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RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:
Denise Clevenger
First Internet Bank of Indiana
11201 USA Parkway
Fishers, IN 46037

Parcel #

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

made by

612 NORTH STATE STREET LLC,
a Utah limited liability company, as Grantor

to

INWEST TITLE SERVICES, INC. as Trustee,

for the use and benefit of

FIRST INTERNET BANK OF INDIANA,
as Beneficiary

County: Utah

State: Utah

Dated as of: January 22, 2019

~~This Deed of Trust~~ covers goods that are or are to become affixed to or fixtures on the land described in Exhibit A attached hereto and is to be filed for record in the real property records. This instrument also serves as a Financing Statement covering such goods. The mailing addresses of Grantor (Debtor) and Beneficiary (Secured Party) are set forth in the Preamble of this Deed of Trust.

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of January 22, 2019, by 612 NORTH STATE STREET LLC, a Utah limited liability company ("Grantor"), whose mailing address is 145 Hudson Street, Suite 5C, New York, NY 10013 to INWEST TITLE SERVICES, INC., its successors and assigns ("Trustee"), whose mailing address is 2037 W. Commerce Way, West Haven, UT 84401, for the benefit of FIRST INTERNET BANK OF INDIANA, its successors and assigns ("Beneficiary"), whose mailing address is 11201 USA Parkway, Fishers, IN 46037.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Grantor hereby irrevocably and unconditionally grants, bargains, sells, assigns, mortgages, warrants, transfers and conveys to Trustee, in trust, with power of sale, for the use and benefit of Beneficiary, a lien on, pledge of and security interest in, the following property, rights, interests, and estates now owned or hereafter acquired by Grantor to the full extent of Grantor's right, title, and interest therein, including hereafter acquired rights, interests, and properties, and all products and proceeds thereof and additions and accessions thereto (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property");

(a) The real property located in the County of Utah, State of Utah, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and the Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and the Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether

stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Grantor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Loan Documents, and any other bank accounts of Grantor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(l) All other personal property of any kind or character as defined in and subject to the provisions of the Code (defined below); together with

(m) Any and all of the foregoing which are now owned or hereafter acquired by Grantor, including any which is now or hereafter situated in, on, or about the Premises; together with

(n) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD the Property unto Trustee and his successors, forever;

IN TRUST, WITH POWER OF SALE, to secure payment of the Secured Obligations at the time and in the manner provided in the Loan Documents;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Beneficiary the Secured Obligations at the time and in the manner provided in the Loan Documents, and shall abide by and comply with each and every covenant and condition set forth in the Loan Documents, these presents and the estate hereby granted shall terminate.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Note.

1.2 Secured Obligations.

(a) Grantor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment of all obligations at any time owing under the promissory note (collectively with any other promissory note executed by Grantor in favor of Beneficiary, as may be amended from time to time, the "Note") bearing even date herewith, payable by Grantor as maker in the aggregate stated principal amount of \$2,582,000.00 (the "Loan") to the order of Beneficiary; and

(ii) Payment and performance of all obligations of Grantor under this Deed of Trust, as may be amended from time to time; and

(iii) Payment and performance of any obligations of Grantor under any Loan Documents which are executed by Grantor; and

(iv) Payment and performance of all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Documents which permit borrowing and repayment, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Assignment. Grantor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and

security deposits (some or all collectively, as the context may require, "**Rents**"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Grantor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Grantor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents. Subject to the License granted to Grantor under Section 2.2 above, Beneficiary has the right, power and authority to collect any and all Rents in accordance with all applicable laws. Grantor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Grantor or in the name of Beneficiary for any and all Rents.

Beneficiary and Grantor agree that the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Grantor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Subsection 6.3(b). In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 6.8. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

2.4 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

- (a) A "Beneficiary in possession" or "mortgagee in possession" for any purpose; or
 - (b) Responsible for performing any of the obligations of the lessor under any lease;
- or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
 - (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Grantor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Beneficiary's prior written consent or prompt written notice to Beneficiary. Grantor shall not lease the Property or any part of it except strictly in accordance with this Deed of Trust.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Grantor, as debtor, hereby grants Beneficiary, as secured party, a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents.

3.2 Financing Statements. Grantor authorizes Beneficiary to file one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property or Rents. As provided in Section 5.9 below, Grantor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Grantor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it. In addition, Grantor agrees to sign any and all other documents that Beneficiary deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property.

4. Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code of Utah (as amended or recodified from time to time, the "Code" or the "UCC"), covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Grantor, as debtor, and Beneficiary, as secured party, are as set forth in the preamble of this Deed of Trust.

