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Book - 10561 Pg - 2402-2440  
Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 39 P.

This instrument was prepared by, and  
after recordation should be returned to:

Greer, Herz & Adams, LLP  
Attn: Darryl H. Levy  
2525 South Shore Blvd., Suite 203  
League City, Texas 77573

Assessor's Parcel No. 27-36-151-042

CT-91593-AF

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

This Deed of Trust, Security Agreement and Financing Statement (hereinafter termed "Agreement") is entered into as of the 25th day of May, 2017, by **BG VISTA OFFICE 7, L.C.**, a Utah limited liability company (hereinafter termed "**Trustor**"), whose mailing address is 101 South 200 East, Suite 200, Salt Lake City, Utah 84111, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation (hereinafter termed "**Trustee**"), whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121 as trustee, for the benefit of **AMERICAN NATIONAL INSURANCE COMPANY**, a Texas insurance company (hereinafter termed "**Beneficiary**"), whose mailing address is Attention: Mortgage and Real Estate Investment Department, 2525 South Shore Blvd., Suite 207, League City, Texas 77573.

I. **DEFINITIONS**

A. The term "**Indebtedness**" shall mean and include:

(1) any and all sums becoming due and payable pursuant to the Note, as hereinafter defined;

(2) any and all other sums becoming due and payable by Trustor to Beneficiary including, but not limited to, such sums as may hereafter be borrowed by Trustor from Beneficiary (it being contemplated that such future indebtedness may be incurred), including, but not limited to advancements or expenditures made by Beneficiary pursuant to the terms and conditions of this Agreement or any other Loan Document, as hereinafter defined;

(3) any and all obligations, covenants, agreements and duties of any kind or character of Trustor now or hereafter existing, known or unknown, arising out of or in connection with the Note, this Agreement or any other Loan Document; and

(4) any and all renewals, extensions, modifications, increases, consolidations and

rearrangements of any or all of the obligations, covenants, agreements and duties of Trustor defined herein under the term Indebtedness, whether or not Trustor executes any renewal, extension, modification, increase, consolidation or rearrangement relating thereto.

B. The term “**Collateral**” shall mean and include (1) any and all of the goods, articles of personal property, accounts, general intangibles, instruments, documents, furniture, furnishings, equipment and/or fixtures of every kind and nature whatsoever (including without limitation, the items described in subsections (2) - (6) herein now or hereafter owned by Trustor, in or hereafter placed in or used or which may become used, in connection with or in the use, enjoyment, ownership or operation of the Mortgaged Premises (as hereinafter defined) together with all additions thereto, replacements thereof, substitutions therefor and all proceeds therefrom; (2) any and all rents, rentals, payments, compensations, revenues, profits, incomes, leases, licenses, concession agreements, insurance policies, plans and specifications, contract rights, accounts, escrowed funds and general intangibles in any way relating to the Mortgaged Premises or used or useful in the use, enjoyment, ownership or operation of the Mortgaged Premises; (3) any and all of Trustor’s right, title and interest, if any, in all names, trade names, signs, marks and trademarks under or by which the Mortgaged Premises may at any time be operated or known, all rights to carry on business under any such names, trade names, signs, marks and trademarks or any variant thereof, any goodwill in any way relating to the Mortgaged Premises and all of Trustor’s rights to carry on the business of Trustor under all such names, trade names, signs, marks and trademarks or any variant thereof; (4) any and all deposits, awards, damages, payments, escrowed monies, insurance proceeds, condemnation awards or other compensation, and interests, fees, charges or payments accruing on or received from or to be received on any of the foregoing in any way relating to the Mortgaged Premises, or the ownership, enjoyment or operation of the Mortgaged Premises together with all proceeds of the foregoing described in this Section I(B); (5) any and all cash, securities, un-certificated securities, investment property, securities accounts, financial assets, deposit accounts, securities entitlements and other personal property now or hereafter in or coming into or being credited to, or represented by any of the foregoing described in this Section I(B), including, without limitation, any and all interest, dividends, rights, options, powers, splits and income thereon; and (6) any and all products, proceeds, substitutions, and replacements of any of the above described collateral.

C. The term “**Mortgaged Premises**” shall mean and include (1) the real property situated in the City of Draper, Salt Lake County, State of Utah, described on Exhibit “A”, which is attached hereto and incorporated herein for all purposes; together with all of Trustor’s right, title and interest in and to all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all materials now or hereafter placed thereon intended for construction, reconstruction, alteration and repair of such buildings and improvements, all of which materials shall be deemed to be included as a part of said real property immediately upon the delivery thereof to said real property; (2) Trustor’s right, title and interest in and to all fixtures now or hereafter owned by Trustor and attached to, contained in or used in connection with said land, and all renewals and replacements thereof, including but not limited to (a) all equipment, apparatus, machinery, motors, elevators, fittings and radiators, (b) all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment, (c) all awnings, storm windows and doors, mantels, cabinets, computer flooring, rugs, carpeting, linoleum, stoves, shades, draperies,

blinds and water heaters, (d) such other goods and chattels and personal property as are usually furnished by landlords in letting an unfurnished building, or which shall be attached to said buildings and improvements by nails, screws, bolts, pipe connections, masonry or in any other manner and (e) all built-in equipment as may be shown by plans and specifications; and (3) the air space and right to use said air space above the Mortgaged Premises to the extent owned by Trustor, all rights of ingress and egress by pedestrians and motor vehicles to parking facilities on or within the Mortgaged Premises, and all easements now or hereafter affecting same, royalties and all rights appertaining to the use and enjoyment of the Mortgaged Premises, including, without limitation, alleys, drainage, sewer, mineral, water, oil and gas rights, rights-of-way, vaults, ways, passages, water courses, water rights and powers, and all estates, rights, titles, interests, reversionary interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Mortgaged Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto and the reversion and reversions, remainder and remainders thereof.

D. The term “**Mortgaged Property**” shall mean (1) the Mortgaged Premises, (2) the Collateral and (3) any and all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the foregoing, hereafter acquired by, or released to, Trustor, or constructed, assembled or placed by Trustor or by others for Trustor’s benefit thereon, and all conversions of the security constituted thereby, which immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further conveyance, assignment or other act by Trustor, shall become subject to the lien of this Agreement as fully and completely, and with the same effect, as though now owned by Trustor and specifically described herein.

E. The term “**Note**” shall mean that certain Promissory Note of even date herewith in the principal sum of \$22,000,000.00 executed by Trustor and made payable to the order of Beneficiary, with a maturity date of June 1, 2027, and payable with interest in installments as stipulated therein and providing for the right to declare the unpaid principal balance due and payable upon the occurrence of an Event of Default (as defined herein) and otherwise as provided therein and providing for reasonable attorneys’ fees, and any and all notes given in renewal, extension, modification, increase, consolidation or rearrangement of said Note or any portion thereof.

F. The term “**Loan Documents**” shall mean, individually and collectively, the Note, this Agreement and any and all other documents securing, evidencing or relating to the Indebtedness.

## II. **CONVEYANCE IN TRUST**

In consideration of Ten and 00/100 Dollars (\$10.00) cash in hand paid, of Beneficiary’s advancing or extending to Trustor the funds or credit constituting a part of the Indebtedness, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby conveys to Trustee the above-described Mortgaged Property, in trust, with power of sale, for the purpose of securing the Indebtedness, and the full and complete performance of each and every obligation, covenant, duty and agreement of Trustor contained herein or in the Note or any

other document executed by Trustor pertaining to the Note or as security therefor; TO HAVE AND TO HOLD the Mortgaged Property, together with the rights, privileges and appurtenances thereto belonging unto the Trustee and his substitutes or successors forever, and Trustor is hereby bound to warrant and forever defend the Mortgaged Property unto the Trustee, his substitutes or successors and their assigns, against the claims of all persons claiming any interest in the Mortgaged Property or any part thereof save and except only these items identified on Exhibit "B" attached hereto and incorporated herein for all purposes (the "Permitted Exceptions").

### III. ADDITIONAL SECURITY

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of Trustor contained herein or contained in any other document executed by Trustor pertaining to the Note or the security therefor:

A. Security Interest. Trustor hereby grants and conveys to Beneficiary a security interest in and lien on all of the Collateral. This Agreement shall serve as a Security Agreement under the Utah Uniform Commercial Code (the "UCC") and under any other applicable law, and Beneficiary shall have and may exercise all rights, remedies and powers of a secured party under the UCC. Trustor hereby represents, warrants and covenants that Trustor (1) is the owner and holder of the Collateral free and clear of any adverse claim, security interest or encumbrance, except those created herein or the Permitted Exceptions; (2) will defend the Collateral, and the priority of the security interest created herein as a valid first security interest against any and all claims and demands of any person at any time claiming the same or any interest therein; (3) authorizes Beneficiary to file or record such other and further agreements, financing statements and assignments in such offices and at such times as it is deemed by Beneficiary to be necessary or desirable; and (4) will execute and deliver to Beneficiary such other and further agreements, financing statements and assignments as Beneficiary may request with respect to preserving Beneficiary's security in the Mortgaged Property.

This Agreement is intended to constitute a fixture filing in accordance with the applicable provisions of the UCC or other applicable law. The debtor is Trustor and the secured party is Beneficiary and each of their addresses are those set forth at the beginning of this Agreement. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the UCC), and this Agreement, upon being filed for record in the real estate records of the county wherein the Mortgaged Premises are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC or other applicable law upon such Mortgaged Property that is or may become fixtures. Trustor is the owner in fee simple of the Land.

B. Assignment of Condemnation Awards. To the extent of the full amount of the Indebtedness secured hereby and of the reasonable cost and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Beneficiary in the collection of any award or payment, Trustor hereby assigns to Beneficiary any and all awards or payments, including, without limitation, all interest thereon, together with the right to receive the same, which may be made with respect to the Mortgaged Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decreased value in the

Mortgaged Property, as well as the right, but not the obligation, to, at Trustor's sole cost and expense, participate in and make decisions concerning the progress of any proceeding involving any such award or payment. Trustor shall give Beneficiary written notice of any such action or proceeding immediately upon Trustor's becoming aware of same. All such damages, condemnation proceeds and consideration shall be paid directly and solely to Beneficiary upon the occurrence of any of the events described in this Section III.B.(a) – (c) above, and after first applying said sums to the payment of all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Beneficiary in obtaining such sums, Beneficiary may, at its option, apply the balance on the Indebtedness, in any order and whether or not then due, without prepayment or penalty, or to the restoration of the Mortgaged Property, or release the balance to Trustor. Said application or release shall not cure or waive any default.

