2145 East 2100 South  
Salt Lake City, UT 84109  
County: Salt Lake  
Tax Parcel No.: 16-15-359-018-0000

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**THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING** (as the same may be amended, restated, supplemented, or otherwise modified from time to time, this “**Security Instrument**”) is made effective as of the 7<sup>th</sup> day of November, 2024, by **2100 AND 2100, LLC**, a Utah limited liability company, having its principal place of business at 4655 South 2300 East, Suite 205, Holladay, UT 84117, as grantor (“**Borrower**”), to **COTTONWOOD TITLE INSURANCE AGENCY, INC.** (“**Trustee**”), for the benefit of **DPI-ACRES CAPITAL LLC**, a Delaware limited liability company, as Administrative Agent, having an address c/o ACRES Capital Servicing, LLC, 390 RXR Plaza, Uniondale, New York 11556, and with its successors and assigns (in such capacity, “**Administrative Agent**”), as beneficiary.

WITNESSETH:

**WHEREAS**, this Security Instrument is given to secure a loan (the “**Loan**”) in the principal sum of Thirty-Two Million and No/100 Dollars (\$32,000,000.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, by and among Borrower, Administrative Agent and each of the lenders (together with their successors and assigns, individually and collectively, as the context may require, “**Lender**”) from time to time a party to thereto (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Loan Agreement**”), and evidenced by, among other things, that certain (i) Promissory Note A-1 in the maximum principal sum of Sixteen Million and No/100 Dollars (\$16,000,000.00) dated as of even date herewith made payable to the order of DPI-ACRES Capital LLC, as Lender (“**Note A-1**”), and (ii) Promissory Note A-2 in the maximum principal sum of Sixteen Million and No/100 Dollars (\$16,000,000.00) dated as of even date herewith made payable to the order of DPI-ACRES Capital LLC, as Lender (“**Note A-2**”, together with Note A-1 and with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the “**Note**”);

**WHEREAS**, Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined); and

**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Borrower to Administrative Agent in favor of Lender delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the “**Assignment of Leases**”), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Debt (including all additional deeds of trust, mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the “**Loan Documents**”).

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

## **ARTICLE I - GRANTS OF SECURITY**

**Section 1.1 Property Mortgaged**. In order to secure the payment, fulfillment and performance of the obligations due under the Note and the Loan Agreement and the Obligations (as defined in Article 2), all future advances and re-advances that may subsequently be made to Borrower or any other borrower by Administrative Agent, evidenced by the Note, the Loan Agreement or any other Loan Documents (provided, however, that nothing contained herein shall create an obligation on the part of Administrative Agent or Lender to make future advances or re-advances to Borrower or any other borrower, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Administrative Agent or Lender, including court costs, and reasonable attorneys' fees; to the extent, if any, provided in the Note, or any other promissory note or notes, letters of credit, credit agreements, reimbursement agreements or other similar agreements executed in connection therewith or otherwise or any other Loan Documents, and all modifications, renewals and extensions thereof, interest or discount may be deferred, accrued or capitalized); to secure any advancements made by Administrative Agent or Lender, as hereinafter provided; and also in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee IN TRUST, WITH POWER OF SALE, and grant a security interest Administrative Agent for the benefit of Lender in, all Borrower's right, title and interest in, to and under the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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

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

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

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof, and all the estates, rights,

titles, interests, rights of dower, rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

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

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

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

states where any of the Property is located (the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, rentals, tenancies, rights to occupy, rights of entry, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every renewal, modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, including a guaranty of any such lease (collectively, the “**Leases**”), whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid, collected or accruing before or after the occurrence of an Event of Default or the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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

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

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

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

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

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents of any nature whatsoever, now or hereafter obtained or entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon an Event of Default, to receive and collect any sums payable to Borrower thereunder;

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

(p) Letter of Credit Rights. All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(q) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1 (the “**Tort Claims**”). Notwithstanding anything contained herein or in the Loan Documents to the contrary, Borrower may sue for, compromise, settle and control the procedure of any Tort Claim to the extent not prohibited by the Loan Documents;