This Deed of Trust shall also constitute a "fixture filing" and a financing statement for the purposes of the UCC against all of the Property which is or is to become Fixtures. For purposes of the UCC, the following information concerning the security interest herein granted is furnished:

(a) The name of the Debtor (Grantor) is: 612 North State Street LLC, a Utah limited liability company, having an address as set forth in the first paragraph of this Deed of Trust.

(b) The name of the Secured Party (Beneficiary) is: **FIRST INTERNET BANK OF INDIANA**, having an address as set forth in the first paragraph of this Deed of Trust.

(c) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.

(d) Grantor is the record owner of the real estate described in this Deed of Trust.

e) This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A.

Grantor represents and warrants that (i) upon the filing of a UCC financing statement in the office of the Secretary of State of the State of Utah naming Grantor as "debtor," naming Beneficiary as "secured party" and describing the Property, the security interests in the Property constituting personal property other than fixtures (as defined in the UCC) granted to Beneficiary, and (ii) upon the recordation of this Deed of Trust, the security interests in the Property constituting fixtures (as defined in the UCC) granted to Beneficiary, will, in each case, constitute perfected security interests therein prior to all other liens (except for liens expressly permitted under the Loan Documents), and all filings and other actions necessary or desirable to perfect and protect such security interest have been or substantially contemporaneously herewith shall be duly made or taken. Grantor shall notify Beneficiary of any change in Grantor's name or jurisdiction of organization within fifteen (15) days of such change.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Grantor represents and warrants that:

(a) Grantor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

(b) Grantor has or will have good title to all Property other than the Premises and Improvements;

(c) Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Deed of Trust creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Grantor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(g) Grantor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified in the introductory paragraph hereof.

5.2 Taxes, and Assessments. Grantor shall pay prior to delinquency all taxes, levies, charges and assessments.

5.3 Performance of Secured Obligations. Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Grantor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing.

5.5 Damages and Insurance Proceeds. In the event of any casualty or condemnation of the Property, the provisions of this Deed of Trust shall govern.

(a) Grantor shall maintain at all times, or shall cause the Tenant (as that term is defined in the Note) to maintain at all times, the insurance required to be maintained by Tenant pursuant to the Lease (as that term is defined in the Note).

(b) Grantor shall cause Beneficiary to be named as a "mortgagee" under a standard mortgagee clause or an equivalent endorsement satisfactory to Beneficiary on all fire and extended coverage and flood insurance policies relating to the Property and as "Loss Payee" as respects rental/business income insurance policies relating to the Property. All Losses under all policies other than liability policies shall be payable to Beneficiary pursuant to a standard mortgagee endorsement satisfactory to Beneficiary. Grantor shall deliver to Beneficiary certificates for all policies of insurance against any loss or damage to the Property.

(c) All amounts recoverable under any policy are hereby assigned to Beneficiary and, in the event of a loss, each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary rather than jointly to Beneficiary and Grantor, and the amount collected shall be used in any one or more of the following ways, at the option of Beneficiary: (a) applied upon the indebtedness secured hereby, whether or not such indebtedness is then due and payable, (b) used to fulfill any of the covenants contained herein, or (c) used to replace or restore the Property to a condition satisfactory to Beneficiary. Notwithstanding anything contained herein to the contrary, if Grantor provides a written request to Beneficiary within ninety (90) days after the occurrence of any casualty to use the insurance proceeds to restore or rebuild the Property, then Beneficiary shall disburse the net proceeds of any such insurance proceeds received by Beneficiary to or for the benefit of Grantor for the purpose of restoring the Property provided that the following conditions are satisfied in a manner reasonably acceptable to Beneficiary: (i) there is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Deed of Trust, (ii) the Improvements are to be restored to their original condition prior to the occurrence of the casualty with such modifications as Beneficiary may approve in its reasonable discretion, (iii) Beneficiary determines, in its reasonable discretion, that such restoration can be completed to Beneficiary's satisfaction prior to the maturity date of the Note, (iv) Beneficiary determines, in its reasonable discretion, that Grantor has sufficient funds available to Grantor, including without limitation anticipated payments from business interruption insurance, to pay when due all costs and expenses relating to the operation of the Property during such restoration, (v) Beneficiary receives written confirmation from the Tenant, in form and substance acceptable to Beneficiary, that the Lease Agreement shall remain in full force and effect after such restoration is completed, (vi) Beneficiary determines, in its reasonable discretion, that such net insurance proceeds together with any additional funds made available for such purpose by Grantor and deposited with Beneficiary shall be sufficient to restore the Property in accordance with plans and specifications approved by Beneficiary and Grantor, free and clear of all liens except the lien of this Deed of Trust, (vii) the disbursement of all proceeds shall be done in accordance with Beneficiary's normal and customary construction loan terms, conditions, plans and procedures and Beneficiary may require such additional conditions for disbursement as may be reasonable under the circumstances, and (viii) Beneficiary is reimbursed from each such advance for (1) all costs incurred by Beneficiary in connection with the collection or handling of such funds (including but not limited to reasonable attorney's fees incurred by Beneficiary in collecting or handling such