#### IV. ABSOLUTE ASSIGNMENT OF RENTS

In further consideration for the Indebtedness, Trustor hereby absolutely and unconditionally assigns to Beneficiary all rents, revenues, profits and incomes from the Mortgaged Property or any portion thereof; provided, however, that so long as no Event of Default has occurred, Trustor is hereby granted a license to collect and retain the currently accruing rents, income and profits from the Mortgaged Property, but in no event may Trustor collect same for more than one (1) month in advance of the date upon which such rents become due. If an Event of Default shall occur, however, thereupon, and at any time thereafter such default is continuing, Beneficiary may terminate such license and may, without any liability to Trustor, take possession and control of the Mortgaged Property and/or receive and collect all rents, revenues, profits and income, accrued or accruing thereafter so long as any of the Indebtedness remains unpaid, applying so much thereof as may be collected, first to the expenses incident to taking possession and/or the collection thereof, second to the payment of the Indebtedness other than the Note and third to the amount of the Note then remaining unpaid, at Beneficiary's discretion, either principal or interest, in any order, and whether then matured or not, paying the balance, if any, to Trustor. It is intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only and that Beneficiary shall be entitled to exercise its rights hereunder whether or not Beneficiary is in possession of the Mortgaged Premises at such time. Trustor agrees to fulfill or perform each and every covenant of any and all leases and enforce guaranties of leases of the Mortgaged Property so as to keep all such leases and lease guaranties at all times in full force and effect, and not to make any modification (including, without limitation, any consent to any sale, assignment, transfer or hypothecation of a lease by the tenant under any existing lease of the Mortgaged Property, except any such sale, assignment, transfer or hypothecation that is expressly permitted under any such existing lease of the Mortgaged Property without the Trustor's consent, approval or agreement), consent to any modification of (including, without limitation, any consent to any sale, assignment, transfer or hypothecation of a lease by the tenant under any existing lease of the Mortgaged Property, except any such sale, assignment, transfer or hypothecation that is expressly permitted under any such existing lease of the Mortgaged Property without the Trustor's consent, approval or agreement), or cancel, terminate or consent to the surrender of any lease of all or any part of the Mortgaged Property or any guaranty of such lease after such lease or guaranty has been executed by Trustor and the lessee or guarantor, as applicable, except as required by such lease

or otherwise, without the prior written consent of Beneficiary, which shall not be unreasonably withheld (however, Beneficiary may withhold its consent to any reduction in the term of any lease or any reduction in rent in Beneficiary's sole and absolute discretion); the failure to fulfill or perform any such covenant under a lease beyond all applicable notice and cure periods, or the making of or consent to any such modification or cancellation, termination or surrender shall be an Event of Default (as defined herein). Notwithstanding the foregoing, Trustor may enter into, or cancel, modify (other than any reduction in the rent or in the lease term) terminate or consent to the surrender of, a lease meeting the following terms in the exercise of its commercially reasonable business discretion without the prior written consent of Beneficiary: (i) the proposed lease is an arm's length transaction, on economic terms conforming to current market conditions, with a tenant that is not an affiliate of Trustor, and (ii) the leased premises under the proposed lease are not in excess of 10,000 square feet. Nothing contained in this Agreement or in any other Loan Document shall preclude Beneficiary from taking any action to cure or remedy any default of the landlord or lessor under any lease of all or any portion of the Mortgaged Property or any guaranty of lease, or any act, omission or occurrence which but for the passage of time, the giving of notice or both, would be a default under any such lease or guaranty of lease or take any other action in connection therewith and any amounts expended by Beneficiary in connection with such cure or remediation including, without limitation, reasonable attorneys' fees and expenses, shall be an advance under and secured by this Agreement and shall be included in the Indebtedness and shall be paid by Trustor to Beneficiary on demand. The preceding sentence shall not be construed to obligate Beneficiary to cure any such actual or potential lease defaults or any defaults of Trustor under any guaranty of lease.

#### V. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce Beneficiary to lend the funds evidenced by the Note, Trustor represents and warrants that:

A. Accurate Loan Information. All information and financial statements furnished or to be furnished to Beneficiary by or on behalf of Trustor in connection with the Indebtedness secured by this Agreement is or at the time of delivery will be complete and accurate in all material respects as of the dates of such reports.

B. Valid Title. Trustor is the lawful owner of the Mortgaged Property and has valid right and lawful authority to mortgage, hypothecate and pledge the same.

C. Freedom from Encumbrances. The Mortgaged Property is free from any and all liens and encumbrances save and except only the Permitted Exceptions and those created herein, and Trustor does hereby warrant and will defend its title in and to the Mortgaged Property against any and all claims or demands by third parties whatsoever, save and except only the Permitted Exceptions.

D. Maintenance of Lien Priority. Trustor shall take all steps as may be necessary to preserve and protect the validity and priority of the liens on the Mortgaged Property created hereby. Trustor shall execute, acknowledge and deliver any and all such additional documents as Beneficiary

may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on the Mortgaged Property. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintenance of the security interest and the liens herein created as valid first and subsisting liens shall be paid by Trustor.

E. Value of the Mortgaged Property. To Trustor's knowledge, Trustor acknowledges that the value of the Mortgaged Property, as established by the appraisal submitted by Trustor to Beneficiary, is substantially in excess of the Indebtedness secured hereby. Trustor acknowledges that but for the Mortgaged Property having a value in excess of the amount of the Indebtedness, Beneficiary would not make the loan evidenced by the Note and advance the funds thereunder. Trustor agrees that Beneficiary shall at all times have the benefit of the Mortgaged Property as the security for the Indebtedness even though the value thereof may now or in the future exceed the amount of the Indebtedness secured hereby.

F. Representations, Warranties and Covenants of a Limited Liability Company. Trustor hereby represents, warrants and covenants that:

(1) Trustor is a Utah limited liability company formed pursuant to Articles of Organization filed with the Office of the Utah Department of Commerce, Division of Corporations and Commercial Code, on or about March 21, 2016 (the "Certificate"), and operates pursuant to that certain Operating Agreement dated effective on or about April 1, 2016 (the "Company Agreement"; with the Certificate, individually and collectively, the "Governing Documents") and there is no other operating agreement or amendments thereto or to the Company Agreement.

(2) Trustor is managed by The Boyer Company, L.C., a Utah limited liability company, and KC Gardner Company, L.C., a Utah limited liability company (each, a "Manager").

(3) Any Manager, acting alone and without joinder of any other Manager, is authorized to execute and deliver the Note, this Agreement and any and all other documents which Beneficiary may now or from time to time hereafter require to be executed on behalf of Trustor in connection with the Note, this Agreement or the Indebtedness, including but not limited to renewals, extensions, modifications, increases, consolidations and rearrangements of the Note and this Agreement, and no signature or any other action of any other person or entity shall be required to bind Trustor.

(4) Trustor will not modify, amend or terminate the Governing Documents in any way adverse to Beneficiary nor, except for Permitted Transfers (as defined herein), permit any interest of any member to be sold, transferred, conveyed, encumbered or otherwise the subject of any Transaction (as defined herein).

(5) Except for Permitted Transfers, Trustor will not permit any interest of any Constituent Owner (as defined herein) to be sold, transferred, conveyed, encumbered or otherwise the subject of any Transaction.

G. Construction and Materials. Trustor hereby warrants, represents and covenants that all persons and entities who have provided labor or materials to or for the benefit of the Mortgaged Property by, through or under Trustor or otherwise at Trustor's direction or request at any time on or prior to the date of this Agreement have been paid in full or will be paid as such in the normal course.

H. Hazardous Waste. Trustor hereby represents and warrants that to Trustor's knowledge, and except as disclosed in the environmental report delivered to Beneficiary in connection with the Loan (the "Environmental Report"), Trustor is not aware of any facts or circumstances which may give rise to any litigation, proceedings, investigations, citations or notices of violations resulting from the use, presence, generation, manufacture, storage, discovery or disposition of, on, under or about the Mortgaged Property or the transport to or from the Mortgaged Property of any Hazardous Materials (as defined below) in violation of applicable law. Trustor hereby represents and warrants that, to Trustor's knowledge, and except as disclosed in the Environmental Report, the Mortgaged Property is not in violation of and Trustor covenants and agrees not to use and to use commercially reasonable efforts to prohibit the use of the Mortgaged Property for any purpose which would be in violation of, any Environmental Laws, as defined below, including, without limitation, with respect to industrial hygiene or to health or environmental conditions on, under or about the Mortgaged Property (including, but not limited to, soil and ground water conditions) or with respect to the owner's or occupant's thereof. The foregoing representations and warranties shall survive foreclosure under this Agreement and shall constitute continuing representations and warranties to Beneficiary, its successors and assigns, as to conditions existing prior to foreclosure or in deed in lieu of foreclosure only. The term "Hazardous Materials" as used in this Agreement shall include but not be limited to:

- (1) petroleum, petroleum based products and oil;
- (2) asbestos of any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (sometimes known as a "pcb");
- (3) tanks, whether underground or above ground, and whether empty, filled or partially filled with any substance, material, chemical or other waste;
- (4) any substance, material, chemical or other waste including, without limitation, any explosive, flammable substances, explosives or radioactive materials, hazardous or toxic waste, hazardous or toxic materials, hazardous, toxic or radioactive substances, contaminants or pollutants and any of the preceding which are defined as or included in the definition of "Hazardous Substance", "Hazardous Waste", "Hazardous Material" or "Toxic Substance" or other similar or related terms under any applicable local, state or federal statute, regulation, ordinance or publication, as such statutes, regulations, ordinances and publications may be amended from time to time (individually and collectively the "Environmental Laws"), including but not limited to the statutes listed below including but not limited to:



(a) Resource Conservation and Recovery Act of 1976 (commonly referred to as the Solid Waste Disposal Act), 42 U.S.C. sec. 6901 et seq.;

(b) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sec. 9601 et seq.;

(c) Clean Air Act, 42 U.S.C. sec. 7401 et seq.;

(d) the Water Pollution and Prevention and Control Act (commonly referred to as the Clean Water Act) 33 U.S.C. sec. 1251 et seq.;

(e) Hazardous Materials Transportation Act, 49 U.S.C. sec. 5101 et seq.;

(f) Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. sec. 136 et seq.;

(g) Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq.;

(h) Safe Drinking Water Act, 42 U.S.C. sec. 300(f) et seq.;

(i) any and all analogous or otherwise applicable State of Utah laws, rules regulations, orders or decrees; and

(j) any other material, substance, chemical or other waste, exposure to which is prohibited, limited or regulated from time to time by any federal, state or local statute, regulation, ordinance or publication or may pose a hazard to the health and/or safety of the occupants of the Mortgaged Property or any other adjacent or nearby property,

as such statutes, regulations, ordinances and publications may be amended from time to time; and shall include, but not be limited to, any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Environmental Laws or may pose a hazard to the health and/or safety of the occupants of the Mortgaged Property or any other property.