(r) Accounts. All reserves, escrows and deposit accounts maintained by and/or established for the benefit of Borrower with respect to Borrower’s right, title and/or interest in or to the Property, including, without limitation all accounts established or maintained pursuant to the Cash Management Agreement, the Clearing Account Agreement or any other Loan Document; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends and/or substitutions thereon and thereof (collectively, the “**Accounts**”);

(s) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(t) Interest Rate Cap Agreement. All right, title, interest and claim of Borrower in, to, under or pursuant to any interest rate cap confirmation purchased by Borrower pursuant to the terms of the Loan Documents (the “**Confirmation**”), the corresponding interest rate cap agreement relating thereto (the “**Rate Agreement**”), and in, to, under or pursuant to any and all amendments, supplements and additions thereto (the Confirmation and the Rate Agreement, together with any amendments, additions or supplements thereto being hereinafter collectively referred to as the “**Cap Agreement**”), all claims of Borrower for breach by any counterparty of any covenant, agreement, representation or warranty contained in the Cap Agreement;

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

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

**Section 1.2 Assignment of Rents**. Borrower hereby absolutely and unconditionally assigns to Administrative Agent for the benefit of Lender all of Borrower's right, title and interest in and to all current and future Leases, Rents, Lease Guaranties (as defined in the Assignment of Leases) and Bankruptcy Claims (as defined in the Assignment of Leases); it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and the terms of the Assignment of Leases and the Cash Management Agreement, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents, Lease Guaranties and Bankruptcy Claims and to enforce the Leases, Lease Guaranties and Bankruptcy Claims in accordance with their terms and to otherwise deal with and enjoy the rights of landlord under the Leases, the Lease Guaranties and the Bankruptcy Claims. Borrower shall hold the Rents, Lease Guaranties and Bankruptcy Claims or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. This Section 1.2 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 1.2 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Lender shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

**Section 1.3 Security Agreement**. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Administrative Agent for the benefit of Lender, as security for the Obligations (as defined below), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.

**Section 1.4 Pledge Of Monies Held**. Borrower hereby pledges to Administrative Agent for the benefit of Lender any and all monies now or hereafter held by Administrative Agent or on behalf of Administrative Agent, including, without limitation, any sums deposited in the Clearing Account or Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

**Section 1.5 Future Advances**. This Security Instrument secures not only existing indebtedness or advances made contemporaneously with the execution hereof, if any, but also future principal advances (with all interest thereon), to or for the benefit of Borrower, made pursuant to the terms of the Loan Agreement, the Note or the other Loan Documents (as the same may be amended, restated, supplemented or otherwise modified from time to time), the terms of all of which are incorporated herein by reference, whether such advances are obligatory,

optional, or both, to the same extent as if such future advances were made contemporaneously with the execution of this Security Instrument, even though no advance may have been made at the time of execution of this Security Instrument and even though no indebtedness is outstanding at the time any advance is made, and any lien attaching to the Property after the date hereof shall be under, subject and subordinate to all indebtedness, including, without limitation, future advances (regardless of when made), secured hereby. This Security Instrument shall also secure, in addition to the principal amount specified herein, and Administrative Agent is hereby permitted to make, if it determines same to be necessary, payments on account of, interest, service charges and any disbursements made for the payment of taxes, assessments, maintenance, care, protection or insurance on the Property, with interest on such disbursements.

## **CONDITIONS TO GRANT**

**TO HAVE AND TO HOLD** the above granted and described Property unto Trustee for and on behalf of Lender and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

**WITH POWER OF SALE**, to secure payment to Administrative Agent for the benefit of Lender of the payment and performance of the Obligations (including without limitation payment of the Debt) at the time and in the manner provided for in the Loan Agreement, the Note and in this Security Instrument;

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

## **ARTICLE II - DEBT AND OBLIGATIONS SECURED**

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

**Section 2.2 Other Obligations**. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

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

### **ARTICLE III - BORROWER COVENANTS**

Borrower covenants and agrees that throughout the term of the Loan:

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

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

**Section 3.3 Insurance.** Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Borrower shall cause the Property to be maintained in a good condition and repair, reasonable wear and tear excepted. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the prior written consent of Administrative Agent. Subject to the provisions of Section 6.4 of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.5 Waste.** Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Administrative Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.6 Payment for Labor and Materials.** (a) Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby or by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby or by the other Loan Documents except for the Permitted Encumbrances.