funds or obtaining a settlement of an insurance claim) and (2) all costs and expenses incurred by Beneficiary in connection with advancing such insurance proceeds for the restoration or rebuilding of the Property, including without limitation any inspection fees, engineer review fees, title insurance update fees and survey fees.

5.6 Maintenance and Preservation of Property.

(a) Grantor shall insure the Property as required by this Deed of Trust and keep the Property in good condition and repair.

(b) Grantor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by this Deed of Trust or with Beneficiary's express prior written consent in each instance

(c) If all or part of the Property becomes damaged or destroyed, Grantor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under this Deed of Trust.

(d) Grantor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Grantor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under this Deed of Trust.

(e) Grantor shall not commit or allow waste of the Property, including those acts or omissions characterized under this Deed of Trust as waste which arises out of the presence of any Hazardous Substance (as defined in the Environmental Indemnity Agreement).

(f) Grantor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

- (e) Consent to the making of any plat or map of the Property or any part of it;
 - (f) Join in granting any easement or creating any restriction affecting the Property;
- or
- (g) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or
 - (h) Release the Property or any part of it.

5.8 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Grantor under Section 5.9 of this Deed of Trust and the other Loan Documents have been received, Beneficiary shall request that Trustee release this Deed of Trust and the lien created thereby, and Beneficiary shall release all notes and other instruments evidencing the Secured Obligations. Grantor shall pay any costs of preparation and recordation of such release.

5.9 Compensation, Exculpation, Indemnification.

(a) Grantor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 above. Grantor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable costs and expenses which may be incurred in rendering any such services. Grantor further agrees to pay or reimburse Beneficiary for all reasonable costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of foreclosure hereunder and any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one foreclosure sale. Grantor shall pay all reasonable costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such foreclosure sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Trustee or Beneficiary with respect to environmental matters (including as necessary to be consistent with ASTM Standard E1527-05 (or any successor thereto), outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee or Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Deed of Trust, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the

Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(b) Neither Beneficiary nor Trustee shall be directly or indirectly liable to Grantor or any other person as a consequence of any of the following:

(i) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Deed of Trust; or

(iii) Any loss sustained by Grantor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

(c) Grantor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which they may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Grantor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Grantor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

(d) Grantor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 Defense and Notice of Claims and Actions. At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Grantor shall give Beneficiary prompt notice in writing if any claim is asserted which

does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.12 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Grantor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, its agents or representatives owe any duty of care to protect Grantor or any other party against, or to inform Grantor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Beneficiary shall give Grantor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Grantor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 Notice of Change. Grantor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Grantor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Grantor's place of business or chief executive office if Grantor has more than one place of business.

5.14 Eminent Domain. All awards made by any public or quasi-public authority for damages to the Property by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Property, are hereby assigned to Beneficiary and Beneficiary, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award to the extent of the indebtedness secured by or payable under this Deed of Trust from the appropriate governmental authority. Such award shall be used in any one or more of the following ways, at the option of Beneficiary: (i) applied upon the indebtedness secured hereby or payable hereunder, whether or not such indebtedness is then due and payable, or (ii) applied to replace or restore the Property to a condition satisfactory to Beneficiary. Upon the occurrence of an Event of Default hereunder, Beneficiary is authorized, at its option, to appear in and prosecute in its own name any action or proceeding or, with consent and joinder of Grantor, to make any compromise or settlement in connection with such taking or damage. Grantor will, upon request by Beneficiary, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning, upon the occurrence of an Event of Default hereunder, all proceeds from such awards to Beneficiary free and clear and discharged of any and all encumbrances or claims of any kind or nature whatsoever. Notwithstanding anything contained herein to the contrary, if Grantor provides a written request to Beneficiary within ninety (90) days after the occurrence of any condemnation to use the condemnation proceeds to restore or rebuild the Property, then Beneficiary shall disburse the net proceeds of any such condemnation proceeds received by Beneficiary to

