

**RECORDING REQUESTED BY**  
**AND WHEN RECORDED MAIL TO:**

Quinn C. Wheeler, Esq.  
Bryan Cave Leighton Paisner LLP  
2 North Central Ave., Suite 2100  
Phoenix, AZ 85004-4406

#38954 MB

*Above Space for Recorder's Use Only*

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

**Dated February 20, 2020**

**from**

**AF 500 EAST HOLDINGS, LLC,  
a Utah limited liability company**

**to**

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

**for the benefit of**

**CITIBANK, N.A.,  
a national banking association**

(This Document Serves as a Fixture Filing under the Uniform Commercial Code in effect in the State of Utah)

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust"), dated as of February 20, 2020, is given by AF 500 EAST HOLDINGS, LLC, a Utah limited liability company (together with any future owner of the Property or any part thereof or any interest therein, "Grantor"), whose address is 299 South Main Street, Suite 2400, Salt Lake City, Utah 84111 to OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, whose address is 400 2<sup>nd</sup> Avenue South, Minneapolis, Minnesota 55401 (the "Trustee"), for the benefit of CITIBANK, N.A., a national banking association (together with any future holder of the Note, "Beneficiary"), whose address is 407 N. Maple Drive, Suite 150, Beverly Hills, CA 90210, Attention: Donna Park.

ARTICLE 1  
DEFINITIONS

Any term used or defined in the New York Uniform Commercial Code, as in effect from time to time, and not defined in this Deed of Trust has the meaning given to that term in the New York Uniform Commercial Code, as in effect from time to time, when used in this Deed of Trust, and any term not defined herein or in the New York Uniform Commercial Code shall have the meaning set forth in the Loan Agreement (defined below). In addition to other definitions contained herein, the following terms shall have the meanings set forth below:

1.1 Reserved.

1.2 Collateral. Any part of the Property that may or might now or hereafter be deemed to be personal property, fixtures or other property covered by Article 9 of the Uniform Commercial Code.

1.3 Default Rate. As defined in the Note.

1.4 Event of Default. As defined in Article 7 herein.

1.5 Hedging Agreement. (a) Any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such

master agreement; and (c) any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing.

1.6 Hedge Counterparty. Beneficiary and any of its affiliates that are party to a Hedging Agreement with Grantor.

1.7 Hedge Margin Amount. The margin amount required from time to time to be posted or deposited by Grantor with Hedge Counterparty in respect of a Hedging Agreement.

1.8 Hedging Obligations. Any and all obligations and liabilities, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under or otherwise in respect of all Hedging Agreements between Grantor with or in favor of any Hedge Counterparty, including, without limitation, the Hedge Margin Amount and the Hedging Termination Value of the transactions under the Hedging Agreements.

1.9 Hedging Termination Value. In respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements of a Hedge Counterparty: (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s); and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include Beneficiary or any affiliate of Beneficiary). The Hedging Termination Value in respect of each Hedge Counterparty shall be determined on a net basis among such Hedge Counterparty's Hedging Agreements pursuant to the terms of such Hedging Agreements.

1.10 Land. The tract or tracts of land described on Exhibit A attached hereto and made a part hereof located in the County of Utah, State of Utah.

1.11 Loan. The single advance term loan in the original principal amount of \$42,000,000.00 from Beneficiary to Grantor, as evidenced by the Note.

1.12 Loan Agreement. That certain Loan Agreement of even date herewith, by and between Grantor, Beneficiary and Guarantor, if any, as defined in the Loan Agreement.

1.13 Loan Documents. The Loan Agreement, Note, all of the deeds of trust, mortgages, assignments of rents and leases, security agreements, financing statements, pledge agreements, assignments of contracts, environmental indemnities, guaranties and other documents, instruments and agreements evidencing, governing, securing or otherwise relating to the Loan, including without limitation this Deed of Trust, and all modifications, extensions, renewals, restatements and replacements of any of the foregoing.

1.14 Note. The Promissory Note, dated the date hereof, from Grantor payable to the order of Beneficiary in the principal face amount of \$42,000,000.00, together with all amendments, renewals, extensions, modifications and restatements of such Promissory Note.

1.15 Project. The Land, together with all improvements thereon, whether now existing or hereafter constructed.

1.16 Property. The Land, together with all of the following property and rights of Grantor, whether now owned or hereafter acquired by Grantor:

(a) any and all structures, improvements, tenements, buildings, facilities and fixtures now or hereafter located or constructed on the Land (collectively, "Improvements"), as well as all easements, licenses, permits, rights-of-way, privileges, reservations, allowances, hereditaments and appurtenances, now or hereafter belonging or pertaining to the Land;

(b) all of Grantor's right, title and interest in any land lying between the boundaries of the Land and the center line of any adjacent street, road, avenue or alley, whether existing, vacated or proposed;

(c) all minerals, crops, timber, trees, shrubs, plants, flowers and landscaping features or materials now or hereafter located on, under or above the Land and all as-extracted collateral produced from or allocated to the Land, including without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and all proceeds thereof;

(d) all development rights associated with the Land, now existing or hereafter transferred to the Land from other real property or now or hereafter susceptible of transfer to or from the Land;

(e) all insurance proceeds paid or payable upon any damage to or destruction of any improvements or other property, whether real, personal or mixed, located on the Land;

(f) all awards and payments, including without limitation interest payments, resulting from the exercise of any right of condemnation or eminent domain or from any other public or private taking of, injury to or decrease in the value of, any of the Land or Improvements, or any agreement or conveyance in lieu of any such action;

(g) all architects', contractors' and suppliers' agreements and contracts and all plans and specifications relating to the construction and Improvements on or to the Land;

(h) any and all rights to obtain water, sewer and other services from municipalities and service districts; together with all deposits given to such entities;

(i) all of the rents, income, receipts, revenues, issues and profits of or from the Land and the Improvements;

(j) any and all rights and estates in reversion or remainder;

(k) all water and water rights, ditches and ditch rights, reservoirs and storage rights, wells and well rights, springs and spring rights, groundwater rights (whether tributary, nontributary or not-nontributary), water contracts, water allotments, water taps, shares in ditch or reservoir companies, and all other rights of any kind or nature in or to the use of water, which are appurtenant to, historically used on or in connection with, or located on or under the Land, together with any and all easements, rights of way, fixtures, personal property, contract rights, permits or decrees associated with or used in connection with any such rights;

(l) all of the following property owned by Grantor: all machinery, apparatus, equipment, furniture, furnishings, fittings and fixtures (whether actually or constructively attached, and including all trade fixtures) now or hereafter located in, on or under the Land or Improvements and used or usable in connection with any present or future operation on the Land, including but not limited to all heating, air-conditioning, gas, electricity, water, power lighting, sprinkler protection, waste removal, refrigeration, ventilation, freezing, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, ventilating, cooking, and communications apparatus; boilers, water heaters, ranges, furnaces, and burners; appliances; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; radios and television sets; bars and bar fixtures; uniforms; safes, vaults, cash registers, accounting and duplicating machines; statuary, hangings, mirrors, decorations and pictures and all additions thereto and replacements therefor;

(m) all goods, inventory, equipment, building and other materials, supplies, and other tangible and intangible personal property (including software embedded therein) of every nature now owned or hereafter acquired by Grantor and used or intended for use in the construction, development, or operation of the Land or any Improvements, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof;

(n) all of the records and books, computer programs, tapes, discs, software and other like records and information now or hereafter maintained by or on behalf of Grantor in connection with the operation of the Improvements;

(o) all franchise, operating and management agreements, liquor (to the full extent legally assignable), restaurant, occupancy and other licenses, permits and authorizations relating to the operation of the Improvements;

(p) the right to use all trademarks, trade names, marks, goodwill, software and symbols or logos used in connection with the operation of the Land or the Improvements and the good will associated therewith, provided, however, that Beneficiary shall not have the right to use the name "Wasatch Residential Group" or "Wasatch Property Management" or any derivative thereof or any trademarks associated with Wasatch Residential Group, LLC or Wasatch Property Management, Inc. or their respective Affiliates (other than Grantor);

(q) all monies in the possession of Beneficiary (including without limitation retainages and deposits for taxes and insurance), and all utility and other deposits or prepayments made by Grantor or due, payable or refundable to Grantor at any time arising out of or in connection with all or any part of the property, rights and interests described in this Section 1.16;

(r) deposit accounts and other bank or similar accounts of Grantor (together with all amounts in any such accounts), monies, accounts, accounts receivable, contract rights and general intangibles (whether now owned or existing or hereafter created or acquired, and including proceeds thereof) relating in any way to, or arising in any manner from, Grantor's ownership, use, operation, leasing, or sale of all or any part of the property, rights and interests described in this Section 1.16;