(b) After prior written notice to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid or bonded all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being foreclosed, sold, forfeited, terminated, canceled or lost, and (vi) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

**Section 3.7 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8 Change of Name, Identity or Structure.** Borrower shall not change Borrower’s name, identity (including its trade name or names) or, if not an individual, Borrower’s corporate, partnership or other structure without notifying Administrative Agent of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower’s structure, without first obtaining the prior written consent of Administrative Agent. Borrower shall execute and deliver to Administrative Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Administrative Agent for the benefit of Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Administrative Agent, Borrower shall execute a certificate in form satisfactory to Administrative Agent listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

**Section 3.9 Taxes and Other Charges.** In accordance with the terms and conditions of the Loan Agreement, Borrower shall pay all real estate and personal property taxes, assessments, water rates or sewer rents (collectively “**Taxes**”), ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property (collectively, “**Other Charges**”), now or hereafter levied or assessed or imposed against the Property or any part thereof. Notwithstanding the foregoing, after prior written notice to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, all in accordance with the Loan Agreement.

**Section 3.10 Leases.** Borrower shall not (and shall not permit any other applicable Person to) enter in any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

**Section 3.11 Title.** Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Borrower’s ability to repay the Loan. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

#### **ARTICLE IV - OBLIGATIONS AND RELIANCES**

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

**Section 4.2 No Reliance on Administrative Agent or Lender.** The general partners, officers, shareholders, members, principals and (if Borrower is a trust) beneficial owners of

Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender and Administrative Agent are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Administrative Agent or Lender's expertise, business acumen or advice in connection with the Property.

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

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

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

## ARTICLE V - FURTHER ASSURANCES

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

delivery of this Security Instrument, any mortgage or deed of trust supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, etc.** Borrower will, at the cost of Borrower, and without expense to Administrative Agent or Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Administrative Agent for the benefit of Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Administrative Agent for the benefit of Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Administrative Agent for the benefit of Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower hereby authorizes Administrative Agent to file or record one or more financing statements (including initial financing statements and amendments thereto and continuation statements), to evidence more effectively the security interest of Lender in the Property. Borrower grants to Administrative Agent for the benefit of Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent and Lender at law and in equity, including without limitation, such rights and remedies available to Administrative Agent and Lender pursuant to this Section 5.2.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.** (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property (other than Excluded Taxes), Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Administrative Agent for the benefit of Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

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

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

**Section 5.4 Severing of Security Instrument.** This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Administrative Agent for the benefit of Lender, be severed into two or more notes and two or more security instruments in such denominations as Administrative Agent shall determine in its sole discretion, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Administrative Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Administrative Agent.

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

## ARTICLE VI - DUE ON SALE/ENCUMBRANCE

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

**Section 6.2 No Sale/Encumbrance.** Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

## ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Remedies.** Upon the occurrence and during the continuance of any Event of Default beyond any applicable notice and cure period, unless such Event of Default is subsequently waived in writing by Administrative Agent (provided that Administrative Agent has no obligation whatsoever to grant any such waiver and any such waiver, if granted, will be considered a one time waiver), Borrower agrees that Administrative Agent, or Trustee acting on behalf of and at the sole discretion of Administrative Agent in its capacity as Administrative

Agent's nominee, may take such action, without notice or demand, as it deems advisable to protect and enforce Lender's rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Trustee or Administrative Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Trustee or Administrative Agent:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under *Utah Code Annotated* § 57-1-24 or any other applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) for any complete foreclosure of this Security Instrument under Section 7.1(b), sell the Property or any interest therein in one or more parcels or en masse, as Administrative Agent may elect, if this Security Instrument encumbers more than one parcel of real estate;
- (d) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (e) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (f) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (g) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (h) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, to the extent permitted by applicable law, without bond and without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;
- (i) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Administrative Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower

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

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

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

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

- (iv) Amortization of the unpaid principal balance of the Note;
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Administrative Agent or Lender pursuant to the terms of this Security Instrument;
- (l) pursue such other remedies as Administrative Agent or Lender may have under applicable law; or
- (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Administrative Agent shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, trustee's sale, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 8.1(ix) [SPE Representations] of the Loan Agreement shall occur with respect to Borrower or Principal beyond any applicable notice and cure period, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Administrative Agent or Lender.