or for the benefit of Grantor for the purpose of restoring the Property provided that the following conditions are satisfied in a manner reasonably acceptable to Beneficiary: (i) there is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Deed of Trust, (ii) the Improvements are to be restored to their original condition prior to the occurrence of the casualty with such modifications as Beneficiary may approve in its reasonable discretion, (iii) Beneficiary determines, in its reasonable discretion, that such restoration can be completed to Beneficiary's satisfaction prior to the maturity date of the Note, (iv) Beneficiary determines, in its reasonable discretion, that Grantor has sufficient funds available to Grantor, including without limitation anticipated payments from business interruption insurance, to pay when due all costs and expenses relating to the operation of the Property during such restoration, (v) Beneficiary receives written confirmation from the Tenant, in form and substance acceptable to Beneficiary, that the Lease Agreement shall remain in full force and effect after such restoration is completed, (vi) Beneficiary determines, in its reasonable discretion, that such net condemnation proceeds together with any additional funds made available for such purpose by Grantor and deposited with Beneficiary shall be sufficient to restore the Property in accordance with plans and specifications approved by Beneficiary and Grantor, free and clear of all liens except the lien of this Deed of Trust, (vii) the disbursement of all proceeds shall be done in accordance with Beneficiary's normal and customary construction loan terms, conditions, plans and procedures and Beneficiary may require such additional conditions for disbursement as may be reasonable under the circumstances, and (viii) Beneficiary is reimbursed from each such advance for (1) all costs incurred by Beneficiary in connection with the collection or handling of such funds (including but not limited to reasonable attorney's fees incurred by Beneficiary in collecting or handling such funds or obtaining a settlement of such condemnation claim) and (2) all costs and expenses incurred by Beneficiary in connection with advancing such condemnation proceeds for the restoration or rebuilding of the Property, including without limitation any inspection fees, engineer review fees, title insurance update fees and survey fees.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any Transfer not expressly permitted under the Note. Beneficiary may, at Beneficiary's option, declare immediately due and payable all sums secured by this deed of Trust upon the sale or transfer, without Beneficiary's prior written consent, of all and any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means a conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property.

(b) Grantor acknowledges that Beneficiary is making one or more advances under the Note in reliance on the expertise, skill and experience of Grantor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Grantor agrees that other than a transfer to a Successor Entity permitted by the Note, Grantor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any unpermitted Accelerating Transfer occurs, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2 Events of Default. Grantor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default," any one singly, an "Event of Default").

(a) Failure of Grantor (i) (x) to pay any of the principal of the Loan when due, (y) to pay interest when due or (z) to observe or perform any of the other covenants or conditions by Grantor to be performed under the terms of this Deed of Trust or any of the other Loan Documents concerning the payment of money when due and payable; or (ii) for a period of thirty (30) days after written notice from Beneficiary, to observe or perform any non-monetary covenant or condition contained in this Deed of Trust or any of the other Loan Documents; or

(b) An default or "Event of Default" occurs under the Note or any other Loan Document.

6.3 Beneficiary's Remedies Upon Default. Upon the occurrence of an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself or otherwise, do any one or more of the following:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust or the other Loan Documents, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Secured Obligations, and Grantor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the Default Rate. No such payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Right of Entry. Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of Grantor and to apply such Rents as provided in Section 6.8 hereof. All such costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Secured Obligations. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property unless such loss is caused by the willful misconduct of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR, AND TO**

HOLD BENEFICIARY HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY BENEFICIARY UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Grantor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Grantor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Property taken under this subsection.

(c) Right to Accelerate. Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Secured Obligations, declare the entire unpaid balance of the Secured Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Secured Obligations shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law or in equity.

(d) Power of Sale.

(i) If an Event of Default shall have occurred, Beneficiary may foreclose this Deed of Trust, whether by judicial action or through Trustee. If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or en masse, to the fullest extent permitted by applicable law, as Beneficiary may elect in its sole discretion. Foreclosure through Trustee will be initiated by Beneficiary's filing of its notice of election and demand for sale with Trustee. Upon the filing of such notice of election and demand for sale, Trustee shall promptly comply with all notice and other requirements of the laws of Utah then in force with respect to such sales, and shall give public notice of the time and place of such sale by advertisement weekly in a newspaper of general circulation then published in the county or counties where the Property is located, which shall mean publication once each week for three (3) consecutive weeks. Any sale conducted by Trustee pursuant to this Section shall be held at the front door of the county courthouse for such County or City and County, or on the Property, or at such other place as determined by applicable Utah law, provided that the actual place of sale shall be specified in the notice of sale. All fees, costs and expenses of any kind incurred by Beneficiary in connection with foreclosure of this Deed of Trust, including, without limitation, the costs of any appraisals of the Property obtained by Beneficiary, all costs of any receivership for the Property advanced by Beneficiary, all costs of any environmental

