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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
STEWART TITLE INS AGCY OF UT  
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Recording Requested By and  
When Recorded Mail To:

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Loan No. 901001736

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10-19-103-024

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
AND SECURITY AGREEMENT  
(ALSO CONSTITUTING A FIXTURE FILING)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT (this "Deed of Trust") is made this 25 day of April, 2019, by BOYER SOUTH SALT LAKE CROSSING, L.C., a Utah limited liability company, as Trustor ("Borrower"), whose address is 101 South 200 East, Suite 200, Salt Lake City, Utah 84111; to STEWART TITLE INSURANCE AGENCY OF UTAH, INC., as Trustee ("Trustee"), whose address is 6955 Union Park Avenue, Suite 370, Union Heights, Utah 84047; for the benefit of GENWORTH LIFE INSURANCE COMPANY, a Delaware corporation, as Beneficiary ("Lender"), whose address for notice purposes is Servicing Department, 10851 Mastin, Suite 300, Overland Park, Kansas 66210. For purposes of Article 9 of the Uniform Commercial Code, this Deed of Trust constitutes a security agreement and financing statement with Borrower being the Debtor and Lender being the Secured Party. This Deed of Trust also constitutes a financing statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code.

Lender is making a loan (the "Loan") in the principal amount of Four Million Four Hundred Thousand Dollars (\$4,400,000.00) to be secured by that certain real property (the "Realty") described in Exhibit A attached hereto. The Loan, if not sooner paid, is due and payable in full on April 30, 2039.

In consideration of the Loan and to secure the full and absolute payment and performance of the Secured Obligations (hereinafter defined), Borrower hereby irrevocably GRANTS, PLEDGES, TRANSFERS, CONVEYS and WARRANTS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, all of Borrower's estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (the "Property"):

(a) The Realty and all rights to the land lying in alleys, streets and roads adjoining or abutting the Realty;

(b) To the extent of Borrower's interest therein, all buildings, improvements and tenements now or hereafter located on the Realty;

(c) To the extent of Borrower's interest therein, all fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of the buildings, improvements and the Realty (whether such items are leased, owned or subject to any title retaining or security instrument, or otherwise used or possessed), including, without limitation, all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, paneling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real

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property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Realty with the right of removal at the termination of their tenancies shall not be included within the scope of this paragraph;

(d) All easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;

(e) All of the rents, benefits, revenues, issues, profits and income of the Realty, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, including without limitation that certain Lease Agreement dated October, 2015 (as amended, the "WinCo Lease"), between Borrower, as landlord, and WinCo Foods, LLC, a Delaware limited liability company ("WinCo"), and that certain Lease Agreement dated January 19, 2018 (as amended, the "CFCU Lease"; and together with the WinCo Lease, collectively, the "Existing Leases"), between Borrower, as landlord, and Chartway Federal Credit Union ("CFCU", and together with WinCo, collectively, the "Existing Tenants"), and also including, without limitation, licenses, all cash or security deposits (whether or not in the form of cash), advance rentals and deposits or payments of similar nature, all fees or other consideration received by Borrower in connection with the termination or modification of any lease of all or any portion of the Property, and all guaranties of tenants' or occupants' performances under such leases and agreements; SUBJECT, HOWEVER, to the assignment of rents and other property to Lender herein contained;

(f) To the extent of Borrower's interest therein, all general intangibles relating to the development or use of the Realty, including, without limitation, all permits, licenses and franchises, all names under or by which the Realty may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, all trademarks, trade names, logos and good will in any way relating to the Realty and all casualty insurance policies and liability insurance policies, and all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation thereof, pertaining to the Realty, but excluding the name "Boyer" or any derivation thereof;

(g) All water rights relating to the Realty, including, without limitation, all certificated rights and all shares of water stock or other evidence of ownership of any part of the Realty whether owned by Borrower alone or in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Realty; and

(h) All products and proceeds of all of the foregoing;

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

(1) Payment of the sum of Four Million Four Hundred Thousand Dollars (\$4,400,000.00), with interest thereon, according to the terms and provisions of a promissory note of even date herewith, payable to Lender, or order, and made by Borrower, and all modifications, extensions, renewals and replacements thereof (collectively the "Note");

(2) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

(3) Payment of all other sums that are or that may become owing under the Loan Documents;

(4) Performance of all of Borrower's other obligations under the Loan Documents; and

(5) Payment of the principal and interest on all other future loans or advances made by Lender to Borrower when the promissory note evidencing the loan or advance specifically states that it is secured by this Deed of Trust, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

As used herein, the term "Loan Documents" means the Note, this Deed of Trust, any loan agreement and Uniform Commercial Code Financing Statement executed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith (except the environmental indemnity agreement and any guaranties executed in connection with the Loan, none of which are secured by this Deed of Trust), together with all modifications, extensions, renewals and replacements thereof. This Deed of Trust shall not secure any Loan Document or any particular person's liabilities or obligations under any Loan Document to the extent that such Loan Document expressly states that it or such particular person's liabilities or obligations are not secured by this Deed of Trust.

BORROWER HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I**  
**REPRESENTATIONS AND WARRANTIES**

1.1 **Warranty of Title.** Borrower represents and warrants to Lender that: (a) except as may otherwise be expressly stated in this Deed of Trust (including, without limitation, with respect to property owned by the Existing Tenants under the Existing Leases), Borrower has good and marketable title in fee simple to such of the Property as is real property and is the sole and absolute owner of all other Property; (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of property taxes and assessments, general and special, the exceptions, if any, listed on Schedule B of the title insurance policy issued to and approved by Lender in connection with the Loan, and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Deed of Trust (collectively, "Permitted Exceptions"), and no others, whether superior or inferior to this Deed of Trust, will be created or suffered to be created by Borrower during the life of this Deed of Trust without the prior written consent of Lender; (c) no default on the part of Borrower or, to Borrower's knowledge, any other person exists under any of the Permitted Exceptions and all Permitted Exceptions are in full force and effect and in good standing, without modification except as disclosed on Exhibit A attached; (d) none of the Permitted Exceptions will be modified by Borrower without Lender's prior written consent; (e) Borrower will fully comply with all the terms of the Permitted Exceptions; and (f) Borrower has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Lender against all claims and demands of any other person whomsoever, subject only to non-delinquent installments of taxes and assessments and the Permitted Exceptions.