NOTWITHSTANDING ANY NON-RECOURSE LANGUAGE WITHIN THE NOTE OR THIS AGREEMENT, Trustor hereby agrees to INDEMNIFY AND HOLD HARMLESS Beneficiary, its directors, officers, employees, attorneys, contractors and agents, and any successors and assigns, their directors, officers, employees, and agents (individually and collectively the "Indemnitees"), from and against any and all loss, damage, expense or liability (including reasonable attorneys' fees and all investigatory expenses) incurred arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials on or about the Mortgaged Property by Trustor, its present tenants or any future tenants, any prior owner, operator or tenant of the Mortgaged Property or any third party, including, without limitation, (i) all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials by Trustor, past, present or

future tenants, owners or operators of the Mortgaged Property, or any third party, and (ii) the cost of any required or necessary repair, cleanup or detoxification, claimed, threatened or asserted, against any such Indemnitee. SUCH INDEMNIFICATION AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNITEES AND FOR ANY ACTION OR OCCURRENCE FOR WHICH THE INDEMNITEES MAY INCUR STRICT LIABILITY, but such indemnity and hold harmless shall not apply with respect to any Hazardous Substances which first occurred on the Mortgaged Property after any foreclosure of this Agreement or conveyance in lieu thereof, after the sale of the Mortgaged Property pursuant to a Transaction (as defined herein) undertaken with Beneficiary's consent as provided hereinbelow, or to the extent that such loss, damage, expense or liability is caused by or attributable to such Indemnitee's negligence or willful misconduct. Trustor's obligations pursuant to the foregoing indemnification and hold harmless shall survive any termination of the estate created by this Agreement whether as a result of the exercise by Beneficiary of any default remedies available to Beneficiary at law or in equity or otherwise. Trustor acknowledges and agrees that as a condition precedent to making the loan to Trustor evidenced by the Note secured by this Agreement, Beneficiary has required that Trustor provide to the Indemnitees the indemnification set forth herein, and that Beneficiary would not consummate the loan without this indemnification and hold harmless, and that the indemnification and hold harmless contained herein is a material inducement for Beneficiary's agreement to make the loan. Further, Trustor agrees that the foregoing indemnification and hold harmless is separate, independent of and in addition to Trustor's undertakings as Trustor under the Note, as Trustor under this Agreement, as assignor under the Absolute Assignment of Leases and Rents and any and all other documents, agreements and undertakings executed by Trustor in favor of Beneficiary pursuant to the Note. Trustor agrees that a separate action may be brought to enforce the provisions of this indemnification and hold harmless, which shall in no way be deemed to be an action on the Note or under this Agreement, whether or not Beneficiary would be entitled to a deficiency judgment following a foreclosure sale of the Mortgaged Property.

Except as otherwise disclosed to Beneficiary in writing, to Trustor's knowledge, the present use and occupancy of the Mortgaged Property do not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, Environmental Laws, zoning, building, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not and if a third-party is required under any covenants, conditions and restrictions of record or any other agreement to consent to the use and/or operation of the Mortgaged Property, Trustor has obtained such approval from such party;

To Trustor's knowledge, the Mortgaged Property has never been used, nor has Trustor used the Mortgaged Property, for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Materials. Except as disclosed in the Environmental Report, no Hazardous Materials, to Trustor's knowledge, exist on or under the Mortgaged Property or in any surface water(s) or groundwater(s) on or under the Mortgaged Property. Except as may be disclosed in the Environmental Report, to Trustor's knowledge, the

Mortgaged Property and its prior uses have at all times complied with all Environmental Laws, and Trustor has not violated, and will not violate, any Environmental Laws;

There are no facilities on the Mortgaged Property which are subject to reporting under any State laws or Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. sec. 11022), and federal regulations promulgated thereunder. The Mortgaged Property does not contain any underground storage tanks.

## VI. ADDITIONAL COVENANTS OF TRUSTOR

As long as any of the Indebtedness remains unpaid, Trustor covenants and agrees that:

A. Payment of Indebtedness. Trustor will pay the Indebtedness promptly when due and payable.

B. Payment of Taxes and Other Assessments. Trustor will pay or cause to be paid any and all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Mortgaged Property or on the interest created by this Agreement, or any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the interest created by this Agreement, and at least ten (10) days before said taxes, assessments and other governmental charges or impositions become delinquent and will use commercially reasonable efforts to exhibit receipts therefor to Beneficiary upon request. If any tax, assessment or other governmental charge is levied, assessed or imposed on Beneficiary as a legal holder of the Note or any interest in the Loan Documents by any governmental authority, unless all such taxes are paid by Trustor as they become due and payable and in the opinion of Beneficiary after consultation with its general counsel, such payment by Trustor is lawful and does not place Beneficiary in violation of any law, then Beneficiary, at its option, declare the Indebtedness due and payable within sixty (60) days of receipt of notice of levy of such tax, assessment, or government charge, but in this event no prepayment premium shall be due or payable as a result. Notwithstanding the foregoing, Trustor shall have the right to challenge any such levy, assessment or imposition; provided, however, that (i) such a challenge shall be lawful; (ii) such a challenge shall not place Beneficiary in violation of any law; (iii) Trustor shall indemnify and hold Beneficiary harmless from any and all loss, liability, cost or expense that may arise due to Trustor's challenge; and (iv) such contested item and all costs and penalties, if any, shall have been paid at least thirty (30) days before the date on which the Mortgaged Property, or any portion thereof, may be sold in order to satisfy any such contested items. Upon a final determination as to Trustor's challenge, Trustor shall immediately pay any and all such taxes, assessments or other governmental charges deemed to be due and payable. If Trustor fails to timely pay or cause such amounts to be paid prior to delinquency, Beneficiary may, at its option declare the Indebtedness immediately due and payable.

C. Insurance. Trustor shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, flood (in the event any of the Mortgaged Premises is

within a 100-year flood plain and flood insurance is available pursuant to the United States Flood Disaster Protection Act of 1973 or any similar or successor statute or successor governmental authority), vandalism, malicious mischief and such other hazards, casualties or other contingencies and in such amounts (but in no event less than the greater of the amount of the Indebtedness from time to time secured hereby or the full replacement value thereof) as from time to time may be reasonably required by Beneficiary, and maintain rents or rental value insurance coverage, in an amount at least adequate to cover twelve (12) months' principal and interest installments on the Note and together with twelve (12) months' property taxes and insurance premiums, with respect to the Mortgaged Property covering the risk of loss due to the occurrence of any of the foregoing hazards, in each case and in such amounts, in such manner and in such companies as Beneficiary may approve in writing, with insurance companies that maintain an A.M. Best financial rating of at least A – X, and all such policies shall contain a waiver of subrogation and provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses without contribution, including one providing that such insurance as to the interest of Beneficiary shall not be invalidated by any act or omission or neglect of Trustor, to be attached to each policy) be payable to Beneficiary. Trustor shall cause duplicate originals of any and all such insurance policies to be deposited with Beneficiary. Trustor will also carry public liability insurance, in such form, amounts and with such companies as Beneficiary may from time to time reasonably require, with Beneficiary included thereon as a named insured. Any or all of such policies may be provided under a blanket policy or policies provided such blanket policies allocate the amount of insurance required hereunder to the Mortgaged Property.

Trustor shall cause duplicate originals of any and all such insurance policies to be deposited with Beneficiary, or certificates of the insurers under such policies evidencing same. At least ten (10) days prior to the date the premiums on each such policy or policies shall become due and payable, Trustor shall furnish to Beneficiary evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be canceled or modified without at least ten (10) days' prior written notice to Beneficiary. In the event of loss under any such policy, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary. With respect to all insurance policies except public liability insurance, Beneficiary is hereby authorized, but not required, on behalf of and at the expense of Trustor, upon an Event of Default, to make proof of loss, to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Property, to appear in and prosecute any action arising from any of such insurance policies and to apply, at Beneficiary's option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to be released to Trustor, but any such application or release shall not cure or waive any Event of Default. If no event of default exists, all proceeds shall be held and applied in accordance with Article X below.

D. Escrow for Taxes and Insurance. The requirements for escrows for insurance and taxes have been conditionally waived by Beneficiary so long as no Termination of Escrow Waiver Event occurs. A "Termination of Escrow Waiver Event" means one or more of the following has occurred: (i) an Event of Default has occurred and is continuing; (ii) the insurance or taxes on all or any portion of the Mortgaged Property have not paid prior to delinquency; (iii) Trustor does not own the Mortgaged Property or the subject loan has been assumed by a borrower without Beneficiary's

prior written approval, which approval may be given or withheld in Beneficiary's sole and absolute discretion; and (iv) Beneficiary has notified Trustor that Beneficiary has determined, in its sole and absolute discretion, that a material adverse change has occurred in the financial capacity of any tenant of the Mortgaged Property (or any guarantor of any such tenant's obligations) that is obligated to pay for or reimburse Trustor for all or any portion of the taxes and/or insurance on all or any portion of the Mortgaged Property. If a Termination of Escrow Waiver Event occurs, thereafter Trustor shall pay, in addition to the installments payable under the Note, on the same day as such installments are due and payable, a sum equal to 1/12th of the estimated annual taxes, hazard and rental insurance premiums, and special assessments, if any, next due on the Mortgaged Property. If the amount so paid is not sufficient to pay such taxes, insurance premiums and assessments when due, then Trustor will immediately deposit with Beneficiary amounts sufficient to pay the same. Funds deposited by Trustor pursuant to this provision shall be used to pay such taxes, insurance premiums and assessments when due, provided that Trustor has furnished Beneficiary with all tax statements, premium notices and other such notices at least thirty (30) days prior to the date that any such taxes, premiums and assessments may be due. If there is an Event of Default under the provisions of the Note, this Agreement or any other Loan Document, Beneficiary may elect, at any time after such an Event of Default, to apply the funds accumulated under this provision against the Indebtedness in any manner or order. No interest shall accrue or be allowed on any payments under the provisions of this paragraph. Beneficiary shall not be required to deposit or hold monies in an account special or separate from its general funds. Except to the extent caused by the negligence or willful misconduct of Beneficiary, Trustor expressly releases Beneficiary from any liability to Trustor arising out of the maintenance by Beneficiary of an escrow as provided herein or for payment of any sums out of such escrow. Trustor further indemnifies Beneficiary against claims arising out of payment of taxes or insurance premiums where Trustor has failed to provide Beneficiary with tax statements and premium notices as required hereby. The maintenance by Beneficiary of an escrow for taxes and insurance shall not relieve Trustor of its obligations under this Agreement respecting taxes and insurance on the Mortgaged Property if such escrow is insufficient or otherwise applied as provided in accordance with this Agreement. A charge of \$200.00 per month for administration expenses shall be assessed against Trustor for each successive month that all paid tax receipts and insurance policies are not delivered to Beneficiary within thirty (30) days after written notice to Trustor of failure to deliver such documents.