audits or tests incurred by Beneficiary and all attorneys' and consultants' fees incurred by Beneficiary, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Grantor to Beneficiary at any foreclosure sale. The proceeds of any sale under this Section shall be applied first to the fees and expenses of Trustee or other officer conducting the sale (all of which shall be part of the Secured Obligations secured by this Deed of Trust), and then to the reduction or discharge of the Secured Obligations as set forth in the Note; any surplus remaining shall be paid over to Grantor or to such other person or persons as may be lawfully entitled to such surplus. Beneficiary may bid at any such foreclosure sale, and in connection therewith Beneficiary may credit bid all or any portion of the Obligations (including, without limitation, Trustee's fees and expenses, Beneficiary's attorneys' and appraisal fees, and all other expenses incurred by Beneficiary in undertaking the foreclosure). At the conclusion of any foreclosure sale, the Trustee conducting the sale shall execute and deliver to the purchaser a trustee's deed. Nothing in this Section or elsewhere in this Deed of Trust dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah law, and any such inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

(ii) Sale of Personal Property under UCC. If any Event of Default shall have occurred, Beneficiary may exercise in respect of the Property which constitutes personal property, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC, and also may (1) require Grantor to, and Grantor hereby agrees that it shall at its expense and upon request of Beneficiary forthwith, assemble all or part of the Property which constitutes personal property as directed by Beneficiary and make it available to Beneficiary at a place to be designated by Beneficiary that is reasonably convenient to both parties, (2) enter onto the property where any Property is located and take possession thereof with or without judicial process, (3) prior to the disposition of the Property, store, process, repair or recondition the Property or otherwise prepare the Property for disposition in any manner to the extent Beneficiary deems appropriate, (4) take possession of all or any portion of the Premises or place custodians in exclusive control thereof, remain on such Premises and use the same and any of Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (3) and collecting any of the Secured Obligations, (5) without notice except as specified below, sell the Property which constitutes personal property or any part thereof in one or more parcels at public or private sale, at any of Beneficiary's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Beneficiary may deem commercially reasonable. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Grantor, and Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, and/or stay which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Beneficiary shall not be obligated to make any sale of Property regardless of notice of sale having been given. Beneficiary may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Grantor hereby waives any claims against Beneficiary arising by reason of the fact that the price at which any Property may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even

if Beneficiary accepts the first offer received and does not offer such Property to more than one offeree. If the proceeds of any sale or other disposition of the Property are insufficient to pay all the Secured Obligations, Grantor shall be liable for the deficiency and the fees of any attorneys employed by Beneficiary to collect such deficiency. Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to Beneficiary, that Beneficiary has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

(e) Beneficiary's Judicial Remedies. Beneficiary, or Trustee, upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Secured Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Beneficiary.

(f) Beneficiary's Right to Appointment of Receiver. Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Secured Obligations, without notice to Grantor and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the *ex parte* appointment of a receiver or receivers of the Property or any part thereof, and of the Rents, and Grantor hereby irrevocably consents to the *ex parte* appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement with respect to fixtures and other personal property under the Code (the "Personalty"), and in conjunction with, in addition to or in substitution for the rights and remedies under such Code as enacted and in effect in the State of Utah, Beneficiary may and Grantor agrees as follows:

(i) without demand or notice to Grantor, enter upon the Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Beneficiary may require Grantor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty; and

(iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the Code; and

(v) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Property may, at the option of Beneficiary, be sold as a whole; and

(vi) it shall not be necessary that Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Beneficiary; and

(viii) after notification, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Grantor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Secured Obligations and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Secured Obligations in accordance with the provisions of Section 6.7 of this Deed of Trust. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Secured Obligations in full. Grantor waives all rights of marshalling in respect of the Personalty; and

(ix) Beneficiary may dispose of the Personalty in its then present condition, has no duty to repair or clean the Personalty prior to sale and may disclaim warranties of title, possession, quiet enjoyment and the like with respect to the Personalty, all without affecting the commercial reasonableness of the sale;

(x) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Event of Default, Beneficiary having declared all or a portion of such Secured Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Beneficiary, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited; and