1.2 **Hazardous Substances.** Borrower represents and warrants to Lender that except as disclosed in that certain Phase 1 Environmental Site Assessment dated February 11, 2019 prepared by Partner Engineering and Science, Inc. in connection with the Loan (the "Environmental Report"): (i) to Borrower's knowledge, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property; (ii) no Hazardous Substance is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property, except for de minimis amounts of pre-packaged supplies and cleaning materials customarily used in the operation and maintenance of comparable properties, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with all applicable laws; (iii) neither Borrower nor, to Borrower's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property in violation of any applicable laws; (iv) Borrower has not received any notice of, nor is Borrower aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) neither Borrower nor the Property is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Property. Borrower further represents and warrants to Lender that the foregoing representations and warranties contained in this Paragraph 1.2(a) are made based upon the Environmental Report and to Borrower's knowledge. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including, without limitation, any substance, waste or material which now or hereafter is (A) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), (B) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery

Act (42 U.S.C. §6901 et seq.), (C) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), or (D) defined or listed as a "hazardous waste," "construction or demolition waste," "infectious waste," or "solid waste" pursuant to Title 19, Chapter 6, Section 102 of the Utah Code, as amended, or defined or listed as "hazardous materials" pursuant to Title 19, Chapter 6, Section 302 of the Utah Code, as amended.

1.3 Location of Borrower. Borrower represents and warrants to Lender that Borrower is a limited liability company organized under the laws of the State of Utah and Borrower's exact legal name is as set forth in the first paragraph on page 1 of this Deed of Trust. Borrower covenants that it will give Lender thirty (30) days' prior written notice of any act, event or occurrence which will cause the representations and/or warranties in this paragraph to become untrue in any respect.

1.4 Personal Property. Borrower represents and warrants that it owns, free and clear of liens or encumbrances, all fixtures, equipment and other items of personal property used in connection with the operation of the Property other than fixtures, equipment and other items of personal property owned by tenants.

## **ARTICLE II** **BORROWER'S COVENANTS**

2.1 Payment and Performance of Secured Obligations. Borrower agrees to pay when due all sums that are now or that may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Borrower agrees to pay, or cause to be paid, prior to delinquency directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust, but excluding any franchise or income tax of Lender. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subparagraph and all receipts evidencing such payments. Borrower, or the Existing Tenants in accordance with the terms of the Existing Leases, may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Borrower's or such Existing Tenant's expense and Borrower shall not be obligated to pay such taxes or assessments while such contest is pending so long as (i) the Property is not thereby subjected to imminent loss or forfeiture and (ii) if Borrower has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with Lender or provides other security satisfactory to Lender in its sole discretion.

(b) Utilities. Borrower will pay when due all utility charges and assessments for services furnished to the Property.

(c) Liens and Charges. Borrower will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of Paragraph 4.1 hereof, Borrower will promptly discharge any lien or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property. Provided that the priority of this Deed of Trust is not in any way affected, Borrower may in good faith contest or protest the payment of any mechanic's lien or similar charge imposed on the Property which it believes is invalid, unwarranted or excessive ("Contested Sum") and may defer payment of such lien or charge pending conclusion of such contest if legally permitted to do so and provided Lender's security is not jeopardized in Lender's sole opinion. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to the delinquency of the Contested Sum, Borrower shall have furnished to Lender such security as may be required in the proceeding or as may be required by Lender, to insure the payment of any such lien or other charge, together with all interest and penalties thereon, or adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefore, together with interest, costs and

penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, on or before such judgment becomes final and before any writ or order is issued under which the Property could be sold pursuant to such judgment. Notwithstanding the foregoing, Borrower shall immediately upon the request of Lender pay any such Contested Sum, regardless of such contest, if in the opinion of Lender in its sole discretion, the Property shall be in jeopardy or in danger of being forfeited or foreclosed.

### 2.3 Insurance.

(a) Coverages Required. Borrower will keep, or will cause the Existing Tenants to keep, the following insurance coverages in effect with respect to the Property:

(i) Insurance against loss by fire, vandalism, malicious mischief and such other hazards as may now or hereafter be embraced by the standard "all risk" or "special form" policy of insurance, in an amount equal at all times to the lesser of one hundred percent (100%) of the current replacement value of the improvements then located on the Property or the amount of the Loan. All such insurance coverage shall contain a "replacement cost endorsement", without deduction for depreciation. Notwithstanding the above, Borrower may cause the Existing Tenants, in accordance with their respective Leases, to carry and provide the insurance coverage described in this paragraph, by either third-party insurance or self-insurance.

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Property, whichever is less, if the Property is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available.

(iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to twelve (12) months' aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Borrower, business interruption insurance in an amount equal to twelve (12) months' net income from such portion of the Property as is so occupied. The amount(s) of such coverage(s) shall be subject to adjustment, from time to time at Lender's request, to reflect changes in the rental and/or income levels during the term of the Loan.

(iv) Commercial general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million Dollars (\$1,000,000) combined single-limit liability coverage, or in such greater amount(s) as Lender may reasonably require.

(v) Insurance covering the perils of terrorism and acts of terrorism.

(vi) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of such items, in such amounts as Lender may reasonably require.

(vii) Demolition, increased cost of construction and contingent building laws liability insurance, if and at any time the Property constitutes a legal, non-conforming use under applicable zoning or other governmental laws.

(viii) Sinkhole insurance if the Property is located in a sinkhole zone.

(ix) Wind storm insurance.

(x) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Lender may from time to time reasonably require.

This paragraph sets forth Lender's minimum insurance requirements and shall not be construed as a recommendation as to the nature, type or extent of any insurance, supplements or endorsements that Borrower could or should acquire, and Borrower shall, with the assistance of its own brokers and advisors, determine whether and to what extent any additional insurance coverages shall be obtained.

(b) Policies. Each insurance policy will be in form and content acceptable to Lender, with a deductible of no greater than Fifty Thousand Dollars (\$50,000.00) (or with respect to insurance maintained by an Existing Tenant, such greater amount as is permitted under the applicable Lease as of the date of this Deed of Trust), and will be issued by a company acceptable to Lender, which company shall, among other things, be (i) duly authorized to provide such insurance in the state in which the Property is located, and (ii) rated "A-" or better with a size rating of "VII" or larger by A.M. Best Company's Key Rating Guide in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Lender shall be entitled to select replacement ratings in the exercise of its reasonable business judgment). Each hazard insurance policy maintained by Borrower will include a mortgagee endorsement in favor of and in form acceptable to Lender, naming Lender as first mortgagee and loss payee, and which endorsement provides that the policy to which it relates will survive foreclosure of this Deed of Trust. Each liability insurance policy will name Lender as an additional assured. An "agreed amount endorsement" will be included in any policy containing a co-insurance clause, and Borrower agrees that any and all co-insurance clauses and "agreed amount endorsements" must be satisfactory to Lender. If any required property insurance coverage is furnished as part of a "blanket policy," either the blanket policy will include an "agreed value endorsement" or "agreed amount endorsement," or Borrower will furnish to Lender a copy of the insurer's "statement of value" for the Property. All required policies maintained by Borrower will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage, and shall include a waiver of subrogation for any policy on which Borrower is a co-insured or additional insured. Borrower shall furnish to Lender (x) the complete original of each required insurance policy, or (y) a certified copy thereof (including all declaration pages, policy forms and endorsements), which shall include an original signature of an authorized officer or agent of the insurer, or (z) an uncertified memorandum copy thereof (including all declaration pages, policy forms and endorsements), together with an original evidence of insurance or certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Borrower hereby assigns to Lender all required insurance policies maintained by Borrower and Borrower's interest in all insurance maintained by the Existing Tenants, together with all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation (all such assigned items constituting "Property" for purposes of this Deed of Trust).

