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Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 51 P.

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THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:

Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700  
Atlanta, Georgia 30363  
Attn: Rusty A. Fleming, Esq.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**NOTE:**

1. TO THE EXTENT PROVIDED IN THE NOTE, INTEREST AND DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.
2. THIS DEED OF TRUST COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

Tax Parcel No. 16-06-154-048

**Broadway Centre Investment Limited Partnership  
(Borrower)**

to

**Cottonwood Title Insurance Agency, Inc.  
(Trustee)**

for the benefit of

**Voya Retirement Insurance And Annuity Company  
(Lender)**

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

Dated: As of January 28, 2016  
Location: 111 East Broadway, Salt Lake City, Utah 84111  
County: Salt Lake County

Voya No. 29366

Broadway Centre Investment Limited Partnership (Voya No. 29366)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust") is made as of January 28, 2016, by BROADWAY CENTRE INVESTMENT LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower"), having an address of c/o Hamilton Partners, Inc. 222 South Main Street, Suite 1760, Salt Lake City, Utah 84101, to COTTONWOOD TITLE INSURANCE AGENCY, INC., as trustee, having an address of 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121 ("Trustee"), for the benefit of VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY, a Connecticut corporation ("Lender"), having an address of c/o Voya Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349. For all state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean a grantor of the Premises as described herein the same as if the term "grantor" were used in lieu of the term "Borrower" throughout this Deed of Trust, and (ii) the term "Lender" as used herein shall be deemed to mean a beneficiary of this Deed of Trust with respect to the Premises with all of the rights conferred hereby the same as if the term "beneficiary" were used in lieu of the term "Lender" throughout this Deed of Trust.

WHEREAS, Borrower has executed and delivered to Lender a Promissory Note dated on or about this same date in the principal amount of THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00) (which Promissory Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified, refinanced, substituted, extended, renewed, consolidated, restated or replaced, is hereinafter sometimes referred to as the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on or before the first (1<sup>st</sup>) day of February 2036, the Note by this reference thereto being incorporated herein and, pursuant to such Note, Lender is making a secured loan to Borrower in the principal amount of THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00) (the "Loan"); and

WHEREAS, Borrower is the owner of a valid and subsisting leasehold interest in the real property described on Exhibit A, Part I attached hereto and incorporated herein by reference; and

WHEREAS, Lender is desirous of securing the prompt payment of the Note together with interest, charges and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Note or this Deed of Trust and any additional sums with interest thereon which may be loaned to Borrower by Lender or advanced under the Loan Documents (as hereinafter defined) (all hereinafter sometimes collectively referred to as the "Indebtedness").

NOW, THEREFORE, Borrower, to secure payment of the Indebtedness and the performance of the covenants and agreements herein contained to be performed by Borrower, for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, hereby agrees and covenants as follows:

Voya No. 29366

1. **Granting Clauses.** Borrower hereby irrevocably and absolutely does by these presents GRANT BARGAIN, SELL and CONVEY to Trustee, in TRUST, WITH POWER OF SALE for the benefit of Lender, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of Utah, and grants to Lender a security interest in, all of Borrower's present and hereafter acquired leasehold estate, right, title and interest in, to and under the following (collectively referred to herein as the "Premises"):

(a) All estate, right, title and interest of Borrower in, to, under or derived from the lease described in Exhibit A, Part II (the "Site Lease") affecting those certain tracts or parcels of land and other real property interests in Salt Lake County, Utah, as more particularly described in Exhibit A, Part I attached hereto and made a part hereof (the "Land"), and all of Borrower's right, title and interest in and to rights appurtenant thereto, including easement rights; together with all amendments, supplements, consolidations, extensions, renewals and other modifications of the Site Leases now or hereafter entered into in accordance with the provisions thereof (the "Leasehold Estate"); together with all other further, additional or greater estate, right title or interest of Borrower in, to, under or derived from the Land, the Leasehold Estate and the Improvements now or hereafter located thereon which may at any time be acquired by Borrower by the terms of the Site Lease by reason of the exercise of any option thereunder or otherwise;

(b) All buildings, structures and improvements now or hereafter erected on the Land, together with all fixtures and items that are to become fixtures thereto (collectively, the "Improvements");

(c) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges attached or belonging to the Land, the Leasehold Estate or Improvements or in any way appertaining thereto, whether now or in the future, and all the rents, issues and profits from the Land, the Leasehold Estate or Improvements;

(d) The land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all right, title and interest, if any, of Borrower in and to any strips and gores adjoining the Land;

(e) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land, the Leasehold Estate or Improvements, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land, the Leasehold Estate or Improvements, now owned or hereafter acquired by Borrower, including, but without limitation of the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, telephone, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Land, the Leasehold Estate or Improvements or in warehouses and intended to be used in connection with or incorporated into the Land, the Leasehold Estate or Improvements or for the

pursuit of any other activity in which Borrower may be engaged on the Land, the Leasehold Estate or Improvements, and including without limitation all tools, musical instruments and systems, audio or video equipment, cabinets, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other window and floor coverings, decorative fixtures, plants, cleaning apparatus, and cleaning equipment, refrigeration equipment, cables, computers and computer equipment, software, books, supplies, kitchen equipment, appliances, tractors, lawn mowers, ground sweepers and tools, swimming pools, whirlpools, recreational or play equipment together with all substitutions, accessions, repairs, additions and replacements to any of the foregoing; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the Improvements and are declared to be a portion of the security for the Indebtedness (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Land, the Leasehold Estate or Improvements; and

(f) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Land, the Leasehold Estate or Improvements or other properties described above as a result of: (1) the exercise of the right of eminent domain or action in lieu thereof; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Land, the Leasehold Estate or Improvements or other properties described above, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by Borrower or Lender, and of the reasonable counsel fees, costs and disbursements incurred by Borrower or Lender in connection with the collection of such award or payment. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award or payment.

The parties intend the definition of Premises to be broadly construed and in the case of doubt as to whether a particular item is to be included in the definition of Premises, the doubt should be resolved in favor of inclusion.

TO HAVE AND TO HOLD the Premises with all rights, privileges and appurtenances thereunto belonging, and all income, rents, royalties, revenues, issues, profits and proceeds therefrom, unto Lender, its successors and assigns, forever, for the uses and purposes herein expressed.