**Section 7.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Administrative Agent for the benefit of Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Administrative Agent for the benefit of Lender to the payment of the Debt in such priority and proportions as Administrative Agent in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted (if any), Administrative Agent may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Administrative Agent may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Administrative Agent for the benefit of Lender may deem necessary to protect the security hereof. Administrative Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Administrative Agent upon demand. All such costs and expenses incurred by Administrative Agent or Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Administrative Agent that such cost or expense was incurred to the date of payment

to Administrative Agent or Lender. All such costs and expenses incurred by Administrative Agent or Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Administrative Agent therefor.

**Section 7.4 Actions and Proceedings.** Administrative Agent or Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Administrative Agent or Lender, in their discretion, decides should be brought to protect its interest in the Property.

**Section 7.5 Recovery of Sums Required To Be Paid.** Administrative Agent for the benefit of Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Administrative Agent or Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** Subject to Section 5.1.11 of the Loan Agreement, during normal business hours and upon reasonable notice, Administrative Agent, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Administrative Agent and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, during normal business hours and upon reasonable notice, Administrative Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

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

(b) It is agreed that the risk of loss or damage to the Property, or any part thereof, is on Borrower, and Administrative Agent or Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to

determine whether insurance in force is adequate as to the kind and amount of risks insured. Possession by Administrative Agent or Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Administrative Agent or Lender's possession.

(c) Trustee or Administrative Agent may resort for the payment of the Debt to any other security held by Trustee or Administrative Agent in such order and manner as Administrative Agent, in its discretion, may elect. Trustee or Administrative Agent may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Trustee or Administrative Agent thereafter to foreclose this Security Instrument. The rights of Administrative Agent under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Trustee or Administrative Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Trustee and Administrative Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Administrative Agent for the benefit of Lender may release any portion of the Property for such consideration as Administrative Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Administrative Agent for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9 Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Administrative Agent may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Section 9.3 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any Guarantor and Indemnifying Person contained in Sections 9.2 and 9.3 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Administrative Agent for the benefit of Lender commences a foreclosure action against the Property, Administrative Agent is entitled to pursue a deficiency judgment with respect to such obligations against Borrower, and any Guarantor or Indemnifying Person with respect to the Loan. The provisions of Sections 9.2 and 9.3 herein are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower and any Guarantor or Indemnifying Person with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 9.2 and 9.3 herein. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Sections 9.2 and 9.3 herein is

not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.2 and 9.3 herein whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Administrative Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article VIII or Section 9.4 herein.

**Section 7.11 Right of Entry.** Upon reasonable notice to Borrower, Administrative Agent and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE VIII - ENVIRONMENTAL HAZARDS

**Section 8.1 Environmental Representations and Warranties.** Except as otherwise disclosed by that certain Phase I environmental report (or Phase II environmental report, if required) with respect to the Property delivered to Administrative Agent by Borrower in connection with the origination of the Loan (referred to below as the “**Environmental Report**”), (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are (i) in compliance with all Environmental Laws (defined below) and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), (ii) de-minimis amounts necessary to operate the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under and used in compliance with Environmental Law and (iii) fully disclosed to Administrative Agent in writing; (b) there are no past, present or to the best of Borrower’s knowledge threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property which have not been fully remediated in accordance with Environmental Law; (c) there is no threat of any Release of Hazardous Substances migrating to the Property; (d) there is no present or past non-compliance with Environmental Laws, or with any permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including but not limited to a Governmental Authority) relating to Hazardous Substances or Remediation (defined below) thereof, of possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; (f) no Toxic Mold (as defined below) is present in the indoor air of the Property at concentrations exceeding ambient air levels and no visible Toxic Mold is present on any building materials or surfaces at the Property for which any Legal Requirement applicable to the Property recommends or requires removal thereof by remediation professionals, and Borrower is not aware of any conditions at the Property that are likely to result in the presence of Toxic Mold in the indoor air at concentrations that exceed ambient air levels or on building materials or surfaces that would require such removal; and (g) Borrower has truthfully and fully disclosed to Administrative Agent, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and has provided to

Administrative Agent all information that is contained in files and records of Borrower, including, but not limited to, any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

**“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, relating to liability for or costs of other actual or threatened danger to human health or the environment. 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 Substances 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. Environmental Law also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations, permits or authorizations and the like, as well as common law: that (a) condition transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; (b) require notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with transfer of title to or interest in property; (c) impose conditions or requirements in connection with permits or other authorization for lawful activity; (d) relate to nuisance, trespass or other causes of action related to the Property; or (e) relate to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

**“Hazardous Substances”** include but are 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, 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 and explosives, lead based paint and Toxic Mold but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

**“Release”** of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

**“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; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; 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 to anything referred to in Article VIII.