(c) Payment; Renewals. Borrower shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III, Borrower will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy maintained by Borrower, or, with respect to insurance policies maintained by the Existing Tenants, within two (2) business days of Borrower's receipt of such certificates from the Existing Tenants, Borrower shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.

(i) In the event of any loss, Borrower will give prompt written notice thereof to the insurance carrier and Lender. In connection with any loss resulting in a claim exceeding Twenty-Five Thousand Dollars (\$25,000.00), Borrower hereby grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Lender's or Borrower's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Lender shall have no obligation to do so. If no Event of Default has occurred and is continuing, the immediately preceding sentence shall apply except that Lender shall not be entitled to act as Borrower's attorney-in-fact and Borrower shall be entitled to participate jointly with Lender in adjusting and compromising any claim, and appearing in any proceeding. In the event of any loss covered by an insurance policy maintained by an Existing Tenant, the insurance proceeds maintained by the applicable tenant shall be applied to reconstruction of the applicable building in accordance with the applicable Lease, provided that in the event that any

sums are paid to Borrower in connection with such loss, whether in the form of insurance proceeds payable to Borrower or rent payments due in connection with a termination of the applicable Lease, all such sums shall be subject to the liens and security interests granted herein and shall be paid to Lender for application in accordance with the terms of this paragraph.

(ii) Except as may otherwise be required by applicable law, and subject to the rights of the Existing Tenants under the Existing Leases, Lender shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:

(A) The payment of indebtedness secured hereby, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note or change the amounts thereof, and in the event such application does not result in a payment in full of all sums due and owing under the Loan, provided that there exists no event or circumstance which is or which with the passage of time, the giving of notice, or both will constitute an Event of Default, Borrower may within one hundred twenty (120) days after the date of such application, prepay the remaining balance due under the Loan in full without prepayment premium or penalty; or

(B) The reimbursement of Borrower, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

(iii) Notwithstanding the provisions of Paragraph 2.3(d)(ii) above, but subject to the rights of the Existing Tenants under the Existing Leases, Lender agrees that the Net Proceeds from a loss described in this Paragraph 2.3(d) will be made available under clause (ii)(B) above to reimburse Borrower for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:

(A) At the time the proceeds are received, and at all times during the restoration or repair of the Property, no event or circumstance exists which is or which with the passage of time, the giving of notice, or both will constitute an Event of Default;

(B) The Net Proceeds are less than the indebtedness then secured by this Deed of Trust;

(C) The Net Proceeds are received more than one (1) year prior to the maturity date of the Note, including any acceleration of the maturity date by Lender if the Note gives Lender a right of acceleration;

(D) Borrower gives Lender written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Borrower thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Lender, which approval shall not be unreasonably withheld;

(E) The Net Proceeds are sufficient, in Lender's judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Lender's reasonable business judgment they are not, Borrower deposits with Lender funds in an amount equal to the deficiency, which funds Lender may, at its option, require be expended prior to use of the Net Proceeds; and

(F) Lender receives evidence satisfactory to Lender that the Property can lawfully be restored or repaired to its condition prior to the damage and destruction and that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

(iv) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Borrower from restoring, repairing or maintaining the Property as provided in Paragraph 2.4 below, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(v) Notwithstanding the foregoing to the contrary so long as the Existing Leases are in effect, all insurance proceeds shall be applied in accordance with the requirements of the Existing Leases.

(e) Transfer of Title. If the Property is sold pursuant to Article VIII or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

#### 2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Borrower (i) will not commit, permit to occur or suffer any waste or impairment or deterioration of the Property beyond normal wear and tear, (ii) will not abandon the Property, (iii) except to the extent, if any, that insurance proceeds are available but Lender elects to apply them to payment of the Secured Obligations, will restore or repair or cause the Existing Tenants to restore or repair, promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and will replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. Except to the extent permitted without Borrower's consent under the Existing Leases, no building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor will any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Realty be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Borrower, free and clear of any lien or security interest except such as may be approved in writing by Lender.

(c) Right of Entry. Subject to the rights of the Existing Tenants under the Existing Leases. Lender is hereby authorized to enter the Realty, including the interior of any structures located thereon, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and/or for the purpose of performing any of the acts it is authorized to perform hereunder.

#### 2.5 Hazardous Substances.

(a) No Future Hazardous Substances. Borrower will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Deed of Trust), except for de minimis amounts of pre-packaged supplies and cleaning materials customarily used in the operation and maintenance of comparable properties, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with all applicable laws, nor shall Borrower cause or permit, as a result of any intentional or unintentional act or omission on the part of Borrower or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any



waters. Notwithstanding anything to the contrary, however, Borrower shall not cause or permit the installation, operation or presence on the Property of any underground storage tank or system used or to be used for the storage, handling or dispensing of petroleum or any other substance regulated under the Resource Conservation and Recovery Act (42 USC §6901 et seq.), as now or hereafter amended, or any state or local statute, ordinance, rule, regulation or other law now or hereafter in effect regulating underground storage tanks or systems.

(b) Notification; Clean Up. Borrower will immediately notify Lender if Borrower becomes aware of (i) any Hazardous Substance problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Borrower will, at its sole expense, take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including, without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Deed of Trust relating to Hazardous Substances, and the observance of all covenants contained in this Paragraph 2.5, if (i) an Event of Default exists or if Lender reasonably believes that any Hazardous Material may exist in, on, under or near the property in violation of any applicable law, Lender is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice; or (ii) at any time Hazardous Substances are being handled on the Property, except for de minimus amounts of pre-packaged supplies and cleaning materials customarily used in the operation and maintenance of comparable properties, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with all applicable laws, then in either such case Borrower shall furnish Lender with such information and documents as may be reasonably requested by Lender to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws. Borrower shall reimburse Lender upon demand for all costs and expenses, including, without limitation, attorneys' fees incurred by Lender in connection with any such entry and inspection and the obtaining of such information and documents.