(s) any other real property acquired by Grantor after the date hereof which is adjacent or contiguous to the Land and is acquired by Grantor as a continuation, completion, correction or supplement to the Land;

(t) any and all other rights and interests of every name and nature in all property, whether real, personal or mixed, tangible or intangible, now or hereafter owned or leased by Grantor, forming a part of or used in connection with or relating to the Land and the construction, operation and convenience of the Improvements;

(u) all amounts at any time on deposit in the Interest Account or Reserve Account (each as defined in the Loan Agreement) and all renewals or substitutions thereof, additions thereto, proceeds therefrom and all amounts at any time on deposit therein together with all interest or dividends thereon;

(v) all of the Marketable Securities (as defined in the Loan Agreement) and other property constituting "Investment Property," as such term is defined in the Uniform Commercial Code in effect in the State of New York, in which the Grantor has an interest that are now or may hereafter be in the possession, custody or control of the Beneficiary;

(w) to the extent not included in the foregoing, all of the personal and fixture property of every kind and nature (including, without limitation, all furniture, fixtures, raw materials and deposit accounts, books, records, ledger sheets, files and other data and documents, including records in any form (digital or other) and recorded in or through any medium (magnetic, laser graphic or other) and all machinery and processes (including computer programming instructions) required to read and print such records, now or hereafter existing, including all letter of credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the Land's rights, titles and interests referred to in this Section, all commercial tort claims Grantor now has or hereafter acquires relating to the Land's rights, titles and interests referred to in this Section, all rights and interests, present and future, tangible and intangible, which are owned by Grantor or in which Grantor otherwise has any rights, relating to the Land's rights, titles and interests referred to in this Section, including without limitation all "accounts," "deposit accounts," "letter-of-credit rights," "goods,"

“inventory,” “equipment,” “fixtures,” “chattel paper,” “documents” and “general intangibles,” as all such quoted terms are defined in or encompassed by the Uniform Commercial Code as enacted by the State of New York and as such may be amended from time to time;

(x) any and all rights of Grantor to sums arising out of or in connection with a Hedging Agreement; and

(y) any and all proceeds from the sale or other disposition of any of the foregoing.

1.17 Secured Obligations. All of the following:

(a) Note. All indebtedness now and hereafter evidenced by the Note and any and all modifications, extensions, renewals, restatements and rearrangements of the Note.

(b) Advances. Any and all sums, together with interest thereon, which may hereafter be advanced by Beneficiary or otherwise due under the terms of this Deed of Trust or the other Loan Documents.

(c) Other Loan Documents. All present and future obligations, including, without limitation, those which constitute indebtedness of Grantor under the Loan Documents, other than the Environmental Indemnity and the Guaranty which are not secured by this Deed of Trust.

(d) Related Secured Obligations. All other loans from Beneficiary to Grantor or amounts advanced at any time by Beneficiary to Grantor in connection with or relating to the Property not otherwise specifically described in this Section.

(e) Future Indebtedness. All other indebtedness of Grantor now or hereafter incurred which provides that it is to be secured by this Deed of Trust and which is held or owned by Beneficiary, whether direct or indirect, primary or secondary, fixed or contingent, joint, several or both, and regardless of how evidenced, incurred or arising, including, but not limited to, any indebtedness incurred or arising under any of the Loan Documents or Hedging Agreement.

(f) Hedging Agreement. All Hedging Obligations of Grantor to Beneficiary or its affiliates of any nature whatsoever arising out of or in connection with any Hedging Agreement.

## ARTICLE 2 GRANTING CLAUSE

2.1 Grant to Trustee. As security for the Secured Obligations, Grantor hereby grants, bargains, sells, conveys and assigns the Property, including all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith,

to the Trustee, in trust with power of sale for the use and benefit of Beneficiary, subject to all provisions hereof.

2.2 Security Interest to Beneficiary. As additional security for the Secured Obligations, Grantor hereby grants to Beneficiary a security interest in the Collateral, including all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith. To the extent any of the Collateral has been or may be acquired with funds advanced by Beneficiary under the Loan Documents, this security interest granted hereunder is a purchase money security interest.

2.3 Fixture Filing. This Deed of Trust shall also be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas and timber to be cut), accounts and general intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Grantor and the Beneficiary are set forth at the beginning of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this section.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Grantor hereby represents and warrants to Beneficiary as follows:

3.1 Title to the Property. Grantor has good and marketable title to the Property in fee simple, subject only to those matters set forth in the Title Policy (as defined in the Loan Agreement), and Grantor is the owner of the Collateral, free of any liens, encumbrances, security interests, and other claims whatsoever, except insofar as the Collateral may be encumbered by any encumbrance listed in the Title Policy or otherwise described in the Loan Agreement. Grantor, for itself and its successors and assigns, hereby agrees to warrant and forever defend title to the Property against every person whomsoever lawfully claiming the same or any part thereof.

3.2 Governmental Authorizations. To the best of Grantor's knowledge, no authorization, approval, consent or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Grantor of any of the Loan Documents or the effectiveness of any assignment of any of Grantor's rights and interests of any kind to Beneficiary, except such as have been obtained or made and are in full force and except filings necessary to perfect liens created under the Loan Documents.



3.3 Receiver or Foreclosure Proceeding. No part of the Property is in the hands of a receiver and, to the best of Grantor's knowledge, no application for a receiver is pending, and no part of the Property is subject to any foreclosure or similar proceeding.

3.4 Access. Access to and egress from the Property are available and provided by public streets, and Grantor has no knowledge of any federal, state, county, municipal or other governmental plans to materially change the highway or road system in the vicinity of the Property or to materially restrict or change access from any such highway or road to the Property.

3.5 Assessments. There are no special or other assessments for public improvements or otherwise now affecting the Property, nor does Grantor know of any pending or threatened special assessments affecting the Property or any contemplated improvements affecting the Property that, to Grantor's knowledge, may result in special assessments. There are no tax abatements or exceptions affecting the Property.

3.6 No Defaults or Violations. Grantor has not received any notice from any governmental body having jurisdiction over the Property as to any violation of any applicable law, rule or regulation or any notice from any insurance company or inspection or rating bureau setting forth any requirements as a condition to the continuation of any insurance coverage on or with respect to the Property or the continuation thereof at premium rates existing at present which have not been remedied or satisfied. Grantor is not in default, in any manner which would materially adversely affect its properties, assets, operations or condition (financial or otherwise), in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it is a party or by which it or any of its properties, assets or revenues are bound or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award of any court or governmental body or authority.

3.7 Leases. Except as described on the Rent Roll delivered by Grantor to Beneficiary prior to the date hereof, there are no occupancy rights (written or oral), leases or tenancies presently affecting any part of the Property other than residential leases entered into in the ordinary course of business from and after the date of the Rent Roll. The Rent Roll contains a true and correct description of all occupancy agreements presently affecting the Property other than residential leases entered into in the ordinary course of business from and after the date of the Rent Roll that are substantially similar to those leases reflected on the Rent Roll.

3.8 Options. There are no options, purchase contracts or other similar agreements of any type (written or oral) presently affecting any part of the Property.

3.9 Brokerage Agreements. Except as disclosed to Beneficiary in writing, there exist no brokerage agreements with respect to any part of the Property.

3.10 Contracts. Except as otherwise disclosed to Beneficiary in writing prior to the date hereof, there are no material contracts or agreements with terms of performance in excess of one hundred eighty (180) days or not terminable by Grantor on thirty (30) days' notice presently affecting the Property.

3.11 Insurance. All insurance policies held by Grantor relating to or affecting the Property are in full force and effect and insurance coverage required by Section 4.5 hereof shall remain in full force and effect through the date of payment in full of the Note. Grantor has not received any notice of default or notice terminating or threatening to terminate any such insurance policy and Grantor has made or will make application for renewals or replacements of any of such insurance policies prior to the expiration thereof.

3.12 Grantor's Name. Grantor's exact legal name is correctly set forth on the second page of this Deed of Trust. Grantor is organized under the laws of the State of Utah.

#### ARTICLE 4 AFFIRMATIVE COVENANTS

4.1 Payment of Note and Secured Obligations. Grantor will duly and promptly pay or cause to be paid each and every installment of the principal, interest and premium, if any, on the Note, as the same become due, without notice or demand (subject to applicable notice and cure periods set forth in the Loan Documents) and will duly and punctually perform and observe all of the Secured Obligations.

4.2 Performance of Other Obligations. Grantor will perform and comply with all other covenants, terms, conditions, and prohibitions required of Grantor by the terms of the Loan Documents.