(xi) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including

the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

(h) Rights Relating to Rents. Grantor has, pursuant to Section 2 of this Deed of Trust, assigned absolutely to Beneficiary all Rents under each of the Leases covering all or any portion of the Property. Beneficiary, or Trustee on Beneficiary's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Grantor hereby agrees that Beneficiary shall have the right (in its sole discretion), upon the occurrence of an Event of Default, to terminate the limited license granted to Grantor in Section 2.2 hereof, and thereafter direct the lessees under the Leases ("Lease Rent Notice") to pay direct to Beneficiary the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder direct to Beneficiary, or Trustee on Beneficiary's behalf, without any obligation on the part of Trustee or Beneficiary to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Beneficiary, or Trustee acting on Beneficiary's behalf, shall be applied as provided for in Section 6.8 of this Deed of Trust; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Secured Obligations, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Beneficiary, or Trustee on Beneficiary's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary, or Trustee on Beneficiary's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Property or any collateral given by Grantor to Beneficiary. In addition, from time to time Beneficiary may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(i) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Secured Obligations. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied in accordance with Section 6.7 of this Deed of Trust.

6.4 Other Rights of Beneficiary. Should any part of the Property come into the possession of Beneficiary, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Beneficiary may from time to time deem necessary or desirable) for the purpose of preserving the Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Property. Grantor covenants to promptly reimburse and pay to Beneficiary on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Secured Obligations. It is agreed, however, that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

6.5 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied and sold to such purchaser), and anyone (other than those tenants who have a subordination, non-disturbance and attornment agreement with Beneficiary) occupying such portion of the Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

6.6 Abandonment of Sale. If a foreclosure hereunder is commenced by Trustee in accordance with Subsection 6.3(d) hereof, at any time before the sale, Trustee may continue or abandon the sale, and Beneficiary may then institute suit for the collection of the Secured Obligations and/or for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Secured Obligations and/or for a foreclosure of the liens and security interests, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property or any part thereof in accordance with the provisions of this Deed of Trust.

6.7 Application of Proceeds. Beneficiary shall apply the proceeds of any sale, lease, or other disposition made pursuant to Section 6 in the following manner or as otherwise required by law:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Beneficiary or Trustee under Section 5.9 of this Deed of Trust;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

- (c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and
- (d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.8 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a sale, lease, or other disposition of the Property which Beneficiary may receive or collect under Section 6.7 above, in the following manner or as otherwise required by law:

- (a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;
- (b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and
- (c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

6.9 Miscellaneous.

(a) Discontinuance of Remedies. In case Beneficiary shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Grantor and Beneficiary shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Beneficiary and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) Remedies Cumulative; Non-Exclusive. All rights, remedies, and recourses of Beneficiary granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Property prior to Beneficiary bringing suit to recover the Secured Obligations; and (vi) in the event Beneficiary elects to bring suit on the Secured Obligations and obtains a judgment against Grantor prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Beneficiary's option.

(d) Partial Release. Beneficiary may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or

releasing the lien or security interests evidenced by this Deed of Trust or the other Loan Documents or affecting the obligations of Grantor or any other party to pay the Secured Obligations. For payment of the Secured Obligations, Beneficiary may resort to any of the collateral therefor in such order and manner as Beneficiary may elect. No collateral heretofore, herewith, or hereafter taken by Beneficiary shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Grantor. Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Grantor and Beneficiary mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

6.10 Waiver of Deficiency Statute.

(a) Waiver. In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows: to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantor, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale: (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of

the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale (except for such costs that are otherwise paid or reimbursed by any tenant of the Property), including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

7. Intentionally omitted.

8. **Future Advances.** This Deed of Trust is given to secure the Secured Obligations under, or in respect of, the Loan Documents and shall secure not only Secured Obligations with respect to presently existing Secured Obligations under the foregoing documents and agreements but also any and all other Secured Obligations which may hereafter be owing to Beneficiary under the Loan Documents, if any, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, whether such advances or obligations are obligatory or to be made at the option of Beneficiary, or otherwise, to the same extent as if such future advances or obligations were made on the date of the execution of this Deed of Trust. The lien of this Deed of Trust shall be valid as to all Secured Obligations secured hereby, including future advances and obligations, from the time of its filing for record in the recorder's office of the county in which the Property is located. This Deed of Trust is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby and liens permitted under the Loan Documents related thereto. Although this Deed of Trust is given to secure all future advances and obligations made by Beneficiary to or for the benefit of Grantor and/or the Property, whether obligatory or optional, Grantor and Beneficiary hereby acknowledge and agree that Beneficiary is obligated by the terms of the Loan Documents to make certain future advances or obligations, subject to the fulfillment of the relevant conditions set forth in the Loan Documents.