E. PATRIOT Act.

(1) As of the date of this Agreement, Trustor is and, during the term of this Agreement, shall remain in full compliance with all the applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, including but not limited to, conducting any activity or failing to conduct any activity, if such action or inaction constitutes a money laundering crime, including any money laundering crime prohibited under the Money Laundering Control Act, 18 U.S.C. sec. 1956, 1957, or the Bank Secrecy Act, 31 U.S.C. sec. 5311 et seq. and any amendments or successors thereto and any applicable regulations promulgated thereunder.

(2) Trustor represents and warrants that: (a) neither it, nor any of its Constituent Owners (as defined below), or any officer, director, member, manager, partner or employee, is or will become named as a “Specially Designated National and Blocked Person” as designated by the United States Department of the Treasury’s Office of Foreign Assets Control or as a person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit or supports terrorism; (b) Trustor is not owned or controlled, directly or indirectly, by the government of any country that is subject to any United States embargo; (c) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a “Specially Designated National and Blocked Person,” or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit or supports terrorism; and that it is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation; (d) no funds will be used to make any payments due hereunder or pursuant to the Note which were obtained directly or indirectly from a Specially Designated National and Blocked Person or otherwise derived from a country that is subject to a United States Embargo; and (e) no current or future tenant of any portion of the Mortgaged Property, nor, to Trustor’s actual knowledge, any officer, director, member, manager, partner or Constituent Owner of such tenant, is or will become named a “Specially Designated National and Blocked Person”; provided, however, that, in the event that a tenant of any portion of the Mortgaged Property is a publicly-traded company whose shares are listed on a national stock exchange, such representation and warranty shall not apply to shareholders of such tenant.

(3) Trustor acknowledges that it understands and has been advised by legal counsel on the requirements of the applicable laws referred to above, including, the Money Laundering Control Act, 18 U.S.C. sec. 1956, 1957, the Bank Secrecy Act, 31 U.S.C. sec. 5311 et seq., the applicable regulations promulgated thereunder, and the Foreign Assets Control Regulations, 31 C.F.R. sec. 500 et seq.

(4) Trustor shall notify Beneficiary immediately upon receipt of any information indicating a breach of this Section VI(E) or if Trustor or any officer, director, member, manager, member, employee or Constituent Owner of Trustor is custodially detained on charges relating to money laundering, whereupon Beneficiary shall be entitled to take all actions necessary so that Beneficiary is in compliance with all anti-money laundering regulations. Any and all loss, damage, liability, penalty, fine or expense (including, without limitation, reasonable attorneys’ fees and investigatory expenses) incurred by Beneficiary in connection therewith, including but not limited to attorney’s fees, shall be included in the Indebtedness secured hereunder and shall immediately be due and payable by Trustor to Beneficiary.

F. Waste, Demolition, Alteration or Replacement. Trustor will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Mortgaged Premises, without the prior written consent of Beneficiary, and will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner

and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Trustor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the prior written consent of Beneficiary and unless immediately replaced with like property of at least equal value unless such property is worn out or obsolete. Trustor shall act as necessary to continue or cause the continuance of such income producing activity as is presently conducted upon or contemplated for the Mortgaged Property.

G. Inventory of Personal Property. Upon the written request of Beneficiary, Trustor shall deliver to Beneficiary an inventory describing and showing the make, model, serial number and location of any and all fixtures and personal property owned by Trustor and from time to time used exclusively in the management, maintenance and operation of the Mortgaged Property (other than inventory or property, if any, expressly excluded from the operation of this Agreement by separate written agreement), with a certification by Trustor that said inventory is a true and complete schedule of such fixtures and personal property owned by Trustor and used in the management, maintenance and operation of the Mortgaged Property and that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Mortgaged Property, and, except as previously disclosed and agreed to in writing, that such items are owned by Trustor free and clear of security interests, liens, conditional sales contracts or title retention arrangements. Trustor hereby grants to Beneficiary a security interest in all such items of fixtures and personal property owned by Trustor under the terms and conditions of this Agreement.

H. Financial Statement. April 30<sup>th</sup> of each and every year is the “Financial Statement Due Date”. The requirement for delivery of certified financial statements has been conditionally waived by Beneficiary so long as no Termination of Certified Statement Waiver Event occurs. A “Termination of Certified Statement Waiver Event” means the occurrence of one or more of the following: (i) an Event of Default has occurred and is continuing; or (ii) on or before the Financial Statement Due Date, Trustor has failed to furnish to Beneficiary (a) annual operating information relating to the Mortgaged Property for each calendar year (or, with respect to the year in which this Agreement was executed by Trustor, the portion of the year for which Trustor owned the Mortgaged Property) in the form required by the most recent version of the CRE Finance Council Investor Reporting Package, or such other form as reasonably required by Beneficiary from time to time, signed by the Manager of Trustor, which includes the certification that, to the best of Trustor’s knowledge, during the period of time covered by the particular statement, (1) no activity has been conducted upon the property in violation of any state, federal or local law, ordinance or regulation pertaining to toxic or hazardous materials, industrial hygiene or environmental conditions, and (2) the Mortgaged Property complies in all material respects with the Americans with Disabilities Act of 1990, as it may be amended from time to time, or any state equivalent statute (collectively, the “ADA”) and (b) a detailed listing of all tenants leasing space in the Mortgaged Property which listing evidences the rate, the term, the amount of space, annual rent, any other reimbursements paid by each tenant, and, where appropriate, sales information provided by such tenant on the form attached hereto as Exhibit “C” attached hereto and incorporated herein for all purposes (or such other form as reasonably required by Beneficiary from time to time) signed by the Manager of Trustor. If a Termination of Certified Statement Waiver Event occurs, Trustor will furnish to Beneficiary on or

prior to the Financial Statement Due Date, until the Indebtedness secured hereby has been fully paid, the certified annual statements of Trustor covering the operation of the Mortgaged Property, each such statement prepared in accordance with sound accounting principles consistently applied and each such statement shall be certified by Trustor prepared and signed by an independent certified public accountant. The financial statements referenced herein shall also contain Trustor's certification that, during the period of time covered by the particular statement, to Trustor's knowledge, (1) no activity has been conducted upon the Mortgaged Property in violation of any state, federal or local law, ordinance or regulation pertaining to Hazardous Materials, industrial hygiene or environmental conditions and (2) the Mortgaged Property complies with the ADA. In addition to any other right or remedy of Beneficiary for failure to timely deliver any of the operating statements, lists, certifications or other documents and information required in this paragraph, if Trustor does not deliver such financial statements as and when required by this Section VI(H), and such failure continues for ten (10) days after written notice from Beneficiary, there shall be added to the Indebtedness and Trustor agrees to pay upon demand Two Hundred Dollars (\$200.00) for each calendar month or part thereof following the Financial Statement Due Date until the required financial statements are delivered to Beneficiary.

I. Restrictions upon Sale, Transfer or Mortgaging the Mortgaged Property or the Interest in Trustor. Trustor acknowledges that Beneficiary is relying on the credit worthiness and skill of Trustor in advancing sums secured hereby. Except for the Permitted Transfers defined below, (i) if Trustor should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of the Mortgaged Property, or any interest of Trustor therein, absolutely or as security for a debt or other obligation, whether done in a direct or indirect method or enter into any contractual arrangements to do so, or (ii) if a shareholder, partner, member, Trustee or beneficiary of Trustor (sometimes, a "Tier Two Owner") or if any shareholder, partner, member, trustee or beneficiary of any shareholder, partner, Beneficiary or beneficiary of a Tier Two Owner (sometimes, a "Tier Three Owner") (any and all of Tier Two Owners and Tier Three Owners shall be collectively referred to as "Constituent Owner") should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of its interest in Trustor or if such shareholder, partner, member, trustee or beneficiary in or of Trustor shall otherwise be diluted, or (iii) if Trustor shall in any way, voluntarily or involuntarily be divested of title or of any interest in the Mortgaged Property, then Beneficiary, at its option, may elect to accelerate the maturity of the Note and declare the entire amount of the Indebtedness immediately due and payable whereupon Trustor shall have thirty (30) days to pay the full sum of the Indebtedness including, without limitation, principal and interest, whether or not any such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance might diminish the value of the security for the Indebtedness or increase the likelihood of an Event of Default or increase the likelihood of Beneficiary having to resort to any other security for the Indebtedness after default or add or remove liability of any party for payment or performance of the Indebtedness. Trustor further agrees that the foregoing restrictions shall be effective and remain in full force and effect throughout the term of this Agreement and shall be applicable to Trustor, each shareholder, partner, member, beneficiary and each other Constituent Owner and each of their respective heirs,



executors, administrators, successors and assigns.

The consent by Beneficiary to any one such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance (one or more of the preceding a "**Transaction**") shall not waive or forfeit the right of Beneficiary to elect to accelerate the Indebtedness to maturity as to any other Transaction. Trustor further covenants and agrees to give written notice to Beneficiary in the event there occurs any Transaction which would violate the terms and conditions of this provision. The term "**Transaction**" shall also include any voluntary or involuntary act or omission of Trustor. Nothing herein contained shall prevent Beneficiary from accelerating the Note at any time in the event Trustor enters into such a transaction and does not notify Beneficiary of same. Trustor may request Beneficiary to waive the right to declare the entire amount of the Indebtedness immediately due and payable and Beneficiary may, in its absolute discretion, consent or refuse to consent to the Transaction. Additionally, except for Permitted Transfers including as specifically permitted below with regard to the one time right of assignment, as a condition of consenting to any transfer described in this Section VI(I) other than such one-time right of assignment, specifically permitted below, Beneficiary may, in its absolute discretion, make one or more of the following requirements (sometimes, the "**Transfer Requirements**"):

- (1) that the rate of interest contained in the Note be increased to a rate acceptable to Beneficiary;
- (2) that a transfer fee, in an amount determined by Beneficiary be paid;
- (3) that a principal payment be made against the Note;
- (4) that the proposed transferee execute an assumption agreement or other document as Beneficiary may reasonably require; or
- (5) that any other requirement deemed appropriate by Beneficiary be satisfied.

Notwithstanding the provisions of this Section VI(I), the definition of "Permitted Transfers" shall include, and Beneficiary's consent shall not be required in connection with the following: (a) a transfer of direct and indirect interests in Borrower, provided (i) such transfer does not result in Trustor no longer being controlled by either H. Roger Boyer or Kem C. Gardner, and (ii) after giving effect to such transfer, such transfer does not result in H. Roger Boyer and/or Kem C. Gardner, their spousal or lineal descendants owning less than 51% of all equity interests and voting interests in Trustor, (b) transfers of interests in Trustor or its Constituent Owners for estate planning purposes, and (c) a natural person's transfer by will or applicable state intestacy laws.