THIS DEED OF TRUST IS GIVEN TO SECURE: Payment of the Indebtedness; payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender pursuant to the Note or Deed of Trust or otherwise advanced under the Loan Documents, including without limitation advances made by Lender to protect the Premises or the lien of this Deed of Trust or to pay taxes, assessments, insurance premiums, and all other amounts that Borrower has agreed to pay pursuant to the provisions hereof or that Lender has incurred by reason of the occurrence of an Event of Default (as hereinafter defined), including without limitation, advances made to enable the completion of the Improvements or any restoration thereof, even though the aggregate amount outstanding at any time may exceed the

original principal balance stated herein and in the Note; and the due, prompt and complete performance of each and every covenant, condition and agreement contained in this Deed of Trust, the Note, and every other agreement, document and instrument to which reference is expressly made in this Deed of Trust or which at any time evidences or secures the Indebtedness evidenced by the Note (this Deed of Trust, the Fee Mortgage (as defined in the Note), the Note and all such other agreements, documents and instruments evidencing, securing and otherwise relating to the Note, but excluding the Environmental Indemnification Agreement (as defined in the Note), as any of the foregoing may from time to time be modified, extended, renewed, consolidated, supplemented, substituted, restated or replaced, are hereinafter sometimes collectively referred to as the "Loan Documents"). Borrower hereby warrants that Borrower has good and marketable title to the Premises, is lawfully seized and possessed of the Premises and every part thereof, and has the right to convey same; that Borrower will forever warrant and defend the title to the Premises unto Lender against the claims of all persons whomsoever; and that the Premises are unencumbered except as set forth on Lender's title insurance policy dated on or about even date herewith regarding the Premises.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Borrower shall: (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, such Improvements to be of at least equal value and substantially the same character as prior to such damage or destruction; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (except the lien of current general taxes duly levied and assessed but not yet due and payable); (c) immediately pay when due or within any applicable grace period any indebtedness which may be secured by a lien or charge on the Premises (no such lien, except for current general taxes duly levied and assessed but not yet payable, to be permitted hereunder), and upon request exhibit satisfactory evidence to Lender of the discharge of such lien; (d) complete within a reasonable time any Improvements now or at any time in process of erection upon the Land; (e) comply with all requirements of law (including, without limitation, pollution control and environmental protection laws and laws relating to the accommodation of persons with disabilities), ordinance or other governmental regulation in effect from time to time affecting the Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Premises and the use thereof; (f) not make any material alterations in the Premises (excluding any tenant improvements in connection with Leases entered into in accordance with Section 10 below); (g) not suffer or permit any material change in the general nature of the use of the Premises, without Lender's written consent; (h) not initiate or acquiesce in any zoning reclassification or variance with respect to the Premises without Lender's written consent; and (i) pay each item of Indebtedness when due according to the terms hereof or of the Note.

3. **Payment of Taxes.** Borrower shall pay, except to the extent provision is actually made therefor pursuant to Section 4 of this Deed of Trust, thirty (30) days before any delinquency or any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Lender duplicate receipts therefor.

4. **Tax Deposits.** Borrower covenants and agrees to deposit with such depository as Lender from time to time may in writing appoint, and in the absence of such appointment, then at the office of Lender, c/o Voya Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349, Attention: Mortgage Loan Servicing Department, commencing on the date of disbursement of the Loan and on the first day of each month following the month in which said disbursement occurred until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments for the last ascertainable year (if the current year's taxes and assessments are not yet ascertainable) (general and special) on the Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon Lender's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest (unless local law requires otherwise) and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. Upon demand by such depository, Borrower shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Lender or such depository.

Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments to be paid from the funds on deposit with such depository, and so long as no Event of Default has occurred and is continuing and no circumstance exists, which with the giving of notice, or passage of time, or both, would constitute an Event of Default, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose. In making any payment from the funds on deposit with such depository, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other property not covered by the lien of this Deed of Trust, then the computation of any amount to be deposited under this Paragraph 4 shall be based upon the entire amount of such taxes or assessments, and Borrower shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

5. **Lender's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, Lender may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraphs 4 and 7 hereof, on any of Borrower's obligations herein or in

the Note or any of the Loan Documents contained, in such order and manner as Lender may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Premises. A security interest within the meaning of the Utah Uniform Commercial Code ("UCC") is hereby granted to Lender in and to any monies at any time on deposit pursuant to Paragraphs 4 and 7 hereof and such monies and all of Borrower's right, title and interest therein are hereby assigned to Lender, all as additional security for the Indebtedness and shall in the absence of the occurrence of an Event of Default be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower; provided, however, that neither Lender nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited. Neither Lender nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party but only for its willful misconduct. Borrower agrees to cooperate with Lender in executing a control agreement, if necessary, with the depository chosen to manage the deposit account envisioned by Paragraphs 4 and 7 for the purpose of perfecting the security interest in said account.

6. **Insurance.**

(a) Until the Indebtedness is fully paid, the Improvements and all fixtures, equipment and property therein contained or installed shall be kept unceasingly insured against loss and damage by such hazards, casualties and contingencies in such amounts and for such periods as may from time to time be required by Lender. All insurance shall be written in policies and by insurance companies approved by Lender which approval shall not be unreasonably withheld so long as a A.M. Best Company's Key Rating Guide Class rating of at least **A X** is maintained and the policy otherwise conforms to the terms hereof. All policies of insurance and renewals thereof shall contain standard noncontributory mortgagee loss payable clauses to Lender, shall not contain a co-insurance clause or other clause limiting the amount of coverage under any condition, and shall provide for at least thirty (30) days prior written notice of cancellation, termination, modification or non-renewal to Lender as well as a waiver of subrogation endorsement, all as required by Lender, in form and content acceptable to Lender. All policies (or duplicate certified copies or certificates thereof) and original ACORD 28 and ACORD 25 (as to liability only) Certificates shall, with all premiums fully paid, be delivered to Lender as issued at least thirty (30) days before the expiration of existing policies and shall be held by Lender until all sums hereby secured are fully paid. Upon request by Lender, Borrower shall furnish Lender evidence of the replacement cost of the Improvements. In case of sale pursuant to a foreclosure of this Deed of Trust or other transfer of title to the Premises and extinguishment of the Indebtedness, complete title to all policies, other than liability insurance policies, held by Lender and all prepaid or unearned premiums thereon shall pass to and vest in the purchaser or mortgagee/beneficiary. Lender shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