9. **Miscellaneous Provisions.**

9.1 **Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Deed of Trust and to the Property.

9.2 **No Waiver or Cure.**

(a) Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Grantor. Consent by Beneficiary to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other

defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(b).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.3 and 6.8 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 above.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

9.3 Powers of Beneficiary.

(c) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Grantor shall not be released or changed if Beneficiary grants any successor in interest to Grantor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Grantor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(d) Beneficiary may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(e) From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

9.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

9.5 Joint and Several Liability. If Grantor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Grantor's obligations under this Deed of Trust.

9.6 Applicable Law. To the fullest extent permitted by any applicable law, this Deed of Trust shall be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply. Notwithstanding anything expressed or implied herein to the contrary, the laws of the State of Utah shall be deemed to govern and control with respect to (i) the creation, perfection, enforcement or priority of a lien or security interest in in the Property and other property of Grantor granted, assigned or conveyed by this Deed of Trust, (ii) the perfection, or the effect of perfection or non-perfection, of the security interests granted by this Deed of Trust in any of the Property, (iii) the availability of, and procedures relating to, any remedy hereunder or related to this Security Instrument and (iv) any other provision of this Deed of Trust to the extent that application of the laws of Utah are needed in order to obtain the practical realization of the principal benefits and/or security intended to be provided by this Deed of Trust.

9.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 9.7 does not waive the provisions of Section 6.1 above.

9.8 Interpretation.

(f) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(g) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(h) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

9.9 In-House Counsel Fees. Whenever Grantor is obligated to pay or reimburse Beneficiary for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

9.10 Waiver of Statutory Rights. To the extent permitted by law, Grantor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Grantor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Grantor and on behalf of each and every person acquiring any interest in or title to

the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

9.11 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

9.12 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if delivered in accordance with the terms of the Note. The address for notice to Trustee is as set forth in the introductory paragraph hereof or at such other address as may be specified for the office of Trustee from time to time.

9.13 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that Beneficiary may, but shall not be obligated to, make under this Deed of Trust, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed \$2,582,000.00, plus interest thereon, and any disbursements made for the enforcement of this Deed of Trust and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Beneficiary pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Deed of Trust shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

9.14 Beneficiary's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary not to exceed the maximum amount secured hereby.

9.15 WAIVER OF TRIAL BY JURY. GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF GRANTOR OR BENEFICIARY. GRANTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. GRANTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

9.16 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Note, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest in and lien upon the Property, otherwise the provisions of the Note shall be controlling.

9.17 Negation of Partnership. Nothing contained in the Loan Documents is intended to create any partnership, limited partnership, joint venture or association between Grantor and Beneficiary, or in any way make Grantor a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

9.18 Entire Agreement. THE LOAN DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN GRANTOR AND BENEFICIARY WITH RESPECT TO THE TRANSACTIONS ARISING IN CONNECTION WITH THE SECURED OBLIGATIONS AND SUPERSEDE ALL PRIOR WRITTEN OR ORAL UNDERSTANDINGS AND AGREEMENTS BETWEEN GRANTOR AND BENEFICIARY WITH RESPECT THERETO. GRANTOR HEREBY ACKNOWLEDGES THAT, EXCEPT AS INCORPORATED IN WRITING IN THE LOAN DOCUMENTS, THERE ARE NOT, AND WERE NOT, AND NO PERSONS ARE OR WERE AUTHORIZED BY BENEFICIARY TO MAKE, ANY REPRESENTATIONS, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES, ORAL OR WRITTEN, WITH RESPECT TO THE TRANSACTION WHICH IS THE SUBJECT OF THE LOAN DOCUMENTS.

9.19 Priority Over Special Districts. Grantor shall not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's discretion, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts, or similar districts of any nature, or any other body or entity of any type, or allow to occur any other additional taxes, assessments or other monetary obligations or burdens on the Property, and this provision shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Grantor or any other person or entity include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, then the lien of this Deed of Trust and the rights and interests in the Property arising by virtue of this Deed of Trust in favor of Beneficiary or its successors in interest (which term shall include, without limitation, any foreclosure purchaser or purchaser acquiring by deed in lieu of foreclosure, and any transferee of the Property following completion of foreclosure or deed in lieu thereof) shall be senior and superior to any taxes or liens of any nature (whether statutory, contractual or otherwise) levied or imposed upon the Property or any portion thereof as a result of the inclusion of the Property in such district or districts.