(d) Indemnity for Certain Matters. Borrower shall be responsible for, and indemnify, defend, and hold harmless the Lender from and against, any claim, judgment, loss, damage, demand, cost, expense or liability, known or unknown, contingent or otherwise, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or after the date of this Deed of Trust) of Hazardous Substances on, in, under or about the Property including all costs and expenses incurred by the Lender, including reasonable attorneys' and consultants' fees. The foregoing indemnification obligation shall be limited to the actual damages incurred by Lender, including all advances or payments paid or agreed to be paid by Lender pursuant to its rights to require environmental assessments, join or participate in any proceedings, cure the Borrower's default or enforce its remedies, (i) prior to and after any judicial foreclosure of this Deed of Trust or deed delivered and accepted in lieu thereof, or (ii) prior to any nonjudicial foreclosure of this Deed of Trust or deed delivered and accepted in lieu thereof. The obligations of the Borrower under this Section shall be mutually exclusive of any liabilities arising after a nonjudicial foreclosure of this Deed of Trust or the delivery and acceptance of a deed in lieu of such nonjudicial foreclosure, which are evidenced by the Environmental Indemnity, and are not secured hereby.

2.6 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are reduced for any other reason, Borrower will take all actions as are necessary to provide parking facilities in kind, size and location necessary to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Borrower will furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.7 Use of Property. Borrower will comply with, and will cause all tenants, invitees and other users of the Property to comply with, all federal, state and municipal laws, ordinances, regulations and requirements of any

governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all taxes, fees and charges in connection therewith. The Property may not be converted to a cooperative or condominium without Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion. Borrower shall not cause or permit all or any of the Property to be used for a gasoline station, service station or other fueling facility which in whole or in part handles, sells or distributes gasoline, diesel fuel, gasohol or any other substance used in self-propelled motor vehicles. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower will not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower will not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

## 2.8 Condemnation.

(a) Proceedings. Borrower will promptly notify Lender of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Borrower will appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Lender shall have no obligation to do so. Subject to the rights of the Existing Tenants under the Existing Leases, all awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender (all such assigned items constituting "Property" for purposes of this Deed of Trust); all proceeds of any such awards, payments, damages or claims shall be paid to Lender.

(b) Application of Proceeds. Subject to the rights of the Existing Tenants under the Existing Leases, Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in Paragraph 2.3(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of Paragraph 2.3(d)(iii). Notwithstanding the foregoing to the contrary, if condemnation proceeds are required to be applied to repair under the terms of the Existing Leases, Lender will make such proceeds available for repairs provided that either (i) there will be no abatement or reduction in the rents payable under the Existing Leases, or (ii) in the event that rent under either of the Existing Leases will abate or reduce, Lender shall have received assurances acceptable to Lender that there will be sufficient rents available for the payment of all sums coming due under the Loan Documents during the abatement period. Furthermore, so long as no event or circumstance exists which is or which with the passage of time, the giving of notice, or both will constitute an Event of Default, Lender will permit application of the portion of a condemnation award that is necessary for the restoration or repair of the Property provided that (a) the portion of the Realty which is taken is located along the perimeter or periphery of the Realty, and no material portion of the improvements is located on the condemned land or Lender has otherwise determined the taking is not material, (b) such condemnation does not result in the loss of either (i) permanent access to the Property or the related improvements unless substitute access satisfactory to Lender is available to the Property, or (ii) parking on the Property unless (1) substitute parking satisfactory to Lender is available to the Property, or (2) such loss of parking does not adversely affect the Property or cause the Property to no longer comply with zoning requirements or lease provisions.

2.9 Protection of Lender's Security. Borrower will give notice to Lender of and will, at its expense, appear in and defend any action or proceeding that could reasonably be expected to adversely affect the Property or title thereto or the interests of Lender or Trustee therein or the rights or remedies of Lender or Trustee. If any such action or proceeding is commenced or if Lender or Trustee is made a party to any such action or proceeding by reason of this Deed of Trust, or if Borrower fails to perform any obligation on its part to be performed hereunder, then Lender and/or Trustee, each in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary to protect or enforce the security of this Deed of Trust, to remedy Borrower's failure to perform its obligations (without, however, waiving any default by Borrower) or otherwise to protect Lender's or Trustee's interests. Borrower will pay all losses, damages, fees, costs and expenses, including reasonable out of pocket attorneys' fees, of Lender and Trustee thus incurred. This paragraph shall not be construed to require Lender or Trustee to incur any expenses, make any appearances or take any actions.

2.10 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender and Trustee pursuant to Paragraph 2.9 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Borrower on such amounts by the payee thereof under applicable law if that is less.

2.11 Books and Records; Financial Statements. Borrower will keep and maintain at Borrower's address stated above, or such other place as Lender may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall upon prior reasonable notice be subject to examination, inspection and copying at any reasonable time by Lender. Borrower will furnish to Lender, within twenty (20) days after Lender's request therefor, the following documents, each certified to Lender by Borrower as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Property, (d) a copy of the most recent statements for the insurance coverages maintained by Borrower under Paragraph 2.3(a) of this Deed of Trust, and (e) a statement of income and expenses of the Property for the most recently ended fiscal year of Borrower (or for the prior year if such request is made during the first 90 days of a fiscal year). In addition, Borrower and any general partner therein will furnish to Lender, within twenty (20) days after Lender's request therefor, a complete and current financial statement, in the form delivered to Lender in connection with the Loan or otherwise in form acceptable to Lender and certified as correct by Borrower or such partner. Borrower and any general partner therein hereby irrevocably authorize Lender to obtain credit reports on Borrower and any such general partner on one or more occasions during the term of the Loan.

2.12 Prohibited Person Compliance. For purposes of this paragraph, "Debtor Entity" means Borrower, any guarantor of the Loan, any indemnitor under the Environmental Indemnity, and their respective affiliates (including individuals and entities), members, partners, shareholders and other owners. Borrower warrants, represents and covenants that no Debtor Entity is or will be an entity or person (i) that is listed in the Annex to, or otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specially Designated National and Blocked Persons" (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (<https://www.treasury.gov/ofac/downloads/sdnlist.pdf>); (iii) who commits, threatens to commit or supports "terrorism," as the term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in subparts (i)-(iv) above are herein referred to as a "Prohibited Person"). Borrower covenants and agrees that no Debtor Entity will (A) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to the making or receiving of any contribution funds, goods, or services, to or for the benefit of a Prohibited Person, or (B) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Upon Lender's request, Borrower further covenants and agrees to deliver to Lender any certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that no Debtor Entity is a Prohibited Person or has taken any action described in subparts (A) and (B) above.