(b) Without in any way limiting the generality of the foregoing, Borrower covenants and agrees to maintain insurance coverage on the Premises which shall include: (i) all risk coverage property insurance (insuring against special causes of loss) for an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements, written on a replacement cost basis and with a replacement cost endorsement (without depreciation), an

increased cost of construction endorsement, and an agreed amount endorsement pertaining to the co-insurance clause), and containing a mortgagee clause in Lender's favor; and if at any time a dispute arises with respect to replacement cost, Borrower agrees to provide at Borrower's expense, an insurance appraisal prepared by an insurance appraiser approved by Lender, establishing the full replacement cost in a manner satisfactory to the insurance carrier; (ii) rent loss insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in clause (i) above, in an amount equal to not less than gross revenue from the Premises for twelve (12) months from the operation and rental of all Improvements now or hereafter forming part of the Premises, based upon one hundred percent (100%) occupancy of such Improvements, less any allocable charges and expenses which do not continue during the period of restoration and naming Lender in a standard mortgagee loss payable clause thereunder; (iii) commercial general liability insurance with a broad form coverage endorsement for an amount as required from time to time by Lender but not less than an aggregate amount of Three Million and No/100 Dollars (\$3,000,000.00) with a single occurrence limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for claims arising from any one (1) accident or occurrence in or upon the Premises and naming Lender as an additional insured thereunder; (iv) flood insurance whenever in Lender's judgment such protection is necessary and is available and in such case in an amount acceptable to Lender and naming Lender as the loss payee thereunder; (v) earthquake insurance whenever in Lender's judgment such protection is necessary and is available and in such case in an amount acceptable to Lender and naming Lender as the loss payee thereunder; (vi) insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the Improvements, in an amount satisfactory to Lender, such policies also to insure against physical damage to such buildings and improvements arising out of peril covered thereunder; (vii) windstorm, terrorism, and (viii) such other insurance that may be reasonably required from time to time by Lender.

(c) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

7. **Insurance Premium Deposits.** It is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by Borrower, Borrower shall deposit with Lender or the depository referred to in Paragraph 4 hereof on the date of disbursement of the proceeds of the Loan and on the first day of each month following the month in which said disbursement occurred, an amount equal to the annual premiums that will next become due and payable on such policies less any amount then on deposit with Lender or such depository, divided by the number of months to elapse thirty (30) days prior to the date when such premiums become delinquent. No interest shall be allowed to Borrower on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of Lender or such depository.



8. **Adjustment of Losses with Insurer and Application of Proceeds of Insurance.**

(a) In case of loss or damage by fire or other casualty, Borrower shall immediately give Lender and the insurance companies that have insured against such risks written notice of such occurrence.

(b) In case of loss or damage by fire or other casualty, Borrower shall, if no Event of Default then exists hereunder, have the sole and exclusive right to settle, compromise or adjust any claim under, and receive, for the purpose of rebuilding and restoration, the proceeds arising from, any and all losses payable under insurance policies to the extent the amount thereof does not exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000), and all claims for losses in excess of said amount shall be settled, compromised or adjusted only with the mutual agreement of Borrower and Lender and the proceeds paid as hereinafter provided. In the event insurance proceeds in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) are payable or if an Event of Default exists hereunder, then in either of such events, Lender is authorized to collect and receive any insurance proceeds. Insurance proceeds collected by Lender as aforesaid, after deducting therefrom any expenses incurred in the collection thereof, shall, if requested by Borrower in writing within thirty (30) days after the proceeds of insurance covering such damage or destruction become available, diligently be made available to Borrower for the purpose of paying the cost of rebuilding or restoring of the Improvements if (i) the Premises, in Lender's sole and absolute discretion is capable of being restored to that condition which existed immediately prior to the damage or loss, (ii) the insurance proceeds, together with all other funds which are to be provided by Borrower, are sufficient to restore the Premises, (iii) Lender determines that income from the Premises shall not be materially affected following the completion of the restoration or rebuilding; and (iv) no Event of Default then exists hereunder or under any other Loan Document, and no circumstance or condition exists that would constitute an Event of Default upon the giving of notice or the passage of time, or both. In the event that Lender makes said proceeds available to Borrower to pay the cost of rebuilding or restoring of the Improvements, such proceeds shall be made available in the manner and under the conditions that Lender may reasonably require to assure proper application of such proceeds. In the event such insurance proceeds are made available by Lender, Borrower shall pay all costs incurred by Lender in connection with the application of such insurance proceeds (including but not limited to reasonable costs incurred by Lender, and a title company or agent approved by Lender in overseeing the disbursement of such insurance proceeds). The Improvements shall be restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the projected cost of rebuilding, repairing or restoring of the Improvements exceeds the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000), then insurance proceeds shall not be made available to Borrower unless and until Lender has approved plans and specifications for the proposed rebuilding and restoration, which approval shall not be unreasonably withheld. If the proceeds are to be made available by Lender to Borrower to pay the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of the costs of rebuilding or restoring the Premises shall, at the option of Lender, be applied on account of the Indebtedness or be paid to any party entitled thereto under such conditions as Lender may reasonably require. No interest shall be allowed to Borrower on any proceeds of insurance held by Lender.

(c) In the event proceeds of insurance are not made available to Borrower for the purpose of paying the cost of the rebuilding or restoring of the Improvements, Lender, after deducting the costs of any collection, adjustment and compromise, shall apply such insurance proceeds in accordance with the terms of the Note upon the Indebtedness, provided that any amount so applied by Lender in reduction of the outstanding principal balance of the Note shall be credited to installments of principal in the inverse order of their maturity but no such application shall delay or postpone any installment payment of principal and interest under the Note.

9. **Stamp Tax.** If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps or intangible taxes to be paid on the Note or this Deed of Trust, or impose any other tax or charge on the same (excluding any and all state or federal income tax of Lender), Borrower will pay for the same, with interest and penalties thereon, if any. If, by the laws of the United States of America, or of any state having jurisdiction over Borrower, any tax, excluding income tax of Lender is due or becomes due in respect of the issuance of the Note hereby secured and this Deed of Trust, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender reasonably expends by reason of the imposition of any tax on the issuance of the Note secured hereby and this Deed of Trust. If Borrower is not permitted by law to pay such tax, then the Indebtedness shall, at Lender's election, be due and payable within thirty (30) days after such election. Borrower will not claim, nor demand nor be entitled to, any credit or credits against the Indebtedness secured hereby for so much of the taxes assessed against the Premises or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Premises or any part thereof by reason of this Deed of Trust or the Indebtedness.

10. **Observance of Lease Assignment.**

(a) As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Borrower, as landlord, has assigned to Lender, by that certain Assignment of Rents and Leases dated on or about this same date (the "Assignment of Rents"), all of Borrower's right, title and interest as landlord in and to all leases or other rights of use and or occupancy of any part of the Premises, both present and future (hereinafter collectively referred to as the "Leases") and all of the rents, issues and profits from the Leases or guaranties thereof (hereinafter collectively referred to as the "Rents").