No Transaction pursuant to the foregoing provisions of this Section VI(I) defined as Permitted Transfers shall in any way release Trustor or any other party liable on any of the Indebtedness or liable under any Loan Document from any such liability unless expressly provided in this Agreement, any guaranty or environmental indemnity or an assumption agreement executed by Beneficiary.

J. Delivery of Substitute Note. Trustor will, if the Note is mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued but unpaid interest. Trustor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and also such security or indemnity as may be reasonably requested by Trustor; provided, however, that if the original Beneficiary named herein is the then Beneficiary under this Agreement, an unqualified indemnity from the original grantee named herein shall be deemed to be satisfactory security or indemnification.

K. Compliance with Covenants, Conditions, Restrictions and Recorded Documents. Trustor shall, and shall cause the Mortgaged Property, to fully and timely, comply with all restrictions covenants, conditions, easements and agreements, and all other recorded documents benefiting, burdening or imposed on the Mortgaged Property or any portion thereof or the owner of all or such portion of the Mortgaged Property.

L. ERISA. As of the date hereof and throughout the term of this Agreement, (1) Trustor is not and will not be an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act, as it may be amended from time to time ("ERISA"), which is subject to Title I of ERISA; (2) the assets of Trustor do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (3) Trustor is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA; (4) transactions by or with Trustor are not and will not be subject to state statutes applicable to Trustor regulating investments of fiduciaries with respect to governmental plans; and (5) Trustor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Beneficiary of any of its rights under this Mortgage, the Note, or the other loan documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Trustor further agrees to deliver to Beneficiary such certifications or other evidence of compliance with the provisions of this section as Beneficiary may from time to time request.

M. Segregated Parcel. The Mortgaged Property shall be taxed separately without regard to any other real estate and the real property described on Exhibit "A" shall constitute a single legally subdivided lot under all applicable statutes, regulations, ordinances or publications, but for all purposes may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

N. Compliance with Building, Use and Developmental Laws. Without limiting the generality of any other provision of this Agreement, the Mortgaged Property and the intended use by the Trustor does now, and at all times hereafter shall, materially comply with all applicable zoning ordinances, subdivision and building codes, flood disaster laws, health and environmental laws and regulations and all other federal, state or local statutes, regulations, ordinances or publications.

O. Special Purpose Entity.

(a) Trustor represents, warrants and covenants as follows:

(1) Limited Purpose. The sole purpose conducted or promoted by Trustor is to engage in the following activities:

(i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Mortgaged Premises (or an undivided interest therein) and to contract for the operation, maintenance, management and development of the Mortgaged Premises;

(ii) to enter into and perform its obligations under the Loan Documents;

(iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Mortgaged Premises to the extent permitted under the Loan Documents; and

(iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Utah that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(b) Limitations on Debt, Actions. Notwithstanding anything to the contrary in the Loan Documents or in any other document governing the formation, management or operation of Trustor, Trustor shall not:

(i) guarantee any obligation of any person or entity, including any affiliate, or become obligated for the debts of any other person or entity or hold out its credit as being available to pay the obligations of any other person or entity;

(ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section;

(iii) incur, create or assume any debt other than (A) the loan evidenced by the Note, (B) unsecured loans made by Borrower's members to Borrower, and (C) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Mortgaged Premises and which shall (1) not exceed 1% of the original balance of the loan evidenced by the Note, (2) not be evidenced by a note, (3) be paid within 60 days, and (4) otherwise expressly be permitted under the Loan Documents;

(iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any person or entity, except that Trustor may invest in those investments permitted under the Loan Documents;

(v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of Trustor's business;

(vi) buy or hold evidence of indebtedness issued by any other person or entity (other than cash or investment-grade securities);

(vii) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;

(viii) own any asset or property other than the Mortgaged Premises (or an undivided interest therein) and incidental personal property necessary for the ownership or operation of the Mortgaged Premises; or

(ix) take any action under any bankruptcy or debtor relief law without the unanimous written approval of all members of Trustor.

(c) Separateness Covenants. In order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any affiliate, Trustor represents and warrants that in the conduct of its operations since its organization it has observed, and covenants that it will continue to observe, the following covenants:

(i) maintain books and records and bank accounts separate from those of any other person or entity;

(ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

(iii) comply with all organizational formalities necessary to maintain its separate existence;

(iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity and not have its assets listed on any financial statement of any other person or entity; except that Trustor's assets may be included in a consolidated financial statement of its affiliate so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of Trustor from such affiliate and to indicate that Trustor's assets and credit are not available to satisfy the debts and other obligations of such affiliate or any other person or entity;

(vi) prepare and file its own tax returns separate from those of any person or entity to the extent required by applicable law, and pay any taxes required to be paid by applicable law;

(vii) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates;

(viii) not enter into any transaction with affiliates except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements;

(ix) conduct business in its own name, and use separate stationery, invoices and checks;

(x) not commingle its assets or funds with those of any other person or entity;

(xi) not assume, guarantee or pay the debts or obligations of any other person or entity;

(xii) correct any known misunderstanding as to its separate identity;

(xiii) not permit any affiliate to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents);

(xiv) not make loans or advances to any other person or entity;

(xv) pay its liabilities and expenses out of and to the extent of its own funds;

(xvi) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;

(xvii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require any equity owner to make additional capital contributions to Trustor; and

(xviii) cause the managers, officers, employees, agents and other representatives of Trustor to act at all times with respect to Trustor consistently and in furtherance of the foregoing and in the best interests of Trustor.

Failure of Trustor to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of Trustor as a separate legal entity.

## VII. TERMINATION OF TRUST

If Trustor shall well and truly pay, or cause to be paid, all of the Indebtedness and does keep and perform each and every covenant, duty, condition, and stipulation herein imposed on Trustor, in the Note contained, or in any other Loan Document, then this Agreement and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Trustor and the entire estate, right, title and interest of the Trustee and Beneficiary will thereupon

cease; and Beneficiary in such case shall, upon the request of Trustor and at Trustor's cost and expense, deliver to Trustor proper documents acknowledging satisfaction of this Agreement; otherwise, this Agreement shall remain in full force and effect.

## VIII. EVENTS OF DEFAULT

A. Acts Constituting Default. Trustor will be in default under this Agreement upon the happening of any of the following events or conditions, or the happening of any other Event of Default as defined elsewhere in this Agreement (herein collectively referred to as an "Event of Default"):

(1) Trustor fails to make when due any payment of principal or interest or any installment of principal and interest under the Indebtedness.

(2) Trustor fails to keep or perform any of the covenants, conditions or stipulations contained in this Agreement, the Note or in any other Loan Document, other than any event or condition specified in Sections VIII(A)(1), (3), (4), (5), (6) or (7), and such failure remains uncured on the earlier of (i) the thirtieth (30<sup>th</sup>) day (or such longer number of days, up to a maximum of ninety (90) days in the aggregate, as Beneficiary reasonably determines is necessary to cure such default, provided that Trustor promptly commences and continuously and diligently pursues such cure) after written notice of such default to Trustor, or (ii) a shorter cure period, if any, contained in the Note, this Agreement or any other Loan Document.

(3) Any warranty or representation made in this Agreement by Trustor is determined by Beneficiary to be untrue in any material respect at the time made.

(4) Any person, corporation or other entity that (a) owns all or any part of the Mortgaged Property; (b) is liable for the payment of all or any part of the Indebtedness; or (c) is a guarantor of all or any part of the Indebtedness (i) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition or answer in bankruptcy as a Debtor or seeking reorganization or an arrangement or otherwise to take advantage of any State or Federal bankruptcy or insolvency law, (iii) makes an assignment for the benefit of creditors, (iv) files a petition for or consents to the appointment of a receiver for its assets or any part thereof or (v) without its consent has a petition filed in any bankruptcy or insolvency proceeding or an order, decree or judgment entered by a court of competent jurisdiction appointing a receiver of the Mortgaged Property or approving a petition filed against it seeking reorganization or an arrangement of it or its assets or debts under any bankruptcy or insolvency law and such petition, order, decree or judgment is not dismissed, vacated, set aside or stayed within sixty (60) days from the date of entry.

(5) Except for Permitted Transfers or such other allowable transfers referenced in Section VI(I) above, Trustor sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) the Mortgaged Property, the Collateral, the Fixtures or any portion thereof or interest therein, or, except for Permitted Transfers or such other allowable

transfers referenced in Section VI(I) above, Trustor or any shareholder, partner, member, trustee or beneficiary of Trustor or a Constituent Owner sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting any of the provisions of this subparagraph, the granting of a security interest in) any part of its interest in Trustor or any Constituent Owner, except for Permitted Transfers, or any such event occurs involuntarily to Trustor or such shareholder, partner, member, trustee or beneficiary of Trustor or any shareholder, partner, member, trustee or beneficiary of any Constituent Owner, all without the prior written consent of Beneficiary.

(6) The authority and right of Trustor to do business in the State of Utah or any other jurisdiction where Trustor is so authorized and such authorization is necessary for the performance of Trustor's obligations hereunder is terminated, withdrawn, cancelled or modified, and is not reinstated within the earlier of ten (10) days of Borrower's having knowledge of the same or Lender's delivery of written notice.

(7) Trustor's existence as a legal entity for any reason, by operation of law or otherwise, is modified in any way adverse to Beneficiary or terminates and is not reinstated within thirty (30) days after receipt of notice of same.

Notwithstanding anything in this Agreement, the Note or any other Loan Documents to the contrary, any and all notice and/or cure periods provided for in this Agreement, the Note or any other Loan Documents, if any, shall run concurrently with any and all notice and/or cure periods available to Trustor under applicable Utah law.

#### IX. RIGHTS OF BENEFICIARY UPON DEFAULT

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default and during the continuance at any time thereafter, Beneficiary may, subject to Utah law, at its option and without demand or notice to Trustor, accelerate the maturity of the Note and declare the Indebtedness secured hereby immediately due and payable. Unless otherwise provided herein to the extent permitted by applicable law, Trustor hereby waives presentment for payment, protest and demand, notice of protest, demand, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of the declaration that the Indebtedness is immediately due and payable, and any and all rights Trustor may have to a hearing before any judicial authority prior to the exercise by Beneficiary of any of its rights under this Agreement or any other agreements securing or executed in connection with the Indebtedness, all to the extent authorized by law.