**“Toxic Mold”** means fungi that reproduces through the release of spores or the splitting of cells or other means that is reasonably likely to pose a risk to human health or negatively affects the value of the Property, including, but not limited to, mold, mildew, fungi, fungal spores, fragments and metabolites such as mycotoxins and microbial volatile organic compounds.

**Section 8.2 Environmental Covenants**. Borrower covenants and agrees that: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are (i) in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), (ii) de-minimis amounts necessary to operate the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under and used in compliance with Environmental Law and (iii) fully disclosed to Administrative Agent in writing; (d) Borrower shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the “**Environmental Liens**”); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 8.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at Borrower’s sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Administrative Agent (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Administrative Agent the reports and other written results thereof, and Administrative Agent and the other Indemnified Parties shall be entitled to rely on such reports and other results thereof as evidenced by reliance language within such reports or a separate reliance letter that, in either case shall be in form and substance reasonably acceptable to Administrative Agent; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests to (i) effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any Governmental Authority relating to Environmental Laws, Hazardous Substances or the like and applicable to the Property or Borrower; and/or (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment relating to the Property, in either case, from Hazardous Substances or as required by Environmental Laws; (h) Borrower shall not, and shall use commercially reasonable efforts to prevent other users of the Property to, do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Property), impairs or may impair the value of the Property, 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 Property; (i) in the event that any inspection or audit reveals the presence of Toxic Mold in the indoor air of the Property at concentrations exceeding ambient air levels or visible Toxic Mold on any building materials or surfaces at the Property for which any Legal Requirement applicable to the Property recommends or requires removal thereof by remediation professionals, Borrower shall immediately remediate the Toxic Mold and perform post-remedial clearance sampling in accordance with said Legal Requirement and Environmental Law, following which abatement of the Toxic Mold, Borrower shall prepare and implement an Operations and Maintenance Plan for Toxic Mold and Moisture reasonably acceptable to Administrative Agent; and (j) Borrower shall immediately notify Administrative Agent in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any Person (including but not limited to a Governmental Authority) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article VIII.

**Section 8.3 Lender's Rights.** In the event that Administrative Agent has reason to believe that an environmental hazard exists on the Property that (a) does not, in Administrative Agent's sole discretion, endanger any tenants or other occupants of the Property or their guests or the general public or materially and adversely affect the value of the Property, upon reasonable notice from Administrative Agent, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Administrative Agent to conduct an environmental assessment or audit (the scope of which shall be determined in Administrative Agent's sole and absolute discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Administrative Agent and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Administrative Agent within a reasonable period or if (b) does, in Administrative Agent's sole judgment, endanger any tenant or other occupant of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice to Borrower, Lender and any other Person designated by Lender, 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 Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Administrative Agent's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall cooperate with and provide Administrative Agent and any such Person designated by Administrative Agent with access to the Property.

## ARTICLE IX - INDEMNIFICATION

**Section 9.1 General Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Administrative Agent or Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any Guarantor or Indemnifying Person and/or any partner, joint venturer, member or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article IX; (k) any and all claims and demands whatsoever which may be asserted against Administrative Agent or Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts actually payable to Administrative Agent for the benefit of Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article IX, the term "**Indemnified Parties**" means Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan secured hereby

(including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

**Section 9.2 Security Instrument and/or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

**Section 9.3 ERISA Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Administrative Agent's sole discretion) that Administrative Agent may incur, directly or indirectly, as a result of a breach or default under Sections 4.1.9 or 5.2.10 of the Loan Agreement.