2.13 Commercial Purpose. The proceeds of the Loan will be used exclusively for commercial, business or investment purposes.

### **ARTICLE III** **RESERVES**

3.1 Deposits. If required by Lender, Borrower will, at the time of making each installment payment under the Note, deposit with Lender a sum, as estimated by Lender, but excluding those items paid directly by the

Existing Tenants equal to (a) the rents under any ground lease under which Borrower is the lessee, (b) the taxes and special assessments next due on the Property, and (c) the premiums that will next become due on insurance policies as may be required under this Deed of Trust (not including those policies maintained by the Existing Tenants), less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Lender may require Borrower to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Borrower or the Property as Lender reasonably deems necessary to protect Lender's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Borrower will promptly deliver to Lender all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Lender under this Paragraph 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay such rents, taxes, assessments, premiums and Other Impositions or, upon the occurrence of an Event of Default (as defined below), may be applied in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Article III is solely for the added protection of Lender and, except as may otherwise be required by applicable law, entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the transferee all rights of Borrower with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower the remaining balance of any deposits then held by Lender.

3.3 Adjustments to Deposits. If the total deposits held by Lender exceed the amount deemed necessary by Lender to provide for the payment of such rents, taxes, assessments, premiums and Other Impositions as the same fall due, then such excess shall, provided no Event of Default then exists hereunder, be credited by Lender on the next due installment or installments of such deposits. If at any time the total deposits held by Lender is less than the amount deemed necessary by Lender to provide for the payment thereof as the same fall due, then Borrower will deposit the deficiency with Lender within thirty (30) days after written notice to Borrower stating the amount of the deficiency.

#### **ARTICLE IV** **RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

##### 4.1 Restrictions on Transfer or Encumbrance of the Property.

(a) A "Transfer" is: Any sale (by contract or otherwise), lien, encumbrance, conveyance or other transfer of the Property or any part thereof or interest therein (including, without limitation, any of the foregoing actions between any person or entity that is a part of Borrower and another person or entity that is a part of Borrower); or any change (whether direct or indirect) in the ownership of any stock interest in a corporate Borrower, in the ownership of any membership interest or in the manager of a limited liability company Borrower, in the ownership of any general partnership interest in any general or limited partnership Borrower, or in the ownership of any beneficial interest in any other Borrower which is not a natural person or persons (including without limitation a trust); or any change in the ownership of any such stock, membership, general partnership or other beneficial interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Borrower, or a change in the manager of a limited liability company; or any pledge, assignment or encumbrance of any ownership or equity interest in Borrower, including assignments or ownership or equity interests made in connection with mezzanine or preferred equity financing; or any partition of the Property. A change in the ownership of a limited partnership interest in a limited partnership shall not be deemed a "Transfer." A "Transfer" does not include a lease of space at the Property made in the ordinary course of Borrower's business.

(b) Lender shall give its written consent to Transfers: (a) of gifts for estate planning purposes of any direct or indirect interests in Borrower, to the transferor's spouse or lineal descendants, or to an estate planning trust whose beneficiaries are the transferor or the transferor's spouse or lineal descendants, so long as at all times (i) H. Roger Boyer, his spouse and lineal descendants (A) continue to own, directly or indirectly, no less than

fifty-one percent (51%) of the ownership interests of The Boyer Company, L.C., and (B) continue to have sole and absolute authority for management and control of The Boyer Company, L.C., and (ii) The Boyer Company, L.C., continues to be the Manager of Borrower with sole and absolute authority for management and control of Borrower; (b) of direct or indirect ownership interests in Borrower so long as at all times (i) H. Roger Boyer, his spouse and lineal descendants continue to own, directly or indirectly, no less than fifty-one percent (51%) ownership interests in The Boyer Company, L.C., and the Boyer Company, L.C. continues to own no less than fifty-one percent (51%) of the ownership interests in Borrower, and (ii) H. Roger Boyer, his spouse and lineal descendants (A) continue to own, directly or indirectly, no less than fifty-one percent (51%) of the ownership interests of The Boyer Company, L.C., and (B) continue to have sole and absolute authority for management and control of The Boyer Company, L.C., and (ii) The Boyer Company, L.C., continues to be the Manager of Borrower with sole and absolute authority for management and control of Borrower; and (c) under any will, trust or applicable law of descent arising because of the death of an individual, so long as (i) managerial control of the Property remains in The Boyer Company, L.C. and (ii) H. Roger Boyer, his spouse and lineal descendants (A) continue to own, directly or indirectly, no less than fifty-one percent (51%) of the ownership interests of The Boyer Company, L.C., and (B) continue to have sole and absolute authority for management and control of The Boyer Company, L.C. In all cases above (except in the event of a transfer as a result of death or incapacity), Borrower shall give Lender (i) prior written notice of the proposed Transfer, (ii) copies of all transfer documentation (which shall be reviewed and approved by Lender), and (iii) a \$1,500.00 transfer review fee on each transfer involving ownership of 10% or more of the direct or indirect ownership interests in Borrower. Notwithstanding the foregoing, no transferee of any ownership interest in Borrower may be a Prohibited Person. Lender's consent to any Transfer or its waiver of an Event of Default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Lender by reason of any subsequent Transfer.

(c) For any Transfer permitted under this Deed of Trust or requested by Borrower, Lender may condition its consent upon: the Property having been and assurances that it shall continue to be well maintained and managed in a manner satisfactory to Lender in its sole and absolute discretion; Lender's approval of the Transfer terms, documents and background materials; there being no uncured Event of Default under this Deed of Trust; Borrower furnishing an endorsement to Lender's title insurance policy insuring the continued validity and priority of the lien of this Deed of Trust following the Transfer and such subordination agreements and other documents as may be required by Lender or its title company to issue the endorsement; and Borrower furnishing proof of payment of any taxes arising in connection with the Transfer. Unless Lender in its sole and absolute discretion otherwise agrees in writing at that time, no Transfer shall release the transferor from any liability under the Loan Documents or the Environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity to the extent the transferor has personal liability. At Lender's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Lender to evidence satisfaction of the requirements set forth above. Regardless whether Lender consents to a Transfer request, Borrower agrees to pay all of Lender's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and reasonable attorneys' fees and costs, and Lender may condition its willingness to consider a Transfer request upon a deposit to pay for Lender's expenses.