9.20 Evidence of Indebtedness. For purposes of this Deed of Trust, the evidence of the Secured Obligations secured hereby shall be a fully executed original of the Note, such that, for example, the Note may be presented to Trustee as evidence of the Obligations when seeking to foreclose on this Deed of Trust or securing any partial or complete release of this Deed of Trust, and Trustee shall accept a signed original of the Note as the original evidence of indebtedness or "promissory note" for such purposes.

9.21 Maturity Date. The original maturity date of the Obligations is January 31, 2024, subject to an extension until January 31, 2029.

9.22 Compliance with Utah Foreclosure Law.

(i) If any provision of this Deed of Trust is inconsistent with any applicable provision of Utah's foreclosure statutes, as they may from time to time be amended (herein the "Foreclosure Act"), the provisions of the Foreclosure Act shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can fairly be construed in a manner consistent with the

Foreclosure Act.

(ii) Without in any way limiting or restricting any of Beneficiary's rights, remedies, powers and authorities under this Deed of Trust, and in addition to all of such rights, remedies, powers, and authorities, Beneficiary shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a Deed of Trust is permitted to have or exercise under the provisions of the Foreclosure Act. If any provision of this Deed of Trust grants to Beneficiary any rights, remedies, powers or authorities upon default of Grantor which are more limited than the rights that would otherwise be vested in Beneficiary under the Foreclosure Act in the absence of said provision, Beneficiary shall be vested with all of the rights, remedies, powers and authorities granted in the Foreclosure Act to the fullest extent permitted by law.

9.23 Powers and duties of Trustee under Deed of Trust. If any provision of this Deed of Trust creates a duty or obligation for Trustee or grants Trustee any right to act which are outside the scope of the authority granted pursuant to the provisions of the Foreclosure Act, as they may from time to time be amended, then such provisions of this Deed of Trust are hereby amended to not include Trustee in the parties with rights, duties or obligations thereunder.

9.24 Substitute Trustee. Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust. Without conveyance of the Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

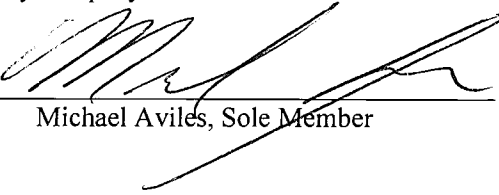
9.25 Request for Notices. Grantor requests that copies of the notice of default and notice of sale be sent to Grantor at Grantor's address stated in the first paragraph of this Deed of Trust.

[Remainder of page intentionally left blank.]

EXECUTED as of the date first set forth above.

GRANTOR:

612 NORTH STATE STREET LLC, a Utah limited liability company

By: 
Michael Aviles, Sole Member


ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK)

On JANUARY 22, 2019, before me, TULIO R. PRIETO, a Notary Public, personally appeared Michael Aviles, Sole member of 612 North State Street LLC, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of NEW YORK that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public

TULIO R. PRIETO
Notary Public, State of New York
No. 02PR6070011
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires February 19, 2022

EXHIBIT A

Description of Premises

PARCEL 1: (14-046-0055)

BEGINNING NORTH 550.72 FEET AND WEST 918.70 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 88°18'00" WEST 151.84 FEET TO THE EAST LINE OF STATE ROAD; THENCE NORTH 42°11'00" WEST 137.80 FEET ALONG SAID STREET LINE; THENCE NORTH 80°19'00" EAST 74.00 FEET ALONG FENCE LINE; THENCE NORTH 00°22'20" WEST 247.38 FEET ALONG THE CENTERLINE OF CANAL; THENCE NORTH 87°49'50" EAST 123.81 FEET; THENCE SOUTH 08°30'30" EAST 390.46 FEET TO THE POINT OF BEGINNING.
LESS AND EXCEPTING ANY PORTION LYING WITHIN THE 600 NORTH STREET RIGHT OF WAY.

PARCEL 2: (49-091-0031)

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 600 NORTH STREET, SAID POINT BEING LOCATED NORTH 574.34 FEET AND WEST 923.23 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 175.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°08'10" AN ARC LENGTH OF 107.32 FEET (THE CHORD OF WHICH BEARS SOUTH 69°04'05" WEST, 105.64 FEET); TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 30.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°13'55" AN ARC LENGTH OF 45.15 FEET (THE CHORD OF WHICH BEARS NORTH 85°23'03" WEST, 41.01 FEET) TO THE EAST LINE OF STATE ROAD; THENCE NORTH 42°16'06" WEST ALONG SAID EASTERLY LINE, 39.96 FEET; THENCE NORTH 88°19'19" EAST, 166.49 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.