(b) All Leases entered into after the date hereof and any amendments, modifications, renewals and extensions entered into after the date hereof with respect to any Leases (whether such Leases are existing on the date hereof or entered into after said date): (i) shall be bona fide arms-length transactions with a third party, (ii) shall not contain any rental or other concessions which are not approved by Lender in writing in advance, (iii) shall provide that the tenant pay a pro rata share (based on square footage of space) of, or increases in, taxes, insurance or other operating expenses, and (iv) shall be on a form approved by Lender (which approval has not been previously revoked by Lender as hereinafter provided). Lender will, at the request of Borrower, approve a form of lease satisfactory to Lender, but Lender shall have the right subsequently to revoke such approval upon thirty (30) days prior written notice to Borrower of

its election to do so. In the event of any such revocation of approval, Borrower shall not enter into any Lease without the prior written approval of Lender unless Lender has approved a revised form of lease satisfactory to it in its reasonable discretion. Without limiting any other term, condition or requirement set forth in this Section 10, all modifications to existing Leases which are not automatically subordinated to this Deed of Trust (and those Leases for which Lender executes an SNDA shall not be considered "automatically subordinate" for this purpose) must be approved in writing by Lender in advance.

(c) Borrower will not, without Lender's prior written consent: (i) execute an assignment or pledge of any Rents and/or any Leases; or (ii) accept any prepayment of any installment of any Rents more than one (1) month before the due date of such installment, and in any event no more than one (1) month in advance of the then current month.

(d) Borrower at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of landlord thereunder; (iv) upon written request of Lender, transfer and assign to Lender, any Lease or Leases heretofore or hereafter entered into, and make, execute and deliver to Lender upon demand, any and all instruments required to effectuate said assignment; (v) furnish Lender, within ten (10) days after a request by Lender so to do, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Lender any right to request from the lessee under any Lease a certificate with respect to the status thereof.

(e) Nothing in this Deed of Trust or in any other documents relating to the Loan shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Borrower as landlord under any of the Leases assigned to Lender or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Borrower agrees to perform and pay.

(f) Borrower will not permit any Lease or any part thereof to become subordinate to any lien other than the lien hereof.

(g) Lender shall have the option to declare this Deed of Trust in default because of a default of landlord in any Lease of the Premises unless such default is cured by Borrower pursuant to the terms of the Lease and within any applicable cure period or unless such default would not permit the tenant to terminate the Lease. It is covenanted and agreed that an Event of Default under the Assignment of Rents shall constitute an Event of Default hereunder on account of which the whole of the Indebtedness shall at once, at the option of Lender, become immediately due and payable without notice to Borrower.

(h) Borrower shall not, and shall not permit any tenant to, conduct any on-site dry cleaning operations on the Premises.

(i) In the event of the enforcement by Lender of the remedies provided for by law or by this Deed of Trust, the lessee under each Lease of the Premises shall, at the option of Lender, attorn to any person succeeding to the interest of Borrower as a result of such enforcement and shall recognize such successor in interest as landlord under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any Lease made without the consent of Lender or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

11. **Effect of Extension of Time.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of any security for the payment of the Indebtedness is released, or if any person or entity liable for the payment of the Indebtedness is released, or if Lender takes other or additional security for the payment of the Indebtedness, or if Lender waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, then all persons now or at any time hereafter liable for the payment of the Indebtedness, or any part thereof, or interested in the Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

12. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Deed of Trust or the debt secured hereby or the holders thereof, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes or assessments (which in no event shall include any state and federal income taxes of Lender), or reimburse Lender therefor if Lender pays such taxes and submits proof of payment to Borrower; provided, however, that if in the opinion of counsel for Lender: (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in such event, Lender may elect, by notice in writing given to Borrower, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice, without the applicable Prepayment Premium (as defined in the Note).

13. **Lender's Performance of Defaulted Acts.** Upon the occurrence of an Event of Default herein, Lender may, but need not, and whether electing to declare the whole of the Indebtedness due and payable or not, and without waiver of any other remedy, make any

payment or perform any act herein required of Borrower in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of Borrower as landlord in any Lease. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Paragraphs 9 and 12 hereof or to protect the Premises or the lien hereof, shall be additional Indebtedness and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of Borrower.

14. **Lender's Reliance on Tax Bills, Etc.** Lender in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) relating to insurance premiums, may do so according to any bill or statement procured from the appropriate company without inquiry into the accuracy of such bill or statement; or (c) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **Acceleration of Indebtedness in Event of Default.** It is expressly agreed by Borrower that time is of the essence hereof and that the whole of the Indebtedness shall become immediately due and payable without notice to Borrower at the option of Lender upon the occurrence of one or more of the following events (hereinbefore and hereinafter collectively referred to as "Events of Default" and individually referred to as an "Event of Default"), together with a prepayment premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment:

(a) nonpayment of any monetary sum due hereunder within ten (10) days after the same shall become due; or

(b) default shall be made in the due observance or performance of the terms and conditions of Paragraph 6 hereof (Insurance) or Paragraph 30 hereof (Due on Sale or Further Encumbrance); or

(c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Borrower which does not relate to the nonpayment of any monetary sum or for which a specified notice and cure period is not expressly set forth with respect thereto in any other provision of this Mortgage, and such default is not cured within thirty (30) days following written notice thereof by Lender to Borrower or within such longer period of time, not exceeding an additional thirty (30) days, as may be reasonably necessary to cure such non-

compliance if Borrower is diligently and with continuity of effort pursuing such cure and the failure is susceptible of cure within an additional period of thirty (30) days; or

(d) the entry of a decree or order for relief by a court having jurisdiction in respect of Borrower, a general partner of Borrower if Borrower is a partnership, the beneficiary or beneficiaries of Borrower if Borrower is a trust, a managing member of Borrower if Borrower is a limited liability company, or any guarantor of the Note secured hereby (any of the foregoing parties being referred to herein as a "Key Party"), in any involuntary case under the federal bankruptcy laws now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for any Key Party or any substantial part of the property of any such Key Party, or for the winding up or liquidation of the affairs of any Key Party and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(e) the commencement by any Key Party, of a voluntary case under federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or any other similar laws or the consent by any such Key Party to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of any Key Party, or of any substantial part of the property of any such person or entity, or the making by any such Key Party of an assignment for the benefit of creditors or the failure of any such Key Party generally to pay the debts of any such Key Party as such debts become due, or the taking of action by any such Key Party in furtherance of any of the foregoing; or

(f) the death of any Guarantor of the Note secured hereby, unless a substitute new guarantor or guarantors, with assets having a value equal to or greater than the assets of the decedent set forth in the Schedule of Assets (as defined in that certain Limited Guaranty executed by Bruce Bingham, Mark Hamilton, Kirk Hamilton and Ronald Lunt dated on or about this same date (the "Individual Guaranty")) dated as of the date hereof, shall become liable by assumption under the Individual Guaranty within thirty (30) days of the death of any such Guarantor;