4.2 Loan Assumption Provision. Notwithstanding any provision of this Deed of Trust to the contrary, Lender will consent to one sale of the Property to, and the related and concurrent assumption of the Borrower's obligations under the Loan by, an unrelated third party ("Buyer") (a "Loan Assumption"), provided that each of the following conditions is met in a manner acceptable to Lender, in its sole and absolute discretion, at the time of the Loan Assumption:

(a) No Event of Default exists and no event or circumstance has occurred and is continuing which is or which with the passage of time, the giving of notice, or both will constitute an Event of Default; and

(b) Borrower gives Lender at least thirty (30) days prior written notice of the proposed transfer and copies of all proposed transfer documents; and

(c) Buyer evidences a history of property management satisfactory to Lender or contracts for management of the Property with a property management firm satisfactory to Lender; and

(d) If the unpaid balance of the Loan at the time of the Loan Assumption exceeds sixty-five percent (65%) of the sale price of the Property, a prepayment of the Loan shall, if required by Lender, be made at the time of the Loan Assumption in the amount of the excess, together with the applicable prepayment fee; and

(e) Lender is paid at the time Borrower requests approval of the Loan Assumption, an assumption fee equal to one percent (1%) of the then outstanding Loan balance or \$7,500.00, whichever is greater, plus Lender's legal and administrative expenses incurred in connection with such sale and assumption; and

(f) Buyer, the financial statements, financial strength, tax returns and credit history of Buyer, the sale agreement and related documents, and all aspects of the sale and assumption shall be satisfactory to Lender; and

(g) Borrower provides a new guarantor or guarantors for the Loan who are acceptable to Lender in its sole discretion; and

(h) Borrower, the original guarantor(s), Buyer and the new guarantor(s) enter into an assumption agreement and such other documents as are requested by Lender in order to confirm the Loan Assumption and protect the liens and other security for the Loan; and

(i) Borrower furnishes Lender, at Borrower's expense, with the following:

(i) An endorsement to Lender's title insurance policy, in form and content satisfactory to Lender, insuring the continued validity, enforceability and priority of this Deed of Trust following the sale and Loan Assumption; and

(ii) Such subordination agreements and other documents, in form and content satisfactory to Lender and the title company, as may be required by the title company in order to issue the endorsement; and

(j) At the time of the Loan Assumption, Lender may, in its sole discretion, require the continuation or the establishment, as the case may be, of a reserve account under Article III of this Deed of Trust; and

(k) Lender reviews and approves both: (i) the new borrower ownership structure and (ii) the new guarantor, and is able to confirm that no person or entity associated with the new borrower or guarantor is a Prohibited Person.

Lender shall, in connection with a Loan Assumption effected in accordance with the foregoing, release the transferring Borrower and the original guarantor(s) from liability under the non-recourse exceptions set forth in the Note and Unconditional Guaranty and from liability under the Environmental Indemnity to the extent that such liability arose from acts or omissions occurring after the closing of the Loan Assumption; provided, however, that where the time when any act or omission took place is in dispute, the transferring Borrower and/or released guarantor, as applicable, shall have the burden of proof that such act or occurrence took place after the closing of the Loan Assumption.

#### **ARTICLE V**

#### **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT**

5.1 Grant to Lender. Borrower grants and conveys to Lender a continuing security interest under the Uniform Commercial Code, and this Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to all of Borrower's right, title and interest to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and

(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust);

and Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Deed of Trust is and at all times shall be regarded for all purposes as part of the real property.

5.2 Lender's Rights and Remedies. With respect to Property subject to the foregoing security interest, Lender has all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default, Borrower will assemble any items of personal property and make them available to Lender at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Borrower.

5.3 Fixture Filing. This Deed of Trust covers goods which are or are to become fixtures on the Property, and this Deed of Trust constitutes and is filed as a "fixture filing" (as that term is defined in the Utah Uniform Commercial Code) upon such of the Property which is or may become fixtures. The exact names of Borrower, as "Debtor," and Lender, as "Secured Party," and their respective addresses are set forth on page 1 of this Deed of Trust. Borrower has an interest of record in the Property. The organizational number of the Borrower is 9455972-0160.

5.4 Lender Authorization to File Financing Statement; Borrower Cooperation. Borrower hereby authorizes Lender to file one or more Uniform Commercial Code Financing Statements with respect to the Property. Borrower covenants and agrees that it will promptly furnish to Lender, upon Lender's request, such information as may be required in order for Lender to do so.

## ARTICLE VI

### ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION

6.1 Assignment of Rents and Leases. As security for the Secured Obligations, Borrower hereby assigns and transfers to Lender all right, title and interest of Borrower in and to (a) any and all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (collectively "Leases"), (b) all cash or security deposits (whether or not in the form of cash), advance rentals and deposits, all fees or other consideration received by Borrower in connection with the termination or modification of Leases of all or a portion of the Property or other payments of similar nature under the Leases, (c) any and all guaranties of tenants' or occupants' performances under any and all Leases, and (d) all rents, issues, profits and revenues (collectively "Rents") now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

6.2 Collection of Rents. Prior to written notice given by Lender to Borrower of an Event of Default, Borrower shall collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, and apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Borrower under the Leases, and fourth to the indebtedness secured hereby, with the balance, if any, so long as no such Event of Default has occurred, to the account of Borrower, and so long as no Event of Default exists, may be disbursed by Borrower in its discretion. Upon delivery of written notice by Lender to Borrower of an Event of Default and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Lender may make written demand upon all or some of the tenants and occupants of the Property to pay all Rents to Lender, and Borrower hereby agrees that each such tenant and occupant shall have no liability to inquire further as to the existence of a default by Borrower. Upon written demand by Lender following the occurrence of any Event of Default, Borrower hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Borrower. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Leases.

6.3 Borrower's Representations and Warranties. Borrower represents and warrants to Lender that Borrower has not executed and will not execute any other assignment of said Leases or Rents, that Borrower has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article VI, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Borrower further represents and warrants to Lender that all existing Leases are in good standing and to Borrower's knowledge there is no default thereunder, whether by Borrower or lessee, nor to Borrower's knowledge any event or condition which, with notice or the passage of time or both, would be a default thereunder.