4.3 Other Encumbrances. Grantor will perform and comply in all material respects with all covenants, conditions, and prohibitions required of Grantor in connection with any other encumbrance affecting the Property, or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof.

#### 4.4 Payment of Taxes.

(a) Property Taxes. Grantor will pay prior to delinquency all general and special taxes, general and special assessments, water charges and other fees, taxes, charges and assessments of every kind and nature whatsoever ("Taxes"), whether or not assessed against Grantor, if applicable to the Property or any interest therein, or the Secured Obligations, or any obligation or agreement secured hereby; Grantor will deliver to Beneficiary, without notice or demand, duplicate receipts for payment of Taxes within thirty (30) days after payment.

(b) Right to Contest. Grantor may contest any Taxes in good faith by appropriate proceedings, on the conditions that Grantor shall first furnish to Beneficiary such security for the payment of the Taxes as Beneficiary may reasonably request and so long as, in Beneficiary's reasonable judgment, each of the following conditions is satisfied:

(i) Grantor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such tax, assessment, or charge; and

(ii) Nonpayment of such tax, assessment, or charge will not result in the loss or forfeiture of any property encumbered hereby or any interest of Beneficiary therein.

If Beneficiary determines that any one or more of such conditions is not satisfied or is no longer satisfied, Grantor will pay the tax, assessment, or charge in question, together with any interest and penalties thereon, within ten (10) days after Beneficiary gives notice of such determination.

(c) Deposit for Taxes. Upon the occurrence of an Event of Default and at any time thereafter (whether or not such initial Event of Default is subsequently cured), Beneficiary shall have the right to require, upon written notice, that Grantor deposit into the Reserve Account an amount equal to 1/12th of the amount that Beneficiary estimates will be required to pay the next annual payment of taxes, multiplied by the number of whole and partial months that have elapsed since the last annual payment of taxes. Thereafter, Grantor will deposit monthly with Beneficiary, an amount equal to 1/12th of the amount that Beneficiary estimates will be required to make the next annual payment of Taxes. The purpose of these provisions is to provide sufficient funds on hand to pay all such Taxes thirty (30) days before the date on which they become past due. In the event that Beneficiary has elected to require the deposit of Taxes in accordance with this subsection after an Event of Default, and provided such initial Event of Default has been cured and no other Event of Default exists and is continuing, Beneficiary will permit the amounts so deposited to be applied to the payment of Taxes, but in no event will Beneficiary be liable for any interest on any amount so deposited. Beneficiary shall have no responsibility to ensure the adequacy of the amounts deposited hereunder; in the event that such amounts are inadequate to pay the Taxes, Grantor shall pay the shortfall. To the extent that such amounts are in excess of that required to pay the Taxes, such excess amount shall be credited to the deposits to be made thereafter by Grantor.

(d) Intangible Taxes. If by reason of any statutory or constitutional amendment or judicial decision adopted or rendered after the date hereof, any tax, assessment, or similar charge is imposed against the Note, against Beneficiary, or against any interest of Beneficiary in any real or personal property encumbered hereby, Grantor will pay such tax, assessment, or other charge before delinquency and will indemnify Beneficiary against all loss, expense, or diminution of income in connection therewith. In the event Grantor is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Grantor from doing so, the Secured Obligations will, at Beneficiary's option, become due and payable in full upon thirty (30) days' notice to Grantor.

(e) Other Taxes. Grantor will pay prior to delinquency all federal, state and local sales, use, excise, payroll and other taxes relating to the Property and will deliver to Beneficiary, without notice or demand, duplicate receipts for payment of such taxes within fifteen (15) days after payment.

#### 4.5 Maintenance of Insurance.

(a) Coverages Required. Grantor shall maintain or cause to be maintained, with financially sound and reputable insurance companies or associations acceptable to Beneficiary in its reasonable discretion, insurance that insures the Property against such perils and hazards as Beneficiary may from time to time require, and in any event, including without limitation:

(i) all risk of loss, damage, destruction, theft, or any other casualty or risk, covering the Property including all of Grantor's personal property located therein, without deduction for depreciation, in an amount approved by Beneficiary, but in no event less than the full replacement cost thereof; such insurance should include an "Agreed Amount/Agreed Value" endorsement which amount should be at minimum 90% of the insurable value of the improvements;

(ii) during any period of alterations or construction on the Property, builder's risk insurance in an amount at least equal to the full insurable value or replacement cost of the improvements to which the alteration or construction relates;

(iii) use and occupancy insurance covering either rental income or business interruption with coverage in an amount not less than eighteen (18) months' anticipated gross rental income;

(iv) comprehensive general liability insurance covering the Property and Grantor, in an amount not less than \$10,000,000 for bodily injury and/or property damage liability per occurrence or such higher amounts as Beneficiary may reasonably require;

(v) worker's compensation insurance in accordance with the requirements of applicable law; and

(vi) boiler and machinery insurance, if applicable.

(b) Insurance Policies. All policies of insurance maintained pursuant to this Section 4.5 shall be with companies and in forms and amounts acceptable to Beneficiary in its reasonable discretion and shall provide standard mortgagee endorsements or clauses naming Beneficiary as mortgagee and as loss payee (with respect to property insurance) or additional insured (with respect to liability insurance). All required policies shall provide for thirty (30) days' written notice to Beneficiary prior to the effective date of any cancellation or modification thereof. The original or a certified copy of each insurance policy or a certificate thereof (in form and substance acceptable to Beneficiary) shall be delivered to Beneficiary.

(c) Additional Insurance. Grantor shall also maintain, at the request of Beneficiary, such hazard insurance, in addition to the insurance required above, as Beneficiary may reasonably request, including but not limited to flood (if any of the improvements located on the Land are required to be insured under the National Flood Insurance Reform Act of 1994, as amended, and the regulations promulgated thereunder), including surface waters, and earthquake (for properties with a probable maximum loss

("PML") of greater than 20%), including subsidence, all of such insurance to comply in all respects with the requirements of this Section 4.5.

(d) Renewal Policies. Grantor shall use commercially reasonable efforts to, not less than thirty (30) days prior to the expiration date of each insurance policy required pursuant to subsection 4.5(a) above, but in any event promptly upon receipt thereof from the applicable insurer, deliver to Beneficiary an appropriate renewal binder or certificate (including notices of any changes in coverage) together with evidence satisfactory to Beneficiary that the premium applicable to the insurance to be issued pursuant to such binder or certificate has been prepaid. If such renewal binder or certificate is not made available by the applicable insurer prior to thirty (30) days prior to the expiration date of such insurance policy, Grantor shall provide evidence reasonably satisfactory to Beneficiary that such policies will be renewed by such insurer at or prior to the expiration thereof.

(e) Deposit for Premiums. Upon the occurrence of an Event of Default and at any time thereafter (whether or not such initial Event of Default is subsequently cured), Beneficiary shall have the right to require, upon written notice, that Grantor deposit into the Reserve Account an amount equal to 1/12th of the amount that Beneficiary estimates will be required to make the next annual payments of the premium for the policies of insurance referred to in this Section, multiplied by the number of whole and partial months that have elapsed since the most recent policy anniversary date for each such policy. Thereafter, Grantor will deposit monthly an amount equal to 1/12th of the amount that Beneficiary estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section. The purpose of these provisions is to provide sufficient funds on hand to pay all such premiums thirty (30) days before the date on which they become past due. In the event that Beneficiary has elected to require the deposit of Taxes in accordance with this subsection after an Event of Default, and provided such initial Event of Default has been cured and no other Event of Default exists and is continuing hereunder, Beneficiary will permit the amounts so deposited to be applied to the payment of such insurance premiums when due, but in no event will Beneficiary be liable for any interest on any amounts so deposited. Grantor hereby grants Beneficiary a security interest in the funds deposited hereunder. Beneficiary shall have no responsibility to ensure the adequacy of the amounts deposited hereunder; in the event that such amounts are inadequate to pay such insurance premiums, Grantor shall pay the shortfall. To the extent that such amounts are in excess of that required to pay the insurance premiums, such excess amount shall be credited to the deposits to be made thereafter by Grantor

#### 4.6 Proceeds of Insurance.

(a) Notice to Beneficiary. Grantor will give Beneficiary prompt notice of any damage to or destruction of the Property.

(b) Right to Settle or Compromise Claims. In case of loss covered by policies of insurance, Beneficiary (or, after entry of decree of foreclosure or Trustee's sale, the purchaser at the foreclosure or Trustee's sale, as the case may be) is hereby

authorized at its option, either to (i) settle and adjust any claim under such policies in conjunction with Grantor, or (ii) allow Grantor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that Beneficiary shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be so much additional Secured Obligations, together with interest at the Default Rate, and shall be reimbursed to Beneficiary on demand.