(g) any warranty, representation, certification, financial statement, or other information furnished or to be furnished to Lender or any affiliate thereof by or on behalf of Borrower or any guarantor of the Note to induce Lender to loan the money evidenced by the Note proves to have been inaccurate or false in any material respect when made; or

(h) any breach, default, event of default or failure of performance (however denominated) under the Note or any of the other Loan Documents or the Environmental Indemnification Agreement and the expiration of any applicable cure period without the same having been cured; or

(i) Borrower shall be in default of, or in violation of, beyond any applicable grace period, any conditions, covenants or restrictions which benefit or burden the Premises; or

If, while any insurance proceeds or condemnation awards are being held by Lender to reimburse Borrower for the cost of rebuilding or restoration of buildings or improvements on the Premises, Lender shall accelerate the Indebtedness, then and in such event, notwithstanding anything to the contrary herein, Lender shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to Borrower or any other party entitled thereto without interest.

16. **Acceleration of Indebtedness; Remedies.**

(a) **Primary Remedies.** If an Event of Default shall occur, Lender may: declare the Indebtedness to be and the same shall be, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived and without regard to the value of the property held as security for the Indebtedness or the solvency of any person liable for the payment of such Indebtedness; and/or exercise any other right, power or remedy available to it at law or in equity, hereunder or under any other Loan Document without demand, protest or notice of any kind, all of which are hereby expressly waived, except such as is expressly required hereby or by such other Loan Document. Without limiting the generality of the foregoing, Lender may, or may cause Trustee to, as applicable:

(i) Enter and take possession of the Premises or any part thereof, exclude Borrower and all persons claiming under Borrower wholly or partly therefrom, and operate, use, manage and control the same, or cause the same to be operated by a person selected by Lender, either in the name of Borrower or otherwise, and upon such entry, from time to time, at the expense of Borrower and of the Premises, make all such repairs, replacements, alterations, additions or improvements thereto as Lender may deem proper, and to lease the Premises or any part thereof at such rental and to such persons as it may deem proper and collect and receive the rents, revenues, issues, profits, royalties, income and benefits thereof including, without limitation, those past due and those thereafter accruing, with the right of Lender to terminate, cancel or otherwise enforce any Lease or sublease for any default that would entitle Borrower to terminate, cancel or enforce same and apply the same to the payment of all expenses which Lender may be authorized to incur under the provisions of this Deed of Trust and applicable laws, the remainder to be applied to the payment, performance and discharge of the Indebtedness in such order as Lender may determine until the same have been paid in full.

(ii) Institute an action for the foreclosure of this Deed of Trust and the sale of the Premises pursuant to the judgment or decree of a court of competent jurisdiction.

(iii) Sell the Premises to the highest bidder or bidders at public auction at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or in the absence of any such requirement, as Lender may deem appropriate, and from time to time

adjourn such sale by announcement at the time and place specified for such sale or for such adjourned sale or sales without further notice except such as may be required by law.

(iv) Take all action to protect and enforce the rights of Lender under this Deed of Trust by suit for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or for the enforcement of any other rights.

(v) Exercise any or all of the rights and remedies available to a secured party under the UCC, including the right to (A) enter the Premises and take possession of any personal property without demand or notice and without prior judicial hearing or legal proceedings, which Borrower hereby expressly waives, (B) require Borrower to assemble any personal property, or any portion thereof, and make it available to Lender at a place or places designated by Lender and reasonably convenient to both parties and (C) sell all or any portion of the personal property at public or private sale, without prior notice to Borrower except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Lender in its sole discretion may determine. As to any property subject to Article 9 of the UCC included in the Premises, Lender may proceed under the UCC or proceed as to both real and personal property in accordance with the provisions of this Deed of Trust and the rights and remedies that Lender may have at law or in equity, in respect of real property, and treat both the real and personal property included in the Premises as one parcel or package of security. Borrower shall have the burden of proving that any such sale pursuant to the UCC was conducted in a commercially unreasonable manner.

(vi) Terminate any management agreements, contracts, or agents/managers responsible, for the property management of the Premises, if in the sole discretion of Lender such property management is unsatisfactory in any respect.

(vii) Foreclose this Deed of Trust, at Lender's option, by judicial or non-judicial foreclosure (if available under applicable law), for the entire unpaid amount of the Indebtedness, or only as to the sum past due, with interest and costs without injury to this Deed of Trust or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Premises shall be sold subject to all remaining items of the Indebtedness and Lender may again foreclose, in the same manner, as often as there may be any sum past due. In case of sale in any action or proceeding to foreclose this Deed of Trust, Lender shall have the right to sell the Premises covered hereby in parts or as an entirety. It is intended hereby to give to Lender the widest possible discretion permitted by law with respect to all aspects of any such sale or sales.



(viii) If an Event of Default occurs due to the nonpayment of the Indebtedness, or any part thereof, as an alternative to the right of foreclosure for the full Indebtedness after acceleration thereof, Lender shall have the right to institute proceedings, either judicial or non-judicial (if available under applicable law), at Lender's option, for partial foreclosure with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire Indebtedness due (such proceedings being hereinafter referred to as "Partial Foreclosure"), and provided that if a foreclosure sale is made because of an Event of Default in the payment of a part of the Indebtedness, such sale may be made subject to the continuing lien of this Deed of Trust for the unmatured part of the Indebtedness; and it is agreed that such sale pursuant to a Partial Foreclosure, if so made, shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Deed of Trust and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding any Partial Foreclosure, Lender may elect, at any time prior to sale pursuant to such Partial Foreclosure, to discontinue such Partial Foreclosure and to accelerate the Indebtedness by reason of any Event of Default upon which such Partial Foreclosure was predicated or by reason of any other further Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosures may be made pursuant to Partial Foreclosure without exhausting the right of full or Partial Foreclosure sale for any unmatured part of the Indebtedness, it being the purpose to provide for a Partial Foreclosure sale of the Indebtedness hereby without exhausting the power to foreclose and to sell the Premises pursuant to any such Partial Foreclosure for any other part of the Indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(b) Receiver. If an Event of Default shall occur, Lender shall be entitled as a matter of right to the appointment of a receiver of the Premises and the rents, revenues, issues, profits, royalties, income and benefits thereof, without notice or demand, and without regard to the adequacy of the security for the Indebtedness, the value of the Premises or the solvency of Borrower, either before or after any sale, and, Lender may be appointed as such receiver. Such receiver shall have the power: (i) to collect the rents, issues and profits of the Premises during the pendency of any foreclosure proceedings whether by judicial or non-judicial foreclosure, and, in case of a sale and a deficiency, for such time when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, to the maximum time and extent permitted by law; (ii) to extend or modify any then existing Leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the secured obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed

to any purchaser; (iii) all other powers which may be necessary or are usual in such case for the protection, possession, control, management, and operation of the Premises during the whole of said period, including, without limitation, all powers granted to Lender pursuant to Section 16(a)(i) above; and (iv) exercise the rights and remedies provided to Borrower under the Site Lease. The court from time to time may authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of: (i) the Indebtedness and all obligations hereunder, or by any decree foreclosing this Deed of Trust, or in accordance with applicable non-judicial foreclosure provisions, any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree; and (ii) if this is a leasehold mortgage, all rents due or which may become due under the underlying lease.