6.4 Leases of the Property. Borrower will comply with and observe Borrower's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. Without Lender's written consent, Borrower will not collect or accept payment of any Rents of the Property more than two (2) months prior to the due dates thereof, will not enter into, execute, modify or extend any Lease now existing or hereafter made providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the area demised by the Lease is less than twenty-five percent (25%) of the net rentable area of the building(s) at the Property. Without Lender's written consent, Borrower will not surrender or terminate any Lease now existing or hereafter made providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years nor will Borrower surrender or terminate in any single twelve-month period Leases demising more than twenty-five percent (25%) of the aggregate total net rentable area. Each Lease of the Property will be subordinate to the lien of this Deed of Trust, unless Lender elects that the Lease shall be superior to this Deed of Trust, and each tenant shall execute an appropriate subordination or attornment agreement as may be required by Lender. To the extent required by Lender, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment to Lender of its Lease, all satisfactory in form and content to Lender. Without Lender's written consent, Borrower will not request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust.

6.5 Lender in Possession; Appointment of Receiver. Upon the occurrence of an Event of Default, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs



to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default, Lender shall be entitled (without notice and regardless of the adequacy of Lender's security and as a matter of strict right) to the appointment of a receiver, Borrower hereby consenting to the appointment of such receiver, and the receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers (including, without limitation, the power to collect rents), all the rights and powers granted to Lender in this Article VI. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

6.6 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the indebtedness secured hereby. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article VI.

6.7 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Borrower therefor under applicable law if that is less.

6.8 Lender Not Mortgagee in Possession. Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

6.9 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Article VI, the word "lease" shall mean "sublease" if this Deed of Trust is on a leasehold. This assignment shall terminate at such time as this Deed of Trust ceases to secure payment of indebtedness held by Lender.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

7.1 Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

- (a) Borrower's failure to pay any amount outstanding under the Note on the Maturity Date.
- (b) Borrower's failure to make any other payment when due under the Note, this Deed of Trust or any of the other Loan Documents, followed by Borrower's failure to make such payment within ten (10) days after written notice thereof given to Borrower by Lender; provided, however, that Lender shall not be obligated to give Borrower written notice prior to exercising its remedies with respect to such default if Lender had previously given Borrower during the previous twelve (12) month period a notice of default for failure to make a payment of similar type.

(c) Borrower's failure to perform any other covenant, agreement or obligation under the Note, this Deed of Trust or any of the other Loan Documents, followed by Borrower's failure to cure such default within thirty (30) days after written notice thereof given to Borrower by Lender (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Borrower to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Lender's notice of default).

(d) Borrower or any guarantor of any portion of Borrower's obligations hereunder (whether one or more, "Guarantor") files, or there is filed against Borrower or any Guarantor (and such involuntary filing is not dismissed within ninety (90) days), or any portion of the Property becomes the subject of, a petition in bankruptcy or action seeking reorganization, arrangement, liquidation, dissolution or similar relief under any bankruptcy or other federal or state insolvency or other law relating to relief from indebtedness, or a receiver, trustee or liquidator is appointed with respect to Borrower, any Guarantor or any portion of the Property.

(e) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Borrower or Borrower's property, and such decree or order is not vacated within ninety (90) days after the date of entry.

(f) Borrower commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Borrower and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

(g) Borrower makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(h) There is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days.

(i) Any representation or disclosure made to Lender by Borrower or any guarantor in connection herewith proves to be materially false or misleading when made, whether or not that representation or disclosure is contained in the Loan Documents.

(j) Any Transfer (as defined in Section 4.1 above) made without Lender's prior written consent.

(k) The death or dissolution of any Guarantor, unless within thirty (30) days of the death or dissolution of such Guarantor, Borrower provides a new replacement guarantor reasonably acceptable to Lender who executes Lender's standard form guaranty agreement and environmental indemnity agreement and assumes all of the deceased Guarantor's obligations under the Loan Documents. Lender will be deemed to be reasonable in refusing to approve a proposed replacement guarantor whose creditworthiness, net worth and liquidity is less than that of the original Guarantor at the time of the closing of the Loan.

(l) The failure of The Boyer Company, L.C., a Utah limited liability company, to maintain the minimum net worth and minimum liquidity required under the Unconditional Guaranty (Limited Recourse) executed by it in favor of Lender in connection with the Loan.

7.2 Form of Notice. At Lender's option, any written notice of default required to be given to Borrower under Paragraph 7.1 may be given in the form of a statutory notice of default under the laws of the State of Utah relating to non-judicial foreclosures of deeds of trust.

**ARTICLE VIII**  
**REMEDIES**

8.1 Acceleration Upon Default; Additional Remedies. Upon the occurrence of any Event of Default, Lender may, at its option and without notice to or demand upon Borrower, take any one or more of the following actions:

(a) Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately.

(b) Bring a court action to enforce the provisions of this Deed of Trust or any of the indebtedness or obligations secured by this Deed of Trust, or to foreclose this Deed of Trust.

(c) Bring a court action to foreclose this Deed of Trust. Lender may, by and through Trustee, or otherwise elect to institute foreclosure proceedings and sell or offer for sale the Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction in accordance with the requirements of Title 57, Chapter 1 or Title 78B, Chapter 6 of the Utah Code, as amended. The terms of the sale may be cash upon settlement of the sale or upon such other and additional terms as the Trustee deems necessary, proper, or convenient, except as specifically limited by applicable law or court rule. To the extent permitted by law, the Borrower waives any right to redemption it may have under Title 57, Chapter 1 and Title 78B, Chapter 6, Section of the Utah Code, as amended, following a foreclosure sale of the Property.

(d) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.

(e) Exercise any or all of the rights and remedies provided for under this Deed of Trust and the other Loan Documents.

(f) Exercise any other right or remedy available under law or in equity.

8.2 Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale in compliance with the requirements of applicable law. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by Trustee is personal property, Trustee shall be acting as the agent of Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

8.3 Application of Sale Proceeds. Except as may otherwise be required by applicable law, the proceeds of any sale under this Deed of Trust will be applied in the following manner:

**FIRST:** Payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the applicable interest rate under the Note from time to time or at the maximum rate permitted to be charged by Trustee under the applicable law if that is less.

SECOND: Payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note from time to time or the maximum rate permitted by applicable law if that is less.

THIRD: Payment of all other indebtedness secured by this Deed of Trust in any order that Lender chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

8.4 Waiver of Order of Sale and Marshalling. Lender shall have the right to determine the order in which any and all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any person who consents to this Deed of Trust and any person who now or hereafter acquires a security interest in the Property hereby waives, to the extent permitted by law, any and all right to require marshalling of assets in connection with the exercise of any of the remedies provided herein or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

8.5 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.6 Expenses During Redemption Period. If this Deed of Trust is foreclosed through court action and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

8.7 Foreclosure Subject to Tenancies. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

8.8 Evasion of Prepayment Terms. If an Event of Default has occurred and is continuing, a tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or nonjudicial foreclosure sale of the Property by Borrower or anyone on behalf of Borrower shall constitute an evasion of the prepayment terms of the Note and shall constitute voluntary prepayment thereunder and any such tender shall to the extent permitted by law include the additional payment required under the prepayment privilege, if any, contained in the Note or, if at that time there is no prepayment privilege, then such payment shall to the extent permitted by law include an additional payment of five percent (5%) of the then principal Loan balance.