**Section 9.4 Environmental Indemnification.** Borrower shall, at its sole cost and expense, 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) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any Person affiliated with Borrower, and any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any Person affiliated with Borrower and any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any Person affiliated with Borrower and/or any tenant or other user of the Property to comply with any order of any Governmental Authority in connection with any Environmental Laws; (f) the imposition,

recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article VIII and this Section 9.4; (h) the failure of Borrower to promptly commence and diligently perform to completion all environmental remediation work required under all Legal Requirements; (i) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (j) any acts of Borrower, any Person affiliated with Borrower and any tenant or other user of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances at any facility or incineration vessel containing such or similar Hazardous Substances; (k) any acts of Borrower, any Person affiliated with Borrower, and/or any tenant or other user of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (l) any personal injury, wrongful death, or property or other damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (m) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article VIII. This indemnity shall survive any termination, satisfaction or foreclosure of this Security Instrument, subject to the provisions of Section 10.6. Notwithstanding the foregoing, Borrower shall have no liability for any Losses imposed upon or incurred by or asserted against any Indemnified Parties and described in this Section 9.4 to the extent that such Losses arose solely by actions, conditions or events relating to the Hazardous Substances placed in, on, above or under the Property after the date that Administrative Agent on behalf of Lender or Lender (or any purchaser at a foreclosure sale) actually acquired title to the Property and were not caused by the direct or indirect actions of Borrower or any officer or director of Borrower or any employee, agent, contractor or Affiliate of Borrower.

**Section 9.5 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE X - WAIVERS

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Administrative Agent or Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all equity of redemption and statutory common law rights of redemption from sale under power of sale or pursuant to any foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable law.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Trustee or Administrative Agent except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Administrative Agent to Borrower and except with respect to matters for which Trustee or Administrative Agent is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Trustee or Administrative Agent with respect to any matter for which this Security Instrument or other Loan Documents do not specifically and expressly provide for the giving of notice by Trustee or Administrative Agent to Borrower.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND ADMINISTRATIVE AGENT, BY ITS ACCEPTANCE HEREOF, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND ADMINISTRATIVE AGENT AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF BORROWER AND ADMINISTRATIVE AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS

## CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND ADMINISTRATIVE AGENT.

**Section 10.6 Survival.** Subject to the provisions of Section 9.4 herein, the indemnifications made pursuant to Sections 9.3 and 9.4 herein and the representations and warranties, covenants, and other obligations arising under Article VIII, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Administrative Agent or Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Administrative Agent or Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

## ARTICLE XI - EXCULPATION

The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE XII - NOTICES

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

## ARTICLE XIII - APPLICABLE LAW

**Section 13.1 Governing Law.** This Security Instrument shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement.

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

**Section 13.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower, each Person comprising Borrower (if Borrower consists of more than one Person) and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Person**" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Administrative Agent or Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE XV - MISCELLANEOUS PROVISIONS

**Section 15.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Administrative Agent, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 15.2 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Borrower and Administrative Agent and their respective successors and assigns forever.

**Section 15.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 15.4 Headings, etc.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 15.5 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 15.6 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Administrative Agent with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Administrative Agent with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Administrative Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 15.8 Limitation on Administrative Agent or Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Administrative Agent or Lender, nor shall it operate to make Administrative Agent or Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Administrative Agent or Lender a "mortgagee in possession."

**Section 15.9 Perfection of Interests.** Should any deed, conveyance, or instrument of any nature be required from Borrower by Trustee or Administrative Agent for the benefit of Lender to more fully and certainly vest in and confirm to Trustee or Administrative Agent the estates, liens, security interests, rights, powers, and duties granted either of them under this Security Instrument, then, upon request by Administrative Agent, any and all such deeds,

conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

**Section 15.10 Survival.** Upon any foreclosure of this Security Instrument, the Obligations which are not satisfied thereby, and the rights, remedies, liens, assignments and security interests in favor of the Lender hereunder (except for the lien against portions of the Property so foreclosed), shall survive such foreclosure and remain in force and effect thereafter.

**Section 15.11 Secondary Market.** The provisions of Section 9.1 of the Loan Agreement are incorporated herein by reference with the same force as if fully set forth herein.