(c) Sales by Parcels. In any sale made under or by virtue of this Deed of Trust or pursuant to any judgment or decree of court, the Premises may be sold in one or more parts or parcels or as an entirety and in such order as Lender may elect, without regard to the right of Borrower, or any person claiming under it, to the marshaling of assets. To the full extent permitted by law, Borrower waives the marshaling of assets.

(d) Effect of Sale. The purchaser at any sale made under or by virtue of this Deed of Trust or pursuant to any judgment or decree of court shall take title to the Premises or the part thereof so sold free and discharged of the estate of Borrower therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Lender, may purchase at any such sale. Lender is hereby irrevocably appointed the attorney-in-fact of Borrower in its name and stead to make all appropriate transfers and deliveries of the Premises or any portions thereof so sold and, for this purpose, Lender may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, promptly upon Lender's written request, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Deed of Trust, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Borrower in, to and under the Premises, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Borrower, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under Borrower, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) Eviction of Borrower After Sale. If Borrower fails or refuses to surrender possession of the Premises after any sale thereof, Borrower shall be deemed a tenant at sufferance, subject to eviction by means of writ of possession proceedings, provided, that this remedy is not exclusive or in derogation of any other right or remedy available to Lender or any purchaser of the Premises under any provision of this Deed of Trust or pursuant to any judgment or decree of court.

(f) Insurance Policies. In the event of a foreclosure sale pursuant to this Deed of Trust or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Borrower in and to all policies of insurance required under the provisions of this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Borrower or the purchaser or grantee of the Premises or any part thereof so transferred.

(g) Foreclosure; Expense of Litigation. When the Indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, Lender shall have the right, or cause Trustee, to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraiser's fees, actual costs of environmental reviews or audits, 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 the title as Lender may deem reasonably necessary either to prosecute such action or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorneys employed by Lender in any litigation or proceeding affecting this Deed of Trust, the Note or the Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Deed of Trust.

17. Application of Proceeds. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Deed of Trust, shall be applied:

(a) first to the payment of (i) all costs and expenses of such sale, including reasonable attorneys' fees, environmental site assessors fees and costs, appraisers' fees and costs of procuring title searches, title insurance policies and similar items and (ii) all charges, expenses and advances incurred or made by Lender in order to protect the lien or estate created by this Deed of Trust or the security afforded hereby including any expenses of entering, taking possession of and operating the Premises, including, but not limited to, a reasonable fee to the Trustee, receivers' fees, court costs, attorneys', accountants', appraisers', auctioneers', managers' and other professionals' fees, title charges and transfer taxes;

(b) then to the payment of any other Indebtedness in such order as Lender may determine until the same have been paid in full; and

(c) any balance thereof shall be paid to Borrower, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

18. **Rights and Remedies Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

19. **Lender's Right of Inspection.** Lender shall, upon reasonable notice to Borrower, have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

20. **Condemnation.** Lender may, at its option, in its own name (a) appear or proceed in any condemnation proceeding, and (b) make any compromise or settlement thereof, provided that so long as Borrower promptly prosecutes any compromise or settlement thereof, Borrower shall control any compromise or settlement proceeding with the result thereof being subject to Lender's approval. Borrower shall give Lender immediate notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other items served in any condemnation proceeding. Borrower hereby assigns, transfers and sets over unto Lender the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make said proceeds available for restoration or rebuilding of the Premises. In the event that Lender elects, in Lender's sole and absolute discretion, to make said proceeds available to reimburse Borrower for the cost of the rebuilding or restoration of the Improvements, such proceeds shall be made available in the manner and under the conditions that Lender may require. In any event, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Lender prior to commencement of any building or restoration. If the proceeds are made available by Lender to reimburse Borrower for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Lender be applied on account of the Indebtedness or be paid to any party entitled thereto. No interest shall be allowed to Borrower on the proceeds of any award held by Lender.

21. **Release upon Payment and Discharge of Borrower's Obligations.** Lender shall release this Deed of Trust and the lien thereof by proper instrument upon payment and discharge of all Indebtedness including any prepayment premium provided for herein or in the Note secured hereby.

22. **Giving of Notice.** (a) All notices, demands, requests, and other communications desired or required to be given hereunder ("Notices"), shall be in writing and shall be given by: (i) hand delivery to the address for Notices; (ii) delivery by overnight courier service to the

address for Notices; or (iii) sending the same by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices.

(b) All Notices shall be deemed given and effective upon the earlier to occur of: (i) the hand delivery of such Notice to the address for Notices; (ii) one (1) business day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (iii) three (3) business days after depositing the Notice in the United States mail as set forth in (a)(iii) above. All Notices shall be addressed to the following addresses:

Borrower: Broadway Centre Investment Limited Partnership  
Attn: Bruce Bingham  
c/o Hamilton Partners, Inc.  
222 South Main Street, Suite 1760  
Salt Lake City, UT 84101

and

Broadway Centre Investment Limited Partnership  
Attn: Bruce Bingham  
c/o HP Broadway Centre LLC  
300 Park Boulevard, Suite 201  
Itasca, IL 60143

With a copy to: Nelson Christensen Hollingworth & Williams  
Attn: Stephen K. Christensen, Esq.  
68 South Main Street, 6th Floor  
Salt Lake City, UT 84101

Lender: Voya Retirement Insurance and Annuity Company  
c/o Voya Investment Management LLC  
5780 Powers Ferry Road, NW, Suite 300  
Atlanta, Georgia, 30327-4349  
Attention: Mortgage Loan Servicing Department

and

Voya Investment Management LLC  
5780 Powers Ferry Road, NW, Suite 300  
Atlanta, Georgia, 30327-4349  
Attention: Real Estate Law Department

With a copy to: Nelson Mullins Riley & Scarborough LLP  
Attn: Rusty A. Fleming, Esq.  
201 17th Street NW, Suite 1700

Voya No. 29366

Atlanta, Georgia 30363

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice. Provided, that the "copy to" Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

23. **Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law or in equity upon the Note hereby secured.