8.9 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Lender and Borrower, and may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.10 Lender's and Trustee's Expenses. Borrower will pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, and also in connection with any Borrower requests, whether or not there is any default under the Loan Documents or any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Borrower under applicable law if that is less.

**ARTICLE IX**  
**GENERAL**

9.1 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's out of pocket costs and expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) amounts payable to Lender by Borrower under Article III for reserves; (c) interest and late charges payable on the Note; (d) interest payable on advances made to protect the security of this Deed of Trust; (e) principal of such advances; (f) principal of the Note; and (g) any other sums secured by this Deed of Trust in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Deed of Trust prior to applying such payments to interest on or principal of the Note.

9.2 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

9.3 Successor Trustee. Lender may remove Trustee or any successor Trustee at any time or times and appoint a successor Trustee, or if preferred, multiple successor trustees in succession, by recording a written substitution in the county where the Property is located, or in any other manner permitted by law, including but not limited to Title 57, Chapter 1, Section 22 of the Utah Code, as amended. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

9.4 Lender's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations, or any of Lender's rights or remedies, or the priority of this Deed of Trust, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

9.5 Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

9.6 Limitation on Interest and Charges. Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Borrower is entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Lender which exceeded the permitted maximum will be refunded. Lender may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Deed of Trust or the Note or any other Loan Documents.

9.7 Additional Documents; Power of Attorney; Further Assurances. Borrower, from time to time, will execute, acknowledge and deliver to Lender upon request, and hereby grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Borrower will pay to Lender upon request therefor all out of pocket costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document. Borrower shall execute such further documents and do any and all such further things, including, but not limited to, correcting any errors or omissions in the Loan Documents, as may be necessary to implement and carry out the intent of this Deed of Trust.

9.8 Waiver of Statute of Limitations. To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

9.9 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default by Borrower shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under Paragraphs 2.3 and 2.8 hereof operate to cure or waive Borrower's default in payment of sums secured by this Deed of Trust.

9.10 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

9.11 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

9.12 Governing Law; Severability; Captions. This Deed of Trust shall be governed by the laws of the State of Utah. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the Paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

9.13 Definitions. As used herein: the term "Borrower" means the Borrower herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "Trustee" means the Trustee herein named, together with any successor Trustee; and the term "Lender" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

9.14 Successors and Assigns; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article IV hereof. Each person executing this Deed of Trust as Borrower shall be jointly and severally liable for all obligations of Borrower hereunder. In exercising any rights

hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee.

9.15 Number; Gender. This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.16 Time. Time is of the essence in connection with all obligations of Borrower herein.

9.17 Request for Notice. Borrower hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

9.18 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS DEED OF TRUST. BORROWER ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S EXTENDING CREDIT TO BORROWER, THAT THE LENDER WOULD NOT HAVE EXTENDED CREDIT WITHOUT THIS JURY TRIAL WAIVER, THAT BORROWER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER TO UNDERSTAND THE LEGAL EFFECT OF THIS WAIVER, AND THAT NO WAIVER OR LIMITATION OF LENDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON LENDER'S BEHALF. BORROWER ACKNOWLEDGES THAT THIS PROVISION HAS BEEN EXPRESSLY BARGAINED FOR BY LENDER AS PART OF THE LOAN AND THAT, BUT FOR BORROWER'S AGREEMENT AND THE AGREEMENT OF ANY OTHER PERSON LIABLE FOR PAYMENT HEREOF THERETO, LENDER WOULD NOT HAVE EXTENDED THE LOAN UPON THE TERMS AND PROVISIONS CONTAINED IN THE LOAN DOCUMENTS.

9.19 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first above written.

BORROWER:

BOYER SOUTH SALT LAKE CROSSING, L.C.,  
a Utah limited liability company

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



By: \_\_\_\_\_ (SEAL)

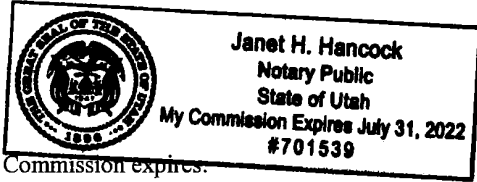
Name: Brian Goetzman

Manager

Acknowledgment

STATE OF UTAH, COUNTY OF SALT LAKE, SS:

The foregoing instrument was acknowledged before me this 22nd day of APRIL, 2019 by BRIAN W. GOUGHOUR, who is a Manager of The Boyer Company, L.C., a Utah limited liability company, which is the Manager of BOYER SOUTH SALT LAKE CROSSING, L.C., a Utah limited liability company, on behalf of the limited liability company.



My Commission expires: \_\_\_\_\_

Janet H. Hancock (SEAL)  
Title: \_\_\_\_\_  
Residing at: Salt Lake City, Utah



**EXHIBIT A**

**TO**

**DEED OF TRUST**

**PROPERTY SCHEDULE**

**LEGAL DESCRIPTION:**

The property which is the subject of this Deed of Trust is situated in the County of Salt Lake, State of Utah, and is legally described as follows:

**PARCEL 1:**

Lots 1 and 3, THE CROSSING AT SOUTH SALT LAKE SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Salt Lake County Recorder, State of Utah.

**PARCEL 2:**

Non-exclusive easement for vehicular and pedestrian access, ingress and egress, as set forth in that certain Declaration of Easements and Use Restriction, recorded December 4, 2015 as Entry No. 12182736, in Book 10385, at Page 167 of the Official Records.

**PARCEL 3:**

Non-exclusive easement for access and the vehicular and pedestrian ingress, egress and parking of vehicles, as set forth in that certain Declaration of Easements and Conditions, recorded February 24, 2017 as Entry No. 12483780, in Book 10532, at Page 7445, of the Official Records, as said Declaration was amended by that certain First Amendment to

Declaration of Easements and Conditions recorded October 18, 2017 as Entry No. 12639460, in Book 10610, at Page 2478, and as further amended by that certain Second Amendment to Declaration of Easements and Conditions recorded December 13, 2017 as Entry No. 12678528, in Book 10629, Page 2473, of Official Records.