(c) Application of Insurance Proceeds. If no Event of Default shall have occurred and be continuing and subject to the conditions set forth in Section 4.6(d) and the further condition that Beneficiary determines that the Property can be restored, repaired, replaced or rebuilt within a reasonable time prior to the maturity date of the Note, the proceeds of insurance shall be disbursed to Grantor to pay for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof; and Grantor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, always, that Grantor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the proceeds of insurance. If proceeds of insurance shall be made available to Grantor for the restoring, repairing, replacing or rebuilding of the Property, Grantor hereby covenants to restore, repair, replace or rebuild the Property, to be of at least equal value, and of substantially the same character as prior to such damage or destruction; and to be effected in accordance with plans and specifications to be first submitted to and approved by Beneficiary. Beneficiary may, prior to the application of insurance proceeds, commingle them with Beneficiary's own funds and otherwise act with regard to such proceeds as Beneficiary may determine in Beneficiary's sole discretion, provided that such commingling shall not reduce the amount of proceeds to be made available to Grantor as provided herein or in the Loan Agreement nor otherwise diminish Grantor's rights thereto.

(d) Disbursement of Insurance Proceeds. If Beneficiary elects to permit Grantor to use the proceeds to rebuild (or Grantor has a right to use such proceeds under Section 4.6(c) above), such proceeds shall be disbursed directly to Grantor for restoration, repair, replacement and rebuilding as required herein, upon Beneficiary's being furnished with: (a) satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and rebuilding; (b) funds (or assurances satisfactory to Beneficiary that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding; (c) contractors' sworn statements, certificates and lien waivers and such other evidences of cost and of payment as Beneficiary may require and approve; and (d) such other items as Beneficiary may in its reasonable discretion require; and Beneficiary may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Beneficiary prior to commencement of work.

(e) Rights Upon Foreclosure, Etc. If the Beneficiary shall, by any manner, acquire the title or estate of Grantor in or to all or any portion of the Property, it shall thereupon become the sole and absolute owner of all insurance policies affecting

such portion of the Property with the sole right to collect and retain all proceeds thereon. Grantor agrees, immediately upon demand, to execute and deliver such assignments or other authorizations or instruments as may, in the opinion of the Beneficiary, be necessary or desirable to effectuate the foregoing.

#### 4.7 Condemnation.

(a) Assignment to Beneficiary. Grantor hereby assigns, transfers and sets over to Beneficiary, the entire proceeds of any award or claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or any other public or private action, including any conveyance or agreement in lieu of any such action.

(b) Notification/Settlement. Grantor shall promptly notify Beneficiary of notice to Grantor of the institution of any proceeding or negotiations for the taking of the Property, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such action (all of the foregoing being referred to herein as a "taking"). Grantor shall keep Beneficiary currently advised, in detail, as to the status of such proceedings or negotiations and shall notify Beneficiary promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to any such action. Grantor shall promptly give Beneficiary copies of all notices, pleadings, judgments, determinations and other documents received or delivered by Grantor in connection with any such proceedings. Beneficiary may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment that may be due as a result of such taking or damaging, and may compromise or settle, in the names of both Grantor and Beneficiary, any claim for any such award or payment. Grantor shall not enter into any settlement or agreement relating to any taking of the Property without Beneficiary's prior written consent.

(c) Application. Any such award or payment is to be paid to Beneficiary and will be applied first to reimburse Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment may, in Beneficiary's sole discretion, either (i) be retained by Beneficiary and applied toward the Secured Obligations (whether or not then due) in any order that Beneficiary may elect, or (ii) be used by Grantor to restore or rebuild the Property as required by Beneficiary, in which event, the proceeds shall be held by Beneficiary and disbursed by Beneficiary to Grantor for the cost of such rebuilding or restoring. If Grantor is permitted to rebuild or restore the Property as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by Beneficiary, and proceeds of the award shall be paid out in the same manner as is provided in Section 4.6(d) hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Grantor shall pay such costs in excess of the award, before being entitled to reimbursement out of the award. Any surplus that may remain out of the award after

payment of such costs of rebuilding or restoration shall, at the option of Beneficiary, be applied to the Secured Obligations in such order or manner as Beneficiary may elect or be paid to any other party entitled thereto.

(d) No Effect on Secured Obligations. Beneficiary will have no duty to see to the application of any part of any award or payment released to Grantor. Grantor's duty to pay the Note in accordance with its terms and to perform the other Secured Obligations will not be suspended by the pendency or discharged by the conclusion of any proceedings for the collection of any such award or payment, and any reduction in the Secured Obligations resulting from Beneficiary's application of any such award or payment will take effect only when Beneficiary receives such award or payment. If this Deed of Trust has been foreclosed prior to Beneficiary's receipt of such award or payment, Beneficiary may nonetheless retain such award or payment to the extent required to reimburse Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations.

4.8 Maintenance and Repair of Property; Compliance with Laws, Etc. Grantor will at all times maintain the Property in good condition and repair, will diligently prosecute the completion of any building or other improvement that is at any time in the process of construction on the Property, and will promptly repair, restore, replace, or rebuild any part of the Property that may be affected by any casualty or any public or private taking or injury to the Property. All costs and expenses arising out of the foregoing shall be paid by Grantor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Grantor will comply in all material respects with all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property, including but not limited to any environmental or ecological requirements provided, that so long as Grantor is not otherwise in default hereunder, the Grantor may, upon providing Beneficiary with security satisfactory to Beneficiary in its reasonable discretion, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement.

4.9 Mechanics' Liens. Grantor will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen, and other such persons, and will cause any recorded statement of any such lien to be released of record within thirty (30) days after the recording thereof. Notwithstanding the preceding sentence, however, Grantor will not be deemed to be in default under this section if and so long as Grantor (a) contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and (b) provides a bond in an amount equal to 150% of the lien, in a form and with a bonding company reasonably acceptable to Beneficiary.

4.10 Defense of Actions. Grantor will defend, at Grantor's expense, any action, proceeding or claim which affects any property encumbered hereby or any interest of Beneficiary in such property or in the Secured Obligations, and will indemnify and hold Beneficiary harmless from all loss or damage or reasonable cost or expense (including reasonable attorneys' fees) that Beneficiary may incur in connection therewith. Such duty to



defend shall not apply to Beneficiary to the extent the subject of the proceeding or claim is caused by or arises out of the gross negligence or willful misconduct of Beneficiary.

4.11 Further Assurances; Estoppel Certificates. Grantor will execute and deliver to Beneficiary upon demand, and pay the costs of preparation and recording thereof, any further documents that Beneficiary may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Grantor will also, within ten (10) Business Days after any request by Beneficiary, deliver to Beneficiary a signed and acknowledged statement certifying to Beneficiary, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note, and (b) whether Grantor claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses; provided, however, that so long as no Event of Default is continuing, Beneficiary will not request any such statement more than one (1) time in any twelve (12) month period.

4.12 Name Change. Grantor shall notify Beneficiary in writing of any proposed change in its name at least sixty (60) days in advance of the effectiveness of such change.

4.13 Books and Records. Grantor shall keep and maintain full and accurate accounts and records of operations in accordance with GAAP and shall permit Beneficiary and its duly authorized agents to inspect and copy such accounts and records including recorded data of any kind or nature, regardless of the medium of recording, including, without limitation, software, writings, plans, specifications and schematics, at any reasonable time and upon reasonable notice (provided that no such notice shall be required at any time that an Event of Default has occurred and is continuing.)