24. **Waiver of Statutory Rights.** Borrower shall not, and will not, apply for or avail itself of any homestead, 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 to the extent lawfully allowed hereby waives the benefit of such laws. Borrower, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Borrower does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Borrower, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Premises subsequent to the date of this Deed of Trust.

25. **Furnishing of Financial Statements to Lender.** (a) Borrower covenants and agrees that it will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times during business hours and on reasonable notice, be open to inspection by Lender and Lender's accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained either:

(i) In accordance with generally accepted accounting principles consistently applied; or

(ii) In accordance with a cash basis or other recognized comprehensive basis of accounting consistently applied.

(b) (i) Borrower covenants and agrees to furnish, or cause to be furnished to Lender, annually, within ninety (90) days following the end of each fiscal year of Borrower unaudited annual financial reports prepared on an accrual basis, including balance sheets, income statements and cash flow statements covering the operation of the Premises, Borrower for the previous fiscal year and a current rent roll of the Premises all certified to Lender to be complete, correct and accurate by Borrower (with respect to

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report regarding the Premises) or by the individual or the managing partner or chief financial officer of the party the report concerns.

(ii) Borrower covenants and agrees to furnish, or cause to be furnished to Lender, annually, within two hundred and ten (210) days following the end of each fiscal year of Borrower unaudited annual financial reports prepared on an accrual basis, including balance sheets, income statements and cash flow statements covering the operation of the Garff Enterprises, Inc., a Utah corporation ("Garff Guarantor") for the previous fiscal year certified to Lender to be complete, correct and accurate by Borrower (with respect to report regarding the Premises) or by the individual or the managing partner or chief financial officer of the party the report concerns.

(iii) In addition to the annual financial statements required above, Borrower shall deliver to Lender within thirty (30) days after the last day of each fiscal quarter of Borrower, unaudited financial reports prepared on an accrual basis, including balance sheets, income statements and cash flow statements covering the operation of the Premises, Borrower and Garff Guarantor for the previous fiscal quarter and a current rent roll, all certified to Lender to be complete, correct and accurate by Borrower (with respect to report regarding the Premises) or by the individual manager, managing general partner or chief financial officer of the party the report concerns.

(iv) Lender shall have the right at any time and from time-to-time to request such additional financial information relating to Borrower and the Premises as Lender determines is necessary or appropriate, and updated rent rolls for the Premises for purposes of monitoring current leasing.

(c) If Borrower omits to deliver as required any report or statement required by this Paragraph 25, and said omission is not cured by Borrower within thirty (30) days after written notice of such omission has been given by Lender to Borrower, Lender may elect, in addition to exercising any remedy for an Event of Default as provided for in this Deed of Trust, to make an audit of all books and records of Borrower including its bank accounts which in any way pertain to the Premises and to prepare the statement or statements which Borrower failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent certified public accountant to be selected by Lender. Borrower shall pay all reasonable expenses of the audit and other services, which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Deed of Trust.

26. **Filing and Recording Fees.** Borrower will pay all filing, registration or recording fees and all reasonable expenses incident to the execution and acknowledgment of this Deed of Trust and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Deed of Trust.

27. **Business Purpose.** Borrower represents, covenants and agrees that all of the proceeds of the Note secured by this Deed of Trust will be used solely for business purposes and in furtherance of the regular business affairs of Borrower.

28. **Exculpatory.** The liability of Borrower personally to pay the Note or any interest that may accrue thereon, or any Indebtedness or obligation accruing or arising hereunder is limited to the extent set forth in the Note.

29. **Security Agreement.** Borrower and Lender agree that this Deed of Trust shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with Lender with respect to insurance proceeds or condemnation proceeds ("Deposits") and with respect to any personal property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit "A," and all replacements of such property, substitutions and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the "Collateral," and that a security interest in and to the Collateral and the Deposits is hereby granted to Lender and the Deposits and all of Borrower's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Indebtedness and to secure performance by Borrower of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Deed of Trust, Lender, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Lender shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lender shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Lender. Borrower agrees that, without the written consent of Lender, Borrower will not remove or permit to be removed from the Premises any of the Collateral except that so long as Borrower is not in default hereunder, Borrower shall be permitted to sell or otherwise dispose of the Collateral, when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby, and so that the security interest of Lender shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and covered hereby. Borrower shall, from time to time, on request of Lender, deliver to Lender an inventory of the Collateral in reasonable detail. Borrower covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless Lender otherwise consents, now are and will be free and clear of liens (other than the lien of taxes not yet due or payable), encumbrances or security interests of others. Borrower shall, upon demand execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender, and will do all such acts and things as Lender may at anytime, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens (other than the lien of taxes not yet due or payable), encumbrances, or security interests of others.



This Deed of Trust also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located. Borrower hereby authorizes Lender to file all financing statements (including continuation statements and amendments) evidencing the security interest granted to Lender in the Collateral with all appropriate filing jurisdictions. For such purpose information concerning the debtor and the secured party is set forth below:

Name of Debtor: Broadway Centre Investment Limited Partnership

Debtor's Mailing  
Address: c/o Hamilton Partners, Inc.  
222 South Main Street, Suite 1760  
Salt Lake City, UT 84101

Debtor is a limited liability company organized under the laws of Delaware.

Debtor's Tax ID Number: 20-0372250

Address of Premises: 111 East Broadway  
Salt Lake City, Utah 84111

Name of Secured Party: Voya Retirement Insurance and Annuity Company

Address of Secured  
Party: c/o Voya Investment Management LLC  
5780 Powers Ferry Road, NW, Suite 300  
Atlanta, Georgia 30327-4349  
Attention: Real Estate Law Department

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the real property described in this Deed of Trust. Borrower is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

30. **Due on Sale or Further Encumbrance.** (a) If, without Lender's prior written consent, (i) the Premises or any part thereof or any interest in the Premises or Borrower is sold or conveyed; (ii) title to the Premises or any interest therein is divested (excluding leases executed pursuant to and in compliance with Section 10 hereof); (iii) the Premises or any ownership interest in Borrower is further encumbered or pledged; (iv) any lease which gives the lessee any option to purchase the Premises or any part thereof is entered into, or, (v) without limiting the generality of clause (i) above, the ownership of shares of Borrower, if a corporation, or of any corporate general partner of Borrower, if a partnership, or the general partnership interests in any partnership which is a general partner of Borrower, or any membership interest in a Borrower which is a limited liability company, or any beneficial or fiduciary interest in any Borrower which is a trust or trustee, is sold or conveyed, Lender shall at its sole discretion be entitled to

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accelerate the Indebtedness and declare the then unpaid principal balance and all accrued interests and other sums due and payable under the Note due and payable and exercise all remedies available to Lender under the Loan Documents. Borrower understands that the present ownership of the Premises and Improvements will be a material inducement to Lender in the making of the Loan. Any consent by Lender to a change in ownership or to a change in the composition of Borrower may be conditioned upon payment of a transfer fee equal to one percent (1%) of the then outstanding Indebtedness for processing such request for consent, upon an increase in the rate of interest on the unpaid balance of the Indebtedness to a then-current market rate, and/or other terms and conditions as Lender may impose in its sole discretion.