B. Operation of Property by Beneficiary. Upon the occurrence of an Event of Default, and during the continuance at any time thereafter, in addition to all other rights herein conferred on the Beneficiary, the Beneficiary (or any person, firm or corporation designated by the Beneficiary) may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Trustor therefrom, and hold, use, administer, manage and operate the same to the extent that Trustor could do so. If the Mortgaged Property includes any type of business enterprise, the Beneficiary may operate and manage such business without any liability of Beneficiary to Trustor

resulting therefrom (excepting failure to use ordinary care in the operation and management of the Mortgaged Property); and the Beneficiary or Beneficiary's designee may collect, receive and receipt for all proceeds accruing from such operation and management, and, at Trustor's expense, make repairs and purchase needed additional property, and exercise every power, right and privilege of Trustor with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to Trustor (providing there has been no foreclosure sale). The provisions of this Section IX(B) establish a right under this Agreement and is not in any way to affect the right of Beneficiary to the appointment of a receiver given Beneficiary by law. Beneficiary may, at any time after such Event of Default, apply to any court of competent jurisdiction for the appointment of a receiver and Trustor agrees that, subject to applicable law, such appointment shall be made upon a prima facie showing of a claimed default without reference to any offsets or defenses against such default and without regard to whether any portion of the Mortgaged Property is in danger of being lost, removed, injured or destroyed or of waste, whether income from the Mortgaged Property is in danger of being lost or whether the Mortgaged Property is or may become insufficient to discharge the obligations secured by this Agreement.

C. Judicial Proceedings. Upon the occurrence of an Event of Default, and during the continuance at any time thereafter, Beneficiary, in lieu of or in addition to causing the Trustee to exercise the power of sale hereafter given, may proceed by suit for a foreclosure of its lien on the Mortgaged Property, or to sue Trustor for damages on, arising out of said default, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right.

D. Foreclosure Sale.

(1) Trustee's Sale. Upon the occurrence of an Event of Default, Beneficiary may declare all sums secured hereby immediately due by delivery to Trustee of a written notice of default and election to sell (which notice Trustee shall cause to be recorded and mailed as required by law).

As provided under Utah law, Trustee shall sell the property subject hereto at such time and at such place in the State of Utah as Trustee, in its sole discretion, shall deem best to accomplish the objects of these trusts, having first given notice of such sale as then required by law. The place of sale may be in the county in which the property to be sold, or any part thereof, is situated.

At the time of sale so fixed, Trustee shall sell the property so advertised or any part thereof or interest therein either as a whole or in separate parcels to the highest bidder for cash in lawful money of the United States, payable at time of sale, and shall deliver to such purchaser a deed or deeds or other appropriate instruments conveying the property so sold, but without covenant or warranty, express or implied. Beneficiary and Trustee may bid and purchase at such sale. To the extent of the indebtedness secured hereby, Beneficiary need not bid for cash at any sale of all or any portion of the Mortgaged Property pursuant hereto, but the amount of any successful bid by Beneficiary shall be applied in reduction of said indebtedness. Trustor hereby agrees, if it is then still



in possession, to surrender, immediately and without demand, possession of said property to any purchaser. If Trustee or its successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the Mortgaged Property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

Beneficiary, from time to time before Trustee's sale, may rescind any notice of breach and election to sell by executing, delivering and causing Trustee to record a written notice of such rescission. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other notices of breach and election to sell, nor otherwise affect any term, covenant or condition hereof or under any obligation secured hereby, or any of the rights, obligations or remedies of the parties thereunder.

(2) Collateral. On the happening of any Event of Default and during the continuance at any time thereafter, Beneficiary shall have and may exercise with respect to the Collateral all rights, remedies and powers of a Secured Party under the UCC with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the UCC after any Event of Default by Trustor without regard to the preservation of the Collateral or its value and without the necessity of a court order, and apply the proceeds thereof first toward the payment of all costs and expenses and reasonable attorneys' fees incurred by Beneficiary or Trustee, and the balance toward the payment of the Indebtedness whether or not then due, and in such order or manner as Beneficiary may elect. Upon the occurrence of an Event of Default, Beneficiary shall have, among all other rights and remedies, the right to take possession or control of all or any part or portion of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing or taking control of the same, without being guilty of trespass and without liability for damages occasioned thereby, and to take any action deemed appropriate or desirable by Beneficiary, at its option and sole and absolute discretion, to repair, restore or otherwise prepare the Collateral for sale or lease or other use or disposition as authorized herein. To the extent permitted by law, Trustor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Trustor or the formalities subscribed by law relative to the sale or disposition of the Collateral or to the exercise of any other right or remedy of Beneficiary existing after any Event of Default. To the extent that such notice is required and cannot be waived, Trustor agrees that if such notice is mailed postage prepaid to Trustor at the address shown herein at least ten (10) business days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or person as a party shall designate from time to time by notice to the other party):

If to Beneficiary, at the address set forth in the Preamble of this Agreement; if to Trustor, at the address set forth in the Preamble of this Agreement. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; in the case of overnight delivery, upon the first attempted delivery on a business day; or in the case of facsimile, upon the confirmation of such facsimile transmission. Notwithstanding anything to the contrary contained in this Agreement, any notice given in accordance with any applicable law shall be deemed effective upon compliance with the requirements of such law.

Trustor agrees that Trustee or Beneficiary may proceed to sell or dispose of both the real and personal property covered herein in accordance with the rights and remedies granted under this Agreement with respect to the Mortgaged Premises secured hereby. Trustor hereby grants Beneficiary the right, at its option, after any Event of Default by Trustor to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Indebtedness, whether or not then due, and in such order and manner as Beneficiary may elect. Trustor covenants and agrees that all recitals and any document transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Beneficiary or Trustee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred. All rights to a marshalling of the assets of Trustor, including such rights with respect to the Collateral and the Mortgaged Premises, are hereby waived.

(3) Application of Proceeds. The proceeds of any and all foreclosure sales of the Mortgaged Property, whether under the assent to or decree or power of sale herein granted, shall be applied in accordance with all applicable laws of the State of Utah.

(4) Prerequisites of Sales. In case of any foreclosure sale of the Mortgaged Property, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured or as to the request of the Trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

#### X. USE OF INSURANCE PROCEEDS

A. Holding of Proceeds. Notwithstanding the provisions of Section VI(C) hereof, any insurance proceeds paid to Beneficiary will be first applied in payment of the expenses, if any, incurred by Beneficiary in the collection of said insurance proceeds and second the balance, if any, will be held and disbursed by Beneficiary in accordance with the following provisions:

(1) (a) Should there exist an Event of Default at the time of a casualty or should there occur at any time thereafter an Event of Default; (b) should any tenants of any portions of the

Mortgaged Property that equal or exceed 25,000 square feet, in the aggregate, or Trustor terminate such lease or leases as a result of said damage, or, whether or not a result of such damages, at any time prior to the commencement of reconstruction and Beneficiary believes such termination could result in a material adverse change to Trustor or the Mortgaged Property; (c) should any insurance proceeds be remaining after the completion of all restoration work; (d) should one (1) year or less remain prior to the maturity date of the Note; (e) should, in Beneficiary's reasonable judgment, the Mortgaged Property be unable to be restored prior to the maturity date of the Note or (f) should Trustor fail to comply with the requirements for disbursing the insurance proceeds, then in any of the said events, Beneficiary may, at its option, apply the insurance proceeds on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to be released to Trustor, but any such application or release shall not cure or waive any default.

(2) If the insurance proceeds have not been disbursed under the provisions of Section X(A)(1) above, or if under Section X(A)(1) Beneficiary elects to permit the insurance proceeds to be used for restoration of the Mortgaged Property, the proceeds shall be held and disbursed as follows:

(a) Should the insurance proceeds be less than \$50,000.00, Trustor shall immediately commence and complete the work of restoring the damaged property and Beneficiary will disburse the portion of the insurance proceeds to pay actual costs to replace, repair and restore the damaged property to Trustor upon (i) completion of the restoration work to a condition satisfactory to Beneficiary, (ii) submission of a written report by Trustor that all restoration work has been completed and (iii) receipt by Beneficiary of such evidence as Beneficiary may require that all mechanics and materialmen performing work or supplying materials for the restoration work have been fully paid.

(b) Should the insurance proceeds equal or be in excess of \$50,000.00, but less than \$250,000.00, Trustor shall cause plans and specifications ("Plans") for the restoration of the damaged property to be submitted to Beneficiary for its reasonable approval, which shall not be unconditionally withheld, conditioned or delayed. Upon receipt of Beneficiary's reasonable approval, Trustor shall forthwith commence and complete the restoration of the damaged property in accordance with the approved Plans. Beneficiary will disburse the portion of the insurance proceeds to pay the actual costs to replace, repair and restore the damaged property to Trustor upon (i) completion of the restoration work to a condition satisfactory to Beneficiary and in accordance with the Plans, (ii) submission of a written report by Trustor that all restoration work has been completed in accordance with the Plans and (iii) receipt by Beneficiary of such evidence as Beneficiary may require that all mechanics and materialmen performing work or supplying materials for the restoration work have been completely paid.

(c) If the insurance proceeds are equal to or in excess of \$250,000.00 (i) Plans for the restoration of the damaged property and a cost estimate will both be prepared by an architect employed by Trustor and acceptable to Beneficiary. The Plans and cost estimates will be submitted to Beneficiary for its reasonable approval, which shall not be unreasonably withheld, conditioned or delayed. Upon receipt of Beneficiary's reasonable approval, Trustor will promptly

commence and diligently pursue the restoration work in accordance with the approved Plans; (ii) if prior to the commencement of, or at any time during the restoration work, Beneficiary shall determine that the total cost of the restoration work shall exceed the balance of the insurance proceeds held in its possession, Trustor shall immediately pay, in cash, to Beneficiary the amount of such excess costs. Until the amount of said excess costs is paid to Beneficiary, Beneficiary shall not be obligated to disburse any of the insurance proceeds held by it. The insurance proceeds and the amount of excess costs paid by Trustor are hereinafter called "**Construction Funds.**" The amount of such excess costs paid by Trustor shall be disbursed prior to the disbursement of any of the insurance proceeds held by Beneficiary; and (iii) the Construction Funds will be made available to Trustor as restoration repair work progresses pursuant to certificates of the architect approved by Beneficiary, submitted not more than once every thirty (30) days. There shall be delivered to Beneficiary such other evidences as Beneficiary may reasonably request, from time to time, during the restoration work, as to the progress of the work, the compliance with the approved Plans, the total cost of restoration work to date of request, the total cost needed to complete the restoration work, lien waivers or evidence of no liens against the Mortgaged Property. If at any time during the course of the restoration work, Beneficiary learns of facts concerning the restoration work which is materially adverse to Beneficiary or the Mortgaged Property, or payment or nonpayment of mechanics and materialmen, or inaccuracy of any information furnished with respect to it, Beneficiary may withhold the disbursement of funds until such time as it is prudent to continue to disburse the Construction Funds or may determine not to make any further disbursements of the Construction Funds and instead to apply all such funds remaining to the payment of the Indebtedness then outstanding, whether due or not at such time, without any prepayment premium, and in such order as determined by Beneficiary.