4.14 Indemnity. Grantor shall reimburse and pay Beneficiary for all reasonable fees, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and legal expenses and consultants' and experts' fees and expenses), incurred or expended in connection with (i) the breach by Grantor of any representation or warranty contained in any of the Loan Documents, (ii) the failure by Grantor to perform any agreement, covenant, condition, indemnity or obligation contained in any of the Loan Documents, (iii) Beneficiary's exercise of any of its rights and remedies under any of the Loan Documents, (iv) any Loan or any actual or proposed use of the proceeds therefrom, or (v) the protection of the Project and the liens thereon and security interests therein. Grantor shall indemnify and hold harmless Beneficiary and persons or entities owned or controlled by or affiliated with Beneficiary and their respective directors, officers, shareholders, partners, employees, consultants and agents (herein individually called an "Indemnified Party," and collectively called "Indemnified Parties") from and against, and reimburse and pay Indemnified Parties with respect to, any and all claims, demands, liabilities, losses, damages (including without limitation, actual, consequential, exemplary and punitive damages), causes of action, judgments, penalties, fees, costs and expenses (including, without limitation, attorneys' fees, court costs and legal expenses and consultants' and experts' fees and expenses), of any and every kind or character, known or unknown, fixed or contingent, that may be imposed upon, asserted against or incurred or paid by or on behalf of any Indemnified Party on account of, in connection with, or arising out of (a) any bodily injury or

death or property damage occurring in or upon or in the vicinity of the Project through any cause whatsoever, (b) any act performed or omitted to be performed hereunder or the breach of or failure to perform any warranty, representation, indemnity, covenant, agreement or condition contained in any of the Loan Documents, (c) any transaction, act, omission, event or circumstance arising out of or in any way connected with the Project or with any of the Loan Documents, (d) the violation of or failure to comply with any statute, law, rule, regulation or order now existing or hereafter occurring, including, without limitation, environmental laws and statutes, laws, rules, regulations and orders relating to pollutants, contaminants, wastes or hazardous, dangerous or toxic substances as more particularly described in the Environmental Agreement, and (e) failure to pay any Loan Expense; however, such indemnities shall not apply to (i) any Indemnified Party to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such Indemnified Party; or (ii) to the extent the subject of the indemnification is caused by the Indemnified Party (or its successors and assigns) after such Indemnified Party (or its successors and assigns) takes actual possession of the Property after a foreclosure or deed in lieu thereof. The foregoing indemnities do not run to the benefit of a purchaser at a foreclosure sale other than an Indemnified Party; provided, however, with respect to any Indemnified Party the foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Deed of Trust, but shall survive foreclosure of the liens and security interests created by this Deed of Trust or conveyance in lieu of foreclosure and the repayment and performance of the Loan and the discharge and release of the liens and security interest created by this Deed of Trust and the other Loan Documents. Any amount to be paid hereunder by Grantor to Beneficiary or for which Grantor has indemnified an Indemnified Party shall be a demand obligation owing by Grantor to Beneficiary and shall bear interest at the Default Rate until paid, and shall constitute a part of the Secured Obligations.

## ARTICLE 5 GRANTOR'S NEGATIVE COVENANTS

5.1 Waste and Alterations. Grantor will not commit or permit any waste with respect to the Property. Grantor shall not cause or permit any part of the Property, including but not limited to any building, structure, parking lot, driveway, landscape scheme, or underground improvement, to be removed, demolished, or altered without the prior written consent of Beneficiary.

5.2 Zoning and Private Covenants. Grantor will not initiate, join in, or consent to (i) any change in any zoning ordinance or classification, any change in the "zone lot" or "zone lots" (or similar zoning unit or units) presently comprising the Property, (ii) any transfer of development rights, (iii) any change in any private restrictive covenant, or (iv) any change in any other public or private restriction limiting or defining the uses that may be made of the Property or any part thereof, without the express written consent of Beneficiary. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Grantor will not cause such use to be discontinued or abandoned without the express written consent of Beneficiary.

5.3 Prohibited Transfers and Encumbrances. Grantor shall not, either directly or indirectly, create, effect or consent to or suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the

Property or any part thereof, or interest therein, except as specifically permitted by the Loan Agreement.

5.4 Assessments Against Property. Grantor will not, without the prior written approval of Beneficiary, which may be withheld for any reason, consent to the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or allow to occur any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property, and to the greatest extent permitted by applicable law, these provisions shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Grantor or any other person or entity include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, the rights of Beneficiary in the Property pursuant to this Deed of Trust or following any foreclosure of this Deed of Trust, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Property or any portion thereof as a result of inclusion of the Property in such district or districts.

5.5 Transfer or Removal of Chattels. Grantor will not sell, transfer or remove from the Property all or any part of the Collateral except that Grantor may sell, transfer or remove from the Property, such Collateral as from time to time becomes worn out or obsolete, provided that such Collateral is replaced with like collateral having similar value.

5.6 Improper Use of Property. Grantor will not use the Property for any purpose or in any manner which violates in any material respect any applicable law, ordinance, license, permit or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

5.7 Change of Use or Name. Grantor will not change its name without the prior written notice to Beneficiary as provided under Section 4.12. Grantor's exact legal name is correctly set forth in the introductory paragraph of this Deed of Trust. Grantor is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust.

## ARTICLE 6 UNIFORM COMMERCIAL CODE

6.1 Security Agreement. This Deed of Trust constitutes a Security Agreement under the Uniform Commercial Code of the State of New York as it may be amended from time to time (herein called the "Code") and all of the terms, provisions, conditions and agreements contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. The following provisions of this Article 6 shall not limit the generality or applicability of any other provision of this Deed of Trust but shall be in addition thereto.

## 6.2 Representations, Warranties and Covenants.

(a) Grantor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien of this Deed of Trust and the matters set forth in the Title Policy or otherwise as permitted in the Loan Agreement;

(b) the Collateral (other than the Marketable Securities) shall be used by Grantor solely for business purposes, being installed upon the Property for Grantor's own use or as the equipment and furnishings furnished by Grantor, as landlord, to tenants of the Property;

(c) the Collateral (other than the Marketable Securities) shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Beneficiary (being the Secured Party as that term is used in the Code); and the Collateral may be affixed to such real estate but shall not be affixed to any other real estate;

(d) no financing statement covering any of the Collateral or any proceeds thereof is on file in any public office except as described in the Title Policy; and Grantor will, at its cost and expense, upon demand, furnish to Beneficiary such further information and will execute and deliver to Beneficiary such financing statements and other documents in form satisfactory to Beneficiary and will do all such acts and things as Beneficiary may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances except as otherwise permitted herein; and Grantor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument in all public offices wherever filing or recording is deemed by Beneficiary to be necessary or desirable; and

(e) for so long as any of the Secured Obligations shall remain outstanding, Grantor shall not change its jurisdiction of organization.

## 6.3 Remedies.

(a) Upon any Event of Default hereunder, and at any time thereafter during the continuance thereof, Beneficiary at its option may declare the Secured Obligations immediately due and payable, all as more fully set forth in Article 8 hereof, and thereupon, Beneficiary shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Grantor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place on which the Collateral or any part thereof may be situated and remove the same therefrom (provided, that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for

sale, until disposed of, or may propose to retain the Collateral subject to Grantor's right of redemption, if any, in satisfaction of Grantor's obligations, as provided in the Code. Beneficiary without removal may render the Collateral unusable and dispose of the Collateral on the Property. Beneficiary may require Grantor to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary that is reasonably convenient to both parties. Beneficiary shall give Grantor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Grantor referred to in Section 10.12 of this Deed of Trust at least five (5) days before the time of the sale or disposition. Beneficiary may buy at any public sale, and Beneficiary may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type that is the subject of widely distributed standard price quotations. Any such sale may be held as part of and in conjunction with any judicial foreclosure sale or Trustee's sale of the real estate comprised within the Property, the Collateral and real estate to be sold as one lot if Beneficiary so elects. The net proceeds realized upon any such disposition after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable fees and disbursements of attorneys and their staff incurred by Beneficiary, shall be applied in satisfaction of the Secured Obligations; and Beneficiary shall account to Grantor for any surplus realized on such disposition.

#### 6.4 Other.

(a) The remedies of Beneficiary hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Beneficiary, including without limitation having the Collateral deemed part of the realty upon any judicial foreclosure or Trustee's sale thereof so long as any part of the Secured Obligations remains unsatisfied;

(b) The terms and provisions contained in this Article 6 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and

(c) This Deed of Trust constitutes a financing statement under the Code with respect to the Collateral. As such, this Deed of Trust covers all items of the Collateral that are or become fixtures on the Property.

(d) Grantor will, from time to time at the reasonable request of Beneficiary, supply Beneficiary with a current inventory of the Collateral, in such detail as Beneficiary may reasonably require.

6.5 Fixture Filing. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code against all of the Property that is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of

Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

6.6 Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without signature of Grantor as authorized by applicable law, as applicable to the Collateral. For purposes of such filings, Grantor agrees to furnish any information related thereto requested by Beneficiary promptly upon written request by Beneficiary. Grantor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Deed of Trust. Grantor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section 6.6, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

#### ARTICLE 7 EVENTS OF DEFAULT

Each of the following events shall constitute a default (an "Event of Default") under this Deed of Trust and under each of the other Loan Documents:

7.1 Default Under Loan Agreement. The occurrence of any "Event of Default" under and as defined in the Loan Agreement.

7.2 Appointment of Receiver. The appointment of a trustee or receiver for the assets, or any part thereof, of Grantor, or the appointment of a trustee or receiver for any real or personal property, or the like, or any part thereof, representing the security for the Secured Obligations, that is not dismissed within sixty (60) days.