## ARTICLE XVI - STATE SPECIFIC PROVISIONS

**Section 16.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

**Section 16.2 Remedies of Administrative Agent.** Subject to the provisions of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default under the terms of the Loan Agreement, in addition to any rights and remedies provided for in the Loan Agreement, and to the extent permitted by applicable law, the following provisions apply:

(a) **Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure**.

After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the Property on the date and at the time and place designated in the notice of sale, in such order as Administrative Agent may determine (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Administrative Agent, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

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

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

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

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

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Instrument, this Security Instrument shall, at the sole election of Administrative Agent, be deemed amended to be consistent with such amendments or Administrative Agent may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(b) Election to Foreclose as a Mortgage. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property, and Administrative Agent shall be entitled to recover in such proceeding all out-of-pocket costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be fixed by the court. Borrower hereby waives all rights to the marshaling of Borrower's assets encumbered by this Security Instrument to the fullest extent permitted by law, including the Property, or any portion thereof, and all rights to require any Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Security Instrument as a mortgage shall first be applied to pay all reasonable out-of-pocket fees, charges, costs of conducting such sale and advertising the Property, and attorneys' fees as herein provided, second to pay to Administrative Agent the then outstanding amount of the Debt with interest at the applicable rate set forth in the Note, and third to the Person so entitled. Administrative Agent may purchase all or any part of the Property at such sale. Any purchaser at

such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Administrative Agent's bid entered at such sale shall bear interest at the Default Rate.

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

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

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

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

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

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

**Section 16.5 Substitution of Trustee.** Administrative Agent, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Administrative Agent and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy

thereof being provided to the persons required by *Utah Code Annotated* § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Borrower, Trustee and Administrative Agent hereunder, the book and page where this Security Instrument is recorded and the name and address of the new Trustee and all other information required by *Utah Code Annotated* § 57-1-22 or any successor statute. In compliance with *Utah Code Annotated* § 57-1-21.5, the Trustee shall not require the Borrower reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

**Section 16.6 Fixture Filings.** This Security Instrument covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, ADMINISTRATIVE AGENT IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR." BORROWER IS THE RECORD OWNER OF THE PROPERTY. THE ORGANIZATIONAL ID NUMBER FOR THE BORROWER IS 85-3597713.

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

**Section 16.8 Liens.** Except as allowed and provided for in Section 16.9 below or as otherwise permitted pursuant to the Loan Documents, Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien or any other lien, charge, attachment, or lis pendens filed or recorded against the Property which relates to Borrower or the Property.

**Section 16.9 State Construction Registry.** Borrower shall cause Administrative Agent to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-204. Borrower shall also provide to Administrative Agent copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property.

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

**BORROWER:**

**2100 AND 2100, LLC,**  
a Utah limited liability company

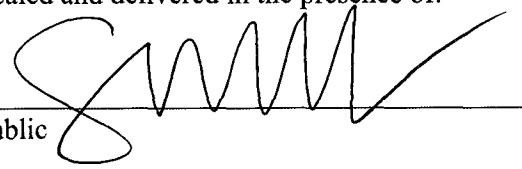
By:   
Name: Thomas R. Henriod  
Title: Authorized Representative

STATE OF UTAH )  
ss.:  
COUNTY OF SALT LAKE )

On NOVEMBER 5<sup>th</sup>, 2024, before me, the undersigned officer, personally appeared Thomas R. Henriod personally known and acknowledged himself to me (or proved to me on the basis of satisfactory evidence) to be the Authorized Representative of the foregoing executing entity (hereinafter, the "Entity") and that as such officer, being duly sworn, and being authorized to do so pursuant to its bylaws or a resolution, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by himself in his authorized capacity as such authorized representative as his free and voluntary act and deed and the free and voluntary act and deed of said Entity.

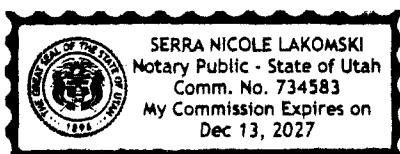
Witness my hand and official seal.

Signed, sealed and delivered in the presence of:

  
Notary Public

My commission expires: DEC 13, 2027

(Notary Seal)



**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 1, 21ST & 21ST SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder on August 2, 2021 as Entry No. 13732902 in Book 11215 at Page 3386.