(3) Beneficiary shall not be required to hold any funds received by it described in this Section X(A) in any account special or separate from Beneficiary's general account. No such funds shall be required to be placed in any interest bearing account, and any interest earned thereon shall constitute additional insurance proceeds to be applied as provided in this Agreement.

B. Intentionally reserved.

## XI. SPECIAL CONDITIONS

This document is expressly made subject to the following special conditions.

A. Successor Trustees. At the option of Beneficiary, without cause or notice, a successor or substitute trustee may be appointed by any officer, agent or attorney-in-fact of Beneficiary without procuring the resignation of the former Trustee and without any formality other than the recordation of a writing in the Office of the Recorder of Salt Lake County, Utah, designating a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein named, the same as if the successor or substitute trustee had been named as required under Utah law.

B. Waiver and Election. The exercise of any right or remedy by Beneficiary shall not be considered as a waiver of any right or remedy nor shall any acceptance by Beneficiary of Trustor's partial payment or partial performance of obligations under the Note or hereunder, nor shall any failure or delay by Beneficiary in exercising any of its rights or remedies as to any Event of Default which may occur, operate as a waiver by Beneficiary of its rights or remedies with respect to the occurrence of any other or further Event of Default or to the recurrence of the same Event of Default. The filing of a suit to foreclose the deed of trust granted by this Agreement either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall never be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Agreement, preclude the exercise by Beneficiary of any other right or remedy provided for herein, including, without limitation, the prosecution of a later suit thereon.

C. Landlord-Tenant Relationship. Any sale of all or a portion the Mortgaged Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Trustor and any person or entity claiming an interest in the Mortgaged Property through Trustor or otherwise occupying any of the Mortgaged Property, upon failure to surrender possession thereof, Trustor and all such persons and entities may be removed by a writ of possession upon suit by the purchaser.

D. Usury. Notwithstanding any provision in this Agreement to the contrary, it is expressly provided that in no case or event should the aggregate amounts, which by applicable law are deemed to be interest with respect to this Agreement, the Note or any other Loan Document ever exceed the Maximum Nonusurious Rate (as defined in the Note). In this connection, it is expressly stipulated and agreed that it is the intention of Beneficiary and Trustor to contract in strict compliance with applicable usury laws of the State of Utah and/or of the United States (whichever permits the higher rate of interest) from time to time in effect. Nothing in this Agreement, the Note or any other Loan Document shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Nonusurious Rate. If under any circumstances the aggregate amounts contracted for, charged or paid with respect to the Note which by applicable law are deemed to be interest, would produce an interest rate greater than the Maximum Nonusurious Rate, Trustor and any other person obligated to pay the Note, stipulates that the amounts will be deemed to have been paid, charged or contracted for as a result of an error on the part of Trustor, any other person obligated for the payment of the Note and Beneficiary, and upon the discovery of the error or upon notice thereof from Trustor or the party making such payment, Beneficiary or the party receiving such excess payment shall, at its option, refund the amount of such excess payment or credit the excess payment against any other amount due under the Note. In addition, all sums paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of monies shall be, to the extent permitted by applicable law, amortized, prorated, allocated and spread through the term of the Note.

E. Enforceability. If any provision of this Agreement is presently or at any time becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect.

F. Application of Payments. If the lien or liens created by this Agreement are invalid or unenforceable as to any part of the Indebtedness or if such lien or liens are invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially unsecured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by the lien or liens created herein.

G. Meaning of Particular Terms. Whenever used, the singular number shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. The words "**Trustor**" and "**Beneficiary**" shall include each of their respective successors and assigns. For the convenience of drafting the following groups of words, and derivations thereof, are used interchangeably and any reference to one or more shall include the others notwithstanding anything seemingly to the contrary: (1) the words "**act**", "**omission**" and "**occurrence**"; (2) "**instrument**" and "**document**"; (c) the words "**amendment**" and "**modification**", "**amended**" and "**modified**", and derivations of the foregoing; and (d) the words "**term**", "**condition**", "**covenant**", "**covenants**", "**condition**", "**stipulation**" or "**provision**", and derivations of the foregoing. The words "**include**" and "**including**" and derivations thereof, mean "**include, without limitation**," and "**including, without, limitation**" as applicable, whether or not such additional language is specified, notwithstanding anything seemingly to the contrary. The words "**as amended**" and "**as modified**", and derivations thereof, include all renewals, extension, increases, consolidations or rearrangements of an applicable document, notwithstanding anything seemingly to the contrary.

H. Advances by Beneficiary. If Trustor shall fail to comply with the provisions with respect to the securing of insurance, payment of taxes, assessments, and other charges, the keeping of the Mortgaged Property in repair or any other term or covenant herein contained, Beneficiary may, but shall not be obligated to, incur such expenses as deemed necessary by Beneficiary, and make advances to perform such provisions, terms or covenants, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. Beneficiary is further empowered, but not obligated, to make advances for any expenditure deemed advisable by Beneficiary for the preservation of the Mortgaged Property or for the continuation of the operation thereof. Trustor agrees to repay all sums so advanced or expended, and all expenses incurred by Beneficiary in connection with the exercise of any of Beneficiary's rights under this Agreement, upon demand, with interest from the date such advances or expenditures are made, determined on the same basis as matured principal in the Note and all sums so advanced or expended, with interest, shall be secured hereby.

I. Release or Extension by Beneficiary. Beneficiary, without notice, may release any part of the Mortgaged Property or any person liable for the Indebtedness without in any way affecting the liens hereof on any part or portion of the Mortgaged Property not expressly released and may agree in writing with any party with an interest in the Mortgaged Property to extend the time for

payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of any Loan Document.

J. Partial Payments. Acceptance by Beneficiary of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default; and subject to Section VIII(B) at any time thereafter and until the entire amount due on the Indebtedness has been paid, Beneficiary shall be entitled to exercise all rights conferred on it by the terms of this Agreement upon the occurrence of an Event of Default.

K. Headings not to be Considered. All section, subsection, paragraph or other headings contained in this Agreement are for convenience and reference purposes only, and this Agreement shall be construed without reference to said titles.

L. Construction of Agreement. This Agreement may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order to fully effectuate the lien and trust established herein and the purposes and agreements herein set forth.

M. Additional Taxes and Indemnification. Trustor agrees that if any state, federal or municipal government, or any of its subdivisions having jurisdiction, shall levy, assess or charge any tax, assessment, charge or imposition upon this Agreement or the credit or indebtedness secured hereby or the Note or the interest of Beneficiary in the Mortgaged Property or upon Beneficiary by reason of any of the foregoing (excepting therefrom any income tax on interest payments on the principal portion of the Indebtedness secured hereby), then Trustor shall pay all such amounts to or for Beneficiary as such taxes, assessments, charges or impositions become due and payable, and, provided further, that in the event of passage of any law or regulation permitting, authorizing or requiring the tax, assessment, charge or imposition to be levied, assessed or charged, which law or regulation prohibits Trustor from paying the tax, assessment, charge or imposition, to or for Beneficiary, then all sums hereby secured shall become immediately due and payable at the option of Beneficiary or Trustor. Trustor agrees to exhibit to Beneficiary at any time upon request, official receipts showing payment of all taxes, assessments, charges or impositions which Trustor is required or elects to pay hereunder. Trustor agrees that if the government of the United States or any department or bureau thereof shall at any time require revenue stamps to be affixed to the Note or this Agreement, Trustor will upon demand pay for such stamps in the required amount and deliver them to Beneficiary, and Trustor agrees to INDEMNIFY and HOLD HARMLESS Beneficiary against any and all loss, damage, liability or expense (including, without limitation, reasonable attorneys' fees and expenses and all investigatory expenses) on account of such revenue stamps, whether such loss, damage, liability or expense arises before or after the payment of the Note and any termination of the estate created by this Agreement whether as a result of the exercise by Beneficiary of any default remedies available to Beneficiary at law or in equity or otherwise. SUCH INDEMNIFICATION AND AGREEMENT TO HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF

ANY OF THE INDEMNITEES, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to any of the Indemnitees' gross negligence or willful misconduct.

N. Indemnification. TRUSTOR AGREES TO INDEMNIFY AND HOLD HARMLESS BENEFICIARY FROM AND AGAINST ANY AND ALL LOSS, DAMAGE AND EXPENSE, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND INVESTIGATORY EXPENSES, INCURRED IN CONNECTION WITH ANY SUIT OR PROCEEDING IN OR TO WHICH BENEFICIARY MAY BE MADE A PARTY FOR THE PURPOSE OF PROTECTING THE LIEN AND TRUST ESTABLISHED UNDER THIS SECURITY DEED, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Beneficiary's negligence or willful misconduct. Trustor's obligations pursuant to the foregoing indemnity and hold harmless shall survive any termination of the estate or trust established by this Agreement whether as a result of the exercise by Beneficiary of any default remedies available to it at law or in equity or otherwise.

O. Additional Documents. Trustor agrees that upon request of Beneficiary it will from time to time execute, acknowledge and deliver all such additional documents and further assurances of title and will do or cause to be done all such further acts and things as may be reasonably necessary fully to effectuate the intent of this Agreement. Trustor, within ten (10) days upon request in person or by mail, will furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Agreement, the date to which interest has been paid and stating either that no offsets or defenses exist against the debt secured hereby or, if such offsets or defenses are alleged to exist, the nature thereof.

P. Disclosure. Trustor agrees to disclose to Beneficiary upon request, the then ownership of the beneficial interest in any trust which then holds legal title to the Mortgaged Property and shall cause the owner(s) of such beneficial interest to furnish sufficient evidence to Beneficiary for Beneficiary to determine the identity of all of the parties which compose such owner(s).

Q. Subrogation. In the event the Note is given for money advanced in the payment of a sum owing upon another note or indebtedness, Trustor hereby acknowledges that Trustor has requested and does hereby request Beneficiary to advance the money necessary to pay such note or indebtedness, whether or not a release or transfer of said other note or indebtedness has been or will be executed by the owner and holder thereof, and, subject to applicable law, Trustor hereby agrees that Beneficiary and Beneficiary's successors and assigns shall be, and are hereby, subrogated to any and all the rights, liens, remedies, equities, superior title and benefits held, owned, possessed or enjoyed at any time by any owner or holder of said other note or indebtedness, to secure payment to Beneficiary of the Note hereby secured and, accordingly, any such other note and indebtedness, and all liens securing same are hereby extended to the maturity date of the Note hereby secured in order to additionally secure such Note. Nothing in this Section IX(P) shall alter any obligation of Trustor



hereunder or under the Note.