7.3 Assertion of Priority. The assertion of any claim of priority over this Deed of Trust, by title, lien, or otherwise, unless Grantor within thirty (30) days after receipt of notice of such assertion either causes the assertion to be withdrawn or provides Beneficiary with such security as Beneficiary may require to protect Beneficiary against all loss, damage, or expense, including attorneys' fees, that Beneficiary may incur in the event such assertion is upheld.

7.4 Breach of Certain Covenants. Notwithstanding anything contained in the Loan Agreement, a breach of any covenant contained in any of Sections 4.6, 4.7 or 5.3 hereof.

#### ARTICLE 8 BENEFICIARY'S REMEDIES

Immediately upon or any time after the occurrence and continuation of any Event of Default hereunder, Beneficiary may exercise any remedy available at law or in equity,

including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Beneficiary may determine in Beneficiary's sole discretion:

8.1 Acceleration. Beneficiary may, without notice or demand, declare all of the Secured Obligations to be immediately due and payable in full.

8.2 Performance of Defaulted Obligations. Beneficiary may make any payment or perform any other obligation under the Loan Documents which Grantor has failed to make or perform, and Grantor hereby irrevocably appoints Beneficiary as the true and lawful attorney-in-fact for Grantor to make any such payment and perform any such obligation in the name of Grantor. All payments made and reasonable expenses (including attorneys' fees) incurred by Beneficiary in this connection, together with interest thereon at the Default Rate from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Grantor to Beneficiary. In lieu of advancing Beneficiary's own funds for such purposes, Beneficiary may use any funds of Grantor which may be in Beneficiary's possession, including but not limited to insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

8.3 Specific Performance and Injunctive Relief. Notwithstanding the availability of legal remedies, Beneficiary will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Grantor to cure or refrain from repeating any default.

8.4 Suit for Monetary Relief. With or without accelerating the maturity of the Secured Obligations, Beneficiary may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Grantor's default under any of the Loan Documents.

8.5 Possession of Property. Beneficiary may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may lease or rent all or any part of the Property, either in Beneficiary's name or in the name of Grantor, and may collect the rents, issues, and profits of the Property. Any revenues collected by Beneficiary under this section will be applied first toward payment of all reasonable expenses (including attorneys' fees) incurred by Beneficiary, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance, if any, will be applied against the Secured Obligations.

8.6 Enforcement of Security Interests. Beneficiary may exercise all rights and remedies set forth in Article 6 above, including all rights of a secured party under the Uniform Commercial Code.

8.7 Foreclosure.

(a) Without limiting any of Beneficiary's rights under this Article 8, Grantor agrees that, upon the occurrence of an Event of Default, Beneficiary may:

(i) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary will cause to be filed for record; or

(ii) with respect to any Collateral, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Land, or proceed to sell the Collateral separately and without regard to the Land in accordance with Beneficiary's rights and remedies.

(b) If Beneficiary elects to foreclose by exercise of the power of sale in this Deed of Trust, Beneficiary will also deposit with Trustee this Deed of Trust, the Note, and any receipts and evidence of expenditures made and secured as Trustee may require. If notice of default has been given as then required by law, and after lapse of the time that may then be required by law, after recordation of the notice of default, Trustee, without demand on Grantor, will, after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels as Trustee determines, and in any order that it may determine, at public auction to the highest bidder. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time after that may postpone the sale by public announcement at the time fixed by the preceding postponement, and without further notice make the sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any notice of default at any time before Trustee's sale by executing a notice of rescission and recording same. The recordation of the notice will constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of the Secured Obligations affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission will not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations, or remedies of Beneficiary or Trustee. After sale, Trustee will deliver to the purchaser its deed conveying the property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts will be conclusive proof of their truthfulness. Any person, including Grantor, Trustee, or Beneficiary, may purchase at that sale. Grantor expressly waives any right of redemption after sale that Grantor may have at the time of sale or that may apply to the sale.

(c) Trustee, upon the sale, will make (without any covenant or warranty, express or implied), execute and, after due payment made, deliver to a purchaser and its heirs or assigns a deed or other record of interest, as the case may be, to the Property sold, which will convey to the purchaser all the title and interest of Grantor in the Property and will apply the proceeds of the sale in payment,

(i) first, of the expenses of the sale together with the expenses of the trust, including, without limitation, reasonable attorneys' fees, that will become due on any default made by Grantor, and also any sums that Trustee or



Beneficiary have paid for procuring a search of the title to the Property subsequent to the execution of this Deed of Trust; and

(ii) second, of the Secured Obligations then remaining unpaid, and the amount of all other monies with interest in this Deed of Trust agreed or provided to be paid by Grantor.

Trustee will pay the balance or surplus of the proceeds of sale to Grantor and its successors or assigns as its interests may appear.

(d) If there is a sale of the Property, or any part of it, and the execution of a deed for it, the recital of default and of recording notice of breach and election of sale, and of the elapsing of the required time between the recording and the following notice, and of the giving of notice of sale, and of a demand by Beneficiary that the sale should be made, will be conclusive proof of the default, recording, election, elapsing of time, and the due giving of notice, and that the sale was regularly and validly made on proper demand by Beneficiary. Any deed with these recitals will be effectual and conclusive against Grantor, its successors, and assigns, and all other persons. The receipt for the purchase money recited or in any deed executed to the purchaser will be sufficient discharge to the purchaser from all obligations to see to the proper application of the purchase money.

(e) The right to foreclose this Deed of Trust by appropriate proceedings in any court of competent jurisdiction is also hereby given.

(f) Notwithstanding any contrary provision of this Deed of Trust, (i) in the event that any provision hereof regarding foreclosure shall conflict with applicable Utah law, Grantor and Trustee shall conduct any non-judicial foreclosure in accordance with applicable Utah law; and (ii) in the event of a default by Grantor under this Deed of Trust, Beneficiary may elect to foreclose this Deed of Trust by judicial foreclosure or in the means provided in Utah law for the foreclosure of a mortgage or to enforce the provisions of this Deed of Trust by any other legal means.

8.8 Appointment of Receiver. (a) Upon or at any time after the occurrence and continuation of any Event of Default, Beneficiary shall at once become entitled to the possession, use and enjoyment of the Property and the rents, issues and profits thereof, from the date of such occurrence and continuing during the pendency of any proceedings for sale by the trustee or foreclosure proceedings, and the period of redemption, if any. Beneficiary shall be entitled to a receiver for the Property, and of the rents, issues and profits thereof, after any such default, including, without limitation, the time covered by any proceedings for sale by the trustee or foreclosure proceedings and the period of redemption, if any. Beneficiary shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Grantor, or of the then owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon *ex parte* application, and without notice, notice being hereby expressly waived, and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver to the payment of the Secured Obligations according to the orders and directions of the court, or in the absence of such orders or directions, in the

manner set forth in subsection (c) below. (b) Such receiver and his agents shall be empowered (i) to take possession of the Property and any businesses conducted by Grantor or any other person (excluding the business of tenants of Grantor) thereon and any business assets used in connection therewith and, if the receiver deems it appropriate, to operate the same, (ii) to exclude Grantor and Grantor's agents, servants, and employees from the Property, (iii) to collect the rents, issues, profits, and income therefrom, (iv) to complete any construction that may be in progress, (v) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (vi) to use all stores of materials, supplies, and maintenance equipment on the Property, (vii) to pay all taxes and assessments against the Property and all premiums for insurance thereon, (viii) to pay all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (ix) generally to do anything that Grantor could legally do if Grantor were in possession of the Property. All reasonable expenses incurred by the receiver or his agents shall constitute a part of the Secured Obligations. (c) Any revenues collected by the receiver shall be applied first to the reasonable expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the Default Rate from the date that is thirty (30) days after the date incurred until repaid, and the balance shall be applied toward the Secured Obligations or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until the Secured Obligations have been discharged in full, or until title to the Property has passed after foreclosure sale and all applicable periods of redemption have expired.

8.9 Right to Take Possession. Upon or at any time after the occurrence and continuation of any Event of Default, Beneficiary may, at its option, without notice, and whether or not the indebtedness evidenced by the Note and secured hereby shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) make, cancel, enforce or modify Leases; (iii) obtain and evict tenants; (iv) fix or modify rents; (v) do any acts which Beneficiary deems reasonably proper to protect the security hereof; and (vi) either with or without taking possession of the Property, in its own name sue for or otherwise take any and all actions Beneficiary deems necessary or advisable to collect and receive such rents, issues and profits, including, without limitation, those past due and unpaid. In connection with the foregoing, Beneficiary shall be entitled and empowered to employ attorneys and their staff, and management, rental or other agents in and about the Property and to effect the matters which the Beneficiary is empowered to do, and if Beneficiary shall itself effect such matters, Beneficiary shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the fees, charges, costs and expenses of Beneficiary or such persons shall be so much additional Secured Obligations. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or invalidate any act done pursuant to said notice.