R. Time. Time is of the essence of this Agreement.

S. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original document and which, taken together, shall constitute one and the same Agreement.

T. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Utah, without regards to any conflicts of law provisions.

XII. INTENTIONALLY OMITTED

XIII. LIMITATION OF LIABILITY

Except with respect to that certain Income Stream Guaranty (the "Income Stream Guaranty") and that certain Development Agreement Guaranty (the "Development Agreement Guaranty"), each dated effective as of or about the date hereof by and between THE BOYER COMPANY, L.C., a Utah limited liability company and GARDNER PROPERTY HOLDINGS, L.C., a Utah limited liability company (individually and collectively, the "Guarantor") in favor of Noteholder and as otherwise specifically provided herein, in the event of a default in the payment of the Note by Trustor, or any Event of Default under this Agreement or any other Loan Document, Beneficiary's sole recourse against Trustor shall be against the Mortgaged Property, and Beneficiary shall not be entitled to recover any deficiency judgment against Trustor if the foreclosure or recovery of such Mortgaged Property is not sufficient to pay the amount owed by Trustor hereunder. Notwithstanding the foregoing limitation of liability, however subject to applicable notice and cure periods, Trustor shall be fully liable for (a) any fraud or misrepresentation made in connection with the Note or any of the Loan Documents or the apparent purpose of which is to deprive Beneficiary of the security for the Note; (b) failure to pay taxes, assessments, charges for labor or materials or any other charges which can create liens on any portion of the Mortgaged Property; (ii) proceeds of the sale or condemnation of any portion of the Mortgaged Property; or (iii) rentals and security deposits received by or on behalf of Trustor subsequent to the date on which Beneficiary gives written notice of the posting of foreclosure notices or the exercise of Beneficiary's assignment of rents; (d) for failure to maintain, repair or restore the Mortgaged Property in accordance with any instrument governing, securing or pertaining to the payment of the Note; (e) any act or omission knowingly or intentionally committed or permitted by Trustor which results in the waste, damage or destruction to all or any portion of the Mortgaged Property, but only to the extent such events are not covered by insurance proceeds which are received by Beneficiary; (f) the return to Beneficiary of all unearned advance rentals and security deposits paid by tenants of the Mortgaged Property or any guarantors of the leases of such tenants which are not rightfully refunded to or which are forfeited by such tenants or guarantors; (g) the return of, or reimbursement for, all personal property taken from the Mortgaged Property by or on behalf of Trustor; (h) any liability of Trustor pursuant to the provisions in this Agreement pertaining to hazardous or toxic materials or substances; (i) any liability of Trustor pursuant to the Certificate and Indemnity Regarding Hazardous Substances executed by Trustor and

delivered to Beneficiary in connection with the indebtedness evidenced by the Note; (j) any delay, after a default which is not cured, in deeding over the Mortgaged Property to Beneficiary, or the failure to cooperate in a consensual foreclosure within 90 days after Beneficiary's request; and (k) all court costs and reasonable attorneys' fees and expenses incurred in connection with the enforcement of one or more of the above items (a) through (j), inclusive.

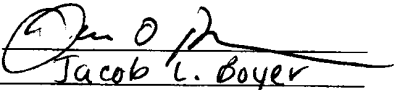
**[THE REMAINDER OF THIS PAGE INTENTIONALLY RESERVED]**

IN WITNESS WHEREOF, executed on the date on the below acknowledgment and TO BE EFFECTIVE on the date first written above.

TRUSTOR:

BG VISTA OFFICE 7, L.C.,  
a Utah limited liability company

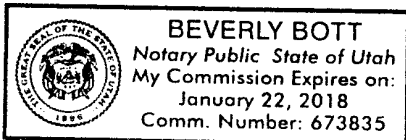
By: The Boyer Company, L.C.,  
a Utah limited liability company  
Its: Manager

By:   
Name: Jacob L. Boyer  
Its: Manager

STATE OF UTAH )

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me on MAY 15, 2017, by Jacob L. Boyer, the Manager of The Boyer Company, L.C., a Utah limited liability company, as Manager of BG VISTA OFFICE 7, L.C., a Utah limited liability company, on behalf of said limited liability company, for the purposes and consideration therein stated.



  
NOTARY PUBLIC

**EXHIBIT "A"**

Mortgaged Premises

PARCEL 1:

Lot 324, VISTA STATION OFFICE PARK, AMENDED, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder, State of Utah.

PARCEL 1A:

Reciprocal rights and easements as more specifically defined in that certain instrument entitled Covenants, Conditions and Restrictions recorded February 4, 2015 as Entry No. 11987390 in Book 10293 at Page 6891 of official records.

PARCEL 1B:

Reciprocal rights and easements as more specifically defined in that certain instrument entitled Declaration of Covenants, Restrictions and Easements recorded November 24, 2015 as Entry No. 12176579 in Book 10381 at Page 9348 of official records.

## **EXHIBIT "B"**

### **Permitted Exceptions**

1. Taxes for the year 2017 are accruing as a lien not yet due and payable under Parcel No. 27-36-151-042. Taxes for the year 2016 have been paid.
2. Property lies within the boundaries of Draper City, Draper Irrigation and South Valley Sewer District and is subject to any and all charges and assessments levied thereunder. As of the effective date of this policy, said charges and assessments are paid current.
3. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
4. Claim, right, title or interest to water or water rights whether or not shown by the public records.
5. Easements, notes and restrictions as shown on the recorded plat of Vista Station Office Park recorded August 24, 2015 as Entry No. 12117993 in Book 2015P at Page 190.
6. Notice of Adoption of Draper Frontrunner Community Development Project Area Plan, dated August 10, 2012 and recorded October 11, 2012 as Entry No. 11489936 in Book 10065 at Page 4047. As of the effective date of this policy, said charges and assessments are paid current.
7. Easement Agreement by and between Draper Holdings, LLC, a Utah limited liability company and EBAY INC., a Delaware corporation, dated November 18, 2011 and recorded November 18, 2011 as Entry No. 11282241 in Book 9967 at Page 8577.
8. Protective Covenants, Conditions and Restrictions, but deleting any covenant condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions, or restrictions violate Title 42, USC 3604. Recorded November 18, 2011 as Entry No. 11282239 in Book 9967 at Page 8558.
9. Protective Covenants, Conditions and Restrictions, but deleting any covenant condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions, or restrictions violate Title 42, USC 3604. Recorded February 4, 2015 as Entry No. 11987390 in Book 10293 at Page 6891.

Exhibit B to Deed of Trust, Security Agreement and Financing Statement

10. Development Agreement as disclosed by that certain Assignment of Development Agreement recorded December 17, 2009 as Entry No. 10861464 in Book 9789 at Page 5662.

First Amendment to Development Agreement and Confirmation of Satisfaction of Conditions Precedent, dated February 15, 2011 and recorded April 22, 2011 as Entry No. 11171122 in Book 9919 at Page 8749.

11. Ordinance No. 1036 of the Draper City Renaming Galena Park Boulevard to Vista Station Boulevard from 12300 South to Approximately 13400 South, dated December 18, 2012 and recorded February 7, 2013 as Entry No. 11573191 in Book 10106 at Page 651.

12. Reimbursement Memorandum by and between Draper Holdings, LLC and BG Vista Station, L.C., Utah limited liability company, dated January 30, 2015 and recorded January 30, 2015 as Entry No. 11985471 in Book 10292 at Page 8279.

13. Commercial Sewer Connection Agreement between BG Vista Station, L.C. and the South Valley Sewer District, a political subdivision of the State of Utah, dated August 3, 2015 and recorded August 6, 2015 as Entry No. 12106980 in Book 10350 at Page 2498.

14. Disclosure and Acknowledgement regarding development of property located within a Natural Hazards Special Study Area for moderate liquefaction potential dated October 6, 2015 and recorded October 22, 2015 as Entry No. 12155933, in Book 10372, at Page 4771.

15. Commercial Sewer Connection Agreement between BG Vista Station LC and Gardner Bingham Junction Holdings LC, dated October 26, 2015 and recorded November 6, 2015 as Entry No. 12166073 in Book 10377 at Page 4093.

16. Protective Covenants, Conditions and Restrictions, but deleting any covenant condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions, or restrictions violate Title 42, USC 3604. Recorded November 24, 2015 as Entry No. 12176579 in Book 10381 at Page 9348.

17. Subject to the following matters disclosed on that certain survey prepared by Ensign Engineering, having been certified under the date of May 9, 2017, as Job No. 64541, by Patrick M. Harris, a Registered Land Surveyor holding License No. 286882:

- a. Storm drain lines
- b. Water lines
- c. Gas lines
- d. Electric lines
- e. TV lines

18. Rights of tenants in possession, as tenants only, under unrecorded leases, as shown on the attached rent roll.

Exhibit B to Deed of Trust, Security Agreement and Financing Statement

**EXHIBIT "C"**

**FORM OF ANNUAL OPERATING INFORMATION**

**CASH BASIS OPERATING STATEMENT FROM \_\_\_\_\_ TO \_\_\_\_\_**

Loan # \_\_\_\_\_

Borrower: \_\_\_\_\_

Gross Potential Minimum Rent at year end based on 100% Occupancy: \_\_\_\_\_

**Income:**

Minimum rentals	\$ _____
Overage or percentage rentals	\$ _____
Expense reimbursements	\$ _____
Other (specify)	\$ _____

Total Income \$ \_\_\_\_\_

**Operating Expenses:**

Taxes (ad valorem)	\$ _____
Utilities	\$ _____
Maintenance & repair	\$ _____
Management	\$ _____
Insurance	\$ _____
Leasing fees	\$ _____
Other (specify)	\$ _____

Total Expense \$ \_\_\_\_\_

Net Operating Income Before Interest and Depreciation \$ \_\_\_\_\_

Debt Service (separate line for each loan) \$ \_\_\_\_\_

Capital expenditures \$ \_\_\_\_\_

Net Cash Flow \$ \_\_\_\_\_

Depreciation \$ \_\_\_\_\_

I certify the operating information shown above is true and correct.

I certify to the best of my knowledge that during the period of time covered by this statement (1) no activity has been conducted upon the property in violation of any state, federal or local law, ordinance or regulation pertaining to toxic or hazardous materials, industrial hygiene or environmental conditions and (2) the property complies with the Americans with Disabilities Act.

\_\_\_\_\_  
Borrower

Sworn and subscribed to me on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

Exhibit C to Deed of Trust, Security Agreement and Financing Statement