8.10 Right to Make Repairs, Improvements. Should any part of the Property come into the possession of Beneficiary, whether before or after an Event of Default, Beneficiary may use, operate, and/or make repairs, alterations, additions and improvements to the Property

for the purpose of preserving it or its value. Grantor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, or at such other place as may be designated by Beneficiary in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Beneficiary in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the Default Rate, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Property is undertaken by Grantor and, except for Beneficiary's willful misconduct or gross negligence, Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

8.11 Waivers. To the full extent that the covenants and waivers contained in this Section are permitted by law, but not otherwise, (a) Grantor hereby waives any and all rights under, and covenants and agrees that it will not at any time insist upon or plead or in any manner whatsoever claim or take advantage of, any stay, exemption, moratorium or extension law hereafter in effect and Grantor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to Trustee or Beneficiary, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws have been made or enacted; and (b) Grantor hereby waives, and subordinates to the lien of this Deed of Trust, any rights that Grantor may have in or to the Property as a homestead exemption under existing law or under any similar law that may hereafter be enacted, such waiver and subordination to be effective in connection with either a trustee's or foreclosure sale under this Deed of Trust or Beneficiary's redemption of the Property in the case of a trustee's or foreclosure sale to enforce an encumbrance prior in right to that of this Deed of Trust.

8.12 Substitution of Trustee. In the event of the death, removal, resignation, refusal to act, or the inability to act of Trustee, or in Beneficiary's sole unfettered discretion for any reason whatsoever, Beneficiary may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor trustee. Such substitute trustee shall not be required to give bond for the faithful performance of its duties unless required by Beneficiary. Such substitute trustee shall be appointed by written instrument duly recorded in the county where the Property is located, which appointment may be executed by an authorized agent of Beneficiary, and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or its successors or assigns in this trust shall do lawfully by virtue hereof. Grantor hereby agrees, on behalf of itself and its heirs, executors, administrators, legal representatives and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute trustee, acting under the provisions of this Deed of Trust, shall be prima facie evidence of the facts recited therein, and that it should not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

ARTICLE 9  
RESERVED

ARTICLE 10  
MISCELLANEOUS PROVISIONS

10.1 Effect of Extensions of Time and Amendments On Junior Liens and Others. If the payment of the Secured Obligations, or any part thereof, is extended or varied, or if any part of the security is released, all persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect, the right of recourse against all such persons following foreclosure of this Deed of Trust being expressly reserved by Beneficiary, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, deed of trust or other lien upon the Property or any interest therein, shall take that lien subject to the rights of Beneficiary herein to amend, modify and supplement the Loan Documents (including this Deed of Trust), and to extend the maturity of the Secured Obligations, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Deed of Trust losing its priority over the rights of any such junior lien.

10.2 Joint and Several Obligations. If Grantor is more than one person or entity, then all persons or entities comprising Grantor are jointly and severally liable for all of the Secured Obligations.

10.3 Mortgagee in Possession. Nothing herein contained shall be construed as constituting Trustee or Beneficiary a mortgagee in possession.

10.4 Title in Grantor's Successors. If the ownership of the Property becomes vested in a person or persons other than Grantor, Trustee and Beneficiary may, without notice to Grantor, deal with such successor or successors in interest of Grantor with reference to this Deed of Trust and the Secured Obligations in the same manner as with Grantor. Grantor will give immediate notice to Beneficiary of any conveyance, transfer or change of ownership of the Property, but nothing in this Section 10.4 contained shall vary or negate the provisions of Section 5.3 hereof.

10.5 Rights Cumulative. Each right, power and remedy of Beneficiary under this Deed of Trust and the other Loan Documents is cumulative and in addition to every other right, power or remedy, existing or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy set forth herein or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

10.6 Waiver. Neither Grantor nor Beneficiary shall be deemed to have waived any provision of this Deed of Trust or any other Loan Document unless such waiver is in writing and is signed by the party being charged. Without limiting the generality of the foregoing, neither Beneficiary's acceptance of any payment with knowledge of a default by Grantor, nor any failure by Beneficiary to exercise any remedy following a default by Grantor shall be deemed a waiver of such default, and no waiver by Beneficiary of any particular default on the part of Grantor shall be deemed a waiver of any other default or of any similar default in the future.

10.7 No Third Party Beneficiaries. No person shall be a third-party beneficiary of or be entitled to assert any rights in connection with any provision of any of the Loan Documents. All provisions of the Loan Documents are intended solely for the benefit of Grantor and Beneficiary.

10.8 Preservation of Liability and Priority. Without affecting the liability of Grantor or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, and without impairing in any way the priority of this Deed of Trust over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Beneficiary may, either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy that Beneficiary may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any and all such actions by Beneficiary.

10.9 Successors and Assigns. This Deed of Trust and every covenant, agreement and other provision hereof shall be binding upon Grantor and its successors and assigns (including without limitation each and every subsequent record owner of the Property or any other person having an interest therein other than tenants of the Property), and shall inure to the benefit of Beneficiary and Trustee and their successors and assigns. Wherever herein Beneficiary is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each subsequent holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded Beneficiary hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder were herein by name specifically granted such rights, privileges, powers, options and benefits and were herein by name designated Beneficiary.

10.10 Provisions Severable/Illegality. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to

such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

10.11 Captions and Pronouns. The captions and headings of the various sections of this Deed of Trust are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

10.12 Addresses and Notices. Any notice required or permitted to be given to Grantor or Beneficiary pursuant to any provision of this Deed of Trust shall be in writing and shall be (i) hand delivered, (ii) sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent by Federal Express or other nationally recognized overnight courier service and, if hand delivered shall be deemed received when delivered, if mailed, shall be deemed received three (3) Business Days after having been deposited in the United States mail, and if sent by Federal Express or other nationally recognized overnight courier service shall be deemed received one (1) Business Day after having been deposited with Federal Express or other nationally recognized overnight courier service if designated for next day delivery addressed as follows:

(a) if to Grantor, at the address of Grantor shown above in the initial paragraph of this Deed of Trust and with a copy to:

Kirton McConkie, P.C.  
50 East South Temple Street, Suite 400  
Salt Lake City, Utah 84111  
Attention: Tyler Buswell and David Wilson

(b) if to Beneficiary, at the address of Beneficiary shown above in the initial paragraph of this Deed of Trust to the attention of Donna Park and with a copy to:

Bryan Cave Leighton Paisner LLP  
2 N. Central Ave., Suite 2100  
Phoenix, AZ 85004-4406  
Attention: Quinn C. Wheeler, Esq.

Either Grantor or Beneficiary may change its address for the giving of notice hereunder by giving notice of such change of address in accordance herewith.

10.13 Further Assurances. Grantor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of Beneficiary, for the better assuring, conveying, mortgaging, assigning and

confirming unto Beneficiary or Trustee all property encumbered hereby or property intended so to be, whether now owned by Grantor or hereafter acquired.

10.14 Recording. Grantor will cause this Deed of Trust and all other documents securing the Secured Obligations at all times to be properly filed and/or recorded at Grantor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of Trustee and Beneficiary and will furnish to Beneficiary promptly after the execution and delivery of this Deed of Trust the Title Policy, insuring that this Deed of Trust has been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby.

10.15 Governing Law. The creation of this Deed of Trust and the rights and remedies of Beneficiary with respect to the Land, the Improvements and the Fixtures, as provided herein and by the laws of the State where the Land is located, shall be governed by and construed in accordance with the internal laws of the State where the land is located, without giving effect to its principles of conflicts of law. With respect to all other provisions of this Deed of Trust, such provisions shall be deemed to have been made under and shall be governed by the laws of the State of New York in all respects. Without limiting the right of the Beneficiary to bring any action or proceeding against Grantor or against the property of Grantor arising out of or relating to any obligation of Grantor under this Deed of Trust or any other Loan Document (an "Action") in the courts of other jurisdictions, Grantor hereby irrevocably agrees, with respect to any Action, to submit to the jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan in New York City, and Grantor hereby irrevocably agrees that any Action may be heard and determined in such New York State court or in such Federal court. Grantor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in any such court. Grantor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by certified or registered mail or by Federal Express or other nationally-recognized overnight courier service addressed to any address specified as a notice address for Grantor hereunder or by hand delivery to an individual person of suitable age and discretion at any of such addresses. Such service will be complete on the date such process is so mailed or delivered. Grantor may also be served in any other manner permitted by law.

10.16 Time of Essence. Time is of the essence of this Deed of Trust and all other Loan Documents and all of the terms, conditions and provisions hereof and thereof.

10.17 **WAIVER OF JURY TRIAL**. GRANTOR AND BENEFICIARY HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL OF ANY CLAIM, COUNTERCLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY SECURED OBLIGATION OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THE OBLIGATION. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS

RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS DEED OF TRUST AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GRANTOR AND BENEFICIARY FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DEED OF TRUST, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN CONTEMPLATED BY THIS DEED OF TRUST. IN THE EVENT OF LITIGATION, THIS DEED OF TRUST MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY JUDGE WITHOUT JURY.

10.18 Waiver of Homestead and Other Exemptions. To the extent permitted by law, Grantor hereby waives all rights to any homestead or other exemption to which Grantor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

10.19 Non Agricultural. The property which is the subject matter of this Deed of Trust is not used principally for agricultural purposes.

10.20 Counterparts. This Deed of Trust may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

10.21 Prohibited Drug Law Activities.

(a) Grantor shall not enter into any Lease, license, sublease, occupancy agreement or other agreement with any Person involving or relating to the use or occupancy of the Property (or any portion thereof) which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances, including without limitation any Person engaged or intending to engage in activities (whether for commercial or personal purposes) regulated under any Utah law or other applicable law relating to the medicinal use and/or distribution of marijuana (otherwise known as the Compassionate Use Act of 1996) ("Prohibited Drug Law Activities"). Every Lease, license, sublease, occupancy agreement and/or other agreement involving or relating to the use or occupancy of the Property entered into by Grantor during the term of the Loan shall expressly prohibit the tenant or other occupant of the Property (or any portion thereof) from engaging or permitting others to engage in any Prohibited Drug Law Activities. In the event that Grantor becomes aware from any source that any tenant or other Person is or may be using, occupying and/or leasing the Property (or any portion thereof) with the intent to engage, and/or is engaged, in any Prohibited Drug Law Activities, Grantor shall terminate its agreement with such Person (to the extent permitted by such agreement) and take all actions permitted under applicable law to discontinue such activities in or on the Property, and shall immediately notify Beneficiary of Grantor's notice regarding said



Prohibited Drug Law Activities and Grantor's actions to terminate such activities. Grantor shall keep Beneficiary advised of each action it takes or plans to take in compliance with the requirements of this Section.

(b) Compliance with the covenants in this Section is a material consideration and inducement to Beneficiary in its agreement to make the Loan to Grantor, and any failure of Grantor to comply with the foregoing requirements shall constitute an Event of Default hereunder. In addition, and not by way of limitation, Grantor hereby agrees to indemnify, defend and hold Beneficiary harmless from and against any actual loss, claim, damage or liability (excluding special, consequential or punitive damages, diminution in value or lost profits) arising from or related to Grantor's breach or violation of said covenants, including without limitation any seizure and forfeiture to the United States without compensation to Beneficiary, free and clear of Beneficiary's first lien security interest in and to the Property, or any action taken by the state or federal government to accomplish same. Grantor shall, within ten (10) Business Days following a request from Beneficiary, provide Beneficiary with a written statement setting forth its efforts to comply with the provisions of this Section and stating whether to Grantor's knowledge any Prohibited Drug Law Activities are or may be on-going and/or have occurred in, on or around the Property.

10.22 Reconveyance. Upon payment and performance in full of the Secured Obligations, Beneficiary shall instruct Trustee to reconvey the Property and shall surrender this Deed of Trust and the Note to Trustee. Trustee shall reconvey the Property without warranty to the Grantor or to such other person or persons legally entitled to the Property. Grantor or such other person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

10.23 Notice of Default and Sale. Beneficiary requests that a copy of any notice of default and any notice of sale hereunder be mailed to Beneficiary at the address set forth herein.

## ARTICLE 11 LOCAL LAW PROVISIONS

### 11.1 State Specific Provisions.

(a) Any reference herein to Grantor as grantor shall also mean Grantor in its capacity as trustor under a deed of trust.

(b) As used herein, the term "Beneficiary" includes the Beneficiary named herein or any future owner or holder, including pledgee and participants, of the Note, or any other instrument secured hereby, or any participation. References to "foreclosure" and related phrases shall be deemed references to the appropriate procedure in connection with Trustee's private power of sale as well as any judicial foreclosure proceeding or a conveyance in lieu of foreclosure.

(c) Any foreclosure proceeding hereunder shall be in accordance with applicable Utah law.

(d) Grantor's obligation to pay, reimburse or indemnify Beneficiary with respect to losses shall include, without limitation, the out-of-pocket fees and costs of Beneficiary's legal counsel and consultants, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses reasonably incurred.

(e) Reserved.

(f) For purposes of Utah Code Ann. Section 57-1-28, Grantor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under any Note or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

(g) In the event of any amendment to the provisions of Utah Code Ann. Title 57 or other provisions of the Utah Code Ann. referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

11.2 Utah Specific Waivers. If Beneficiary invokes the power of sale, then the procedures outlined in Sections 57-1-19 through 57-1-36, Utah Code Ann., as hereinafter supplemented and amended, shall apply in place of any inconsistent procedures specified herein, and such Sections are hereby incorporated into this Deed of Trust, *mutatis mutandis*, by this reference.

11.3 Appointment of Receiver. Grantor specifically agrees that if an Event of Default shall have occurred and be continuing, Beneficiary, upon application to a court of competent jurisdiction, as set forth in the Utah Uniform Commercial Real Estate Receivership Act, and as a matter of strict right without notice, except as required by applicable law, and without regard to occupancy or value of any security for the debt secured hereby or the solvency of any party bound for its payment, without any showing of fraud or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver to take possession of, and to operate the Property and to collect and apply the proceeds of the assignment of production contained herein and all other rents, issues, profits and revenues of the Property. The receiver shall have all of the rights, powers and protections granted to the receiver or Beneficiary herein, or otherwise permitted under the laws of the State of Utah. Grantor will pay to the receiver or Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this section, and all such expenses shall be secured by this Deed of Trust.

11.4 One Action Rule and Deficiency Statute. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under Utah Code Annotated Sections 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits. Grantor agrees for purposes of Utah Code Ann. Section 57-1-32 that the value of the Property as determined and set forth in a FIRREA appraisal of the Property, obtained by Beneficiary 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 Ann. Section 57-1-32.

11.5 Integration. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4(2)(d), GRANTOR IS NOTIFIED THAT THE NOTE, THIS DEED OF TRUST AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE LOAN OBLIGATIONS 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.

11.6 Principles of Constructions. In the event of any inconsistencies between the terms and conditions of this Article 11 and the other terms and conditions of this Deed of Trust, the terms and conditions of this Article 11 shall control and be binding.

THIS DOCUMENT IS A "TRUST DEED" AS DEFINED IN UTAH CODE ANNOTATED SECTION 57-1-19. THIS DOCUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AS A "FIXTURE FILING," AS DEFINED IN UTAH UNIFORM COMMERCIAL CODE SECTION 70A-9a-102(40)(a), AND IS RECORDED IN ACCORDANCE WITH THE UTAH UNIFORM COMMERCIAL CODE SECTION 70A-9a-501(1) AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES AS PROVIDED IN UTAH UNIFORM COMMERCIAL CODE SUBSECTION 70A-9a-501(1)(a)(ii). THIS DOCUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH SECTIONS UTAH CODE ANNOTATED 70A-9a-502(3) OF THE UTAH UNIFORM COMMERCIAL CODE.

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EXECUTED as of the date first set forth above.

GRANTOR:

AF 500 EAST HOLDINGS, LLC  
a Utah limited liability company

By:

Jeffrey Nielson, Manager

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

On February 17, 2020, before me Lauren Ashley, a Notary Public, personally appeared Jeffrey Nielson, as Manager of AF 500 EAST HOLDINGS, LLC, a Utah limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lauren Ashley (Seal)



EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Parcel 1: Lot 3, WASATCH-SAVAGE SUBDIVISION, American Fork, Utah, according to the official plat thereof on file in the office of the Utah County Recorder.

Parcel 2: Lot 5, WASATCH-SAVAGE SUBDIVISION, American Fork, Utah, according to the official plat thereof on file in the office of the Utah County Recorder.

Parcel 3: Parcel A, WASATCH-SAVAGE SUBDIVISION, American Fork, Utah, according to the official plat thereof on file in the office of the Utah County Recorder.

Parcels 1, 2 and 3 are TOGETHER WITH AND SUBJECT TO easements set forth in Conditional Grant of Access in favor of Sun Valley Apartment Holdings, LLC, Lundahl Family Associates, L.C., and Draper West Retail, LLC, the right of access from the landowners' property to SR-180, recorded December 15, 2017, as Entry No. 124420:2017, of Official Records.

Tax Parcel No.: 55-848-0011 and 55-848-0005

Exhibit A