(b) Notwithstanding the foregoing subparagraph (a), Lender will permit one transfer of the Premises, provided: (i) the transferee has a financial and credit standing and management expertise acceptable to Lender as equal to or greater than that of Borrower as of the date of the original approval of the Loan; (ii) assumption documents in form and substance reasonably satisfactory to Lender are executed by the transferee; (iii) Lender is paid a transfer fee equal to one percent (1%) of the then outstanding Indebtedness and Borrower reimburses Lender all fees and expenses associated with the transfer including legal fees; (iv) Lender receives an endorsement to Lender's title policy with respect to the Premises, in form and substance reasonably acceptable to Lender; and (v) Lender receives opinions of counsel and Borrower and transferee authorization documents, in form and substance reasonably acceptable to Lender. Further, Lender, in its sole judgment and discretion, may require individuals specifically named by Lender to deliver to Lender an Environmental Indemnification Agreement on Lender's standard form. The rights granted to Borrower in this subparagraph (b) are personal to Borrower, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any subsequent transferee. Such transfer and assumption will not, however, release Borrower or any guarantors of any of the Indebtedness from any liability to Lender without the prior written consent of Lender, which consent may be given or withheld in Lender's sole discretion, but if given, may be conditioned upon, without limitation, the execution of new guaranties from principals of the transferee as Lender deems necessary, execution by the principals of the transferee of Lender's standard Environmental Indemnification Agreement and such other requirements as Lender may deem appropriate in its discretion.

(c) Notwithstanding the foregoing subparagraph (a) Lender will permit the following transfers of ownership interests in Borrower without the 1% fee or any change in the loan terms provided that: (i) no Event of Default shall have occurred and be continuing hereunder or under the Loan Documents or any separate documents guarantying any payment and/or performance of the Loan; (ii) Lender is promptly notified of such proposed transfer and provided with such documentation evidencing the transfer and identity of the transferee as reasonably requested by Lender; (iii) assumption documents, if deemed necessary by Lender, in a form that is acceptable to Lender are executed by the transferee; and (iv) Borrower reimburses Lender for all fees and expenses including reasonable attorneys' fees associated with Lender's review and documentation of the transfer:

(1) Any ownership interest in Borrower may be transferred upon the death of the owner of said interest but only by will or intestacy;

(2) Any ownership interest in Borrower may be voluntarily sold, transferred, conveyed or assigned for estate planning purposes to immediate family members or to a family trust, provided that at all times there exists a minimum of 51% ownership and control of the Premises and Borrower by parties owning an ownership interest in Borrower as of the date hereof. "Immediate family members" shall mean the spouse, children, grandchildren, siblings, and the siblings' children, of each holder of an ownership interest in Borrower, as of the date hereof, or a trust for the benefit of one or more of any such persons;

(3) Any ownership interest in Borrower may be voluntarily sold, transferred or conveyed or assigned to another person owning an ownership interest in Borrower as of the date hereof; and

(4) Up to forty percent (40%), in the aggregate, of the membership interests in Borrower may be sold, transferred, conveyed or assigned to one or more entities that are affiliated with holder(s) of the interests so conveyed; provided that the transferee(s) of such interests must be controlled by the same person or entity that controlled the transferor of such interests.

(d) Notwithstanding the foregoing subparagraph (a) Lender will permit the conversion of Borrower from a Delaware limited partnership to a Delaware limited liability company (the "Conversion") without the 1% fee or any change in the loan terms provided that: (i) Lender shall have received copies of all documents evidencing the Conversion, which shall be in form and substance reasonably satisfactory to the Lender, together with evidence that (A) all consents and approvals required to effect the Conversion have been obtained and (B) the Conversion shall be consummated in accordance with the terms and conditions of such documents without giving effect to any waiver, modification or consent thereunder that is materially adverse to the Lender unless approved by Lender; (ii) no Event of Default shall have occurred and be continuing hereunder or under the Loan Documents or any separate documents guarantying Borrower's any payment and/or any performance of the Loan; (iii) assumption and/or ratification documents, if deemed necessary by Lender, in a form that is acceptable to Lender are executed by such converted Delaware limited liability company; (iv) if deemed necessary by Lender, Lender receives an endorsement to Lender's title policy with respect to the Premises, in form and substance reasonably acceptable to Lender; and (v) Borrower reimburses Lender for all fees and expenses, including reasonable attorneys' fees, associated with Lender's review and documentation of the Conversion.

31. **Environmental Matters; Notice; Indemnity.** Borrower covenants and agrees as follows:

(a) For purposes of this Deed of Trust, the following definitions shall apply:

(i) The term "Environmental Law" means and includes any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial

hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 *et seq.* ("RCRA"); the Federal Hazardous Materials Transportation Act, as amended, 49 U.S.C. sections 5101 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. sections 2601 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.*; and the rules, regulations, orders, decrees, institutional controls, and ordinances of the U.S. Environmental Protection Agency and of all other federal, state, county and municipal agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation of the Premises.

(ii) The term "Hazardous Substance" means and includes: (1) those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "pollutants," "toxic substances" or "solid waste" in any Environmental Law; (2) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302.4 and any amendments thereto); (3) those other substances, materials and wastes which are or become, regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (4) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (33 U.S.C. sections 1251 *et seq.*); (D) explosive; (E) radioactive; (F) a petroleum product, by product or fraction thereof; (G) infectious waste; or (H) mold or mycotoxins.

(iii) The term "Enforcement or Remedial Action" means and includes any action taken by any person or entity in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law.

(iv) The term "Environmental Liability" means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, institutional control, decree, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys' fees and disbursements, resulting from or arising out of the violation or alleged

violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.

(v) The term "Permitted Commercial Substances" shall mean commercially sold products which are otherwise included within the definition of the term "Hazardous Substance," but (A) which are used or disposed of by Borrower or used or sold by tenants of the Premises in the ordinary course of their respective businesses, (B) the presence of which is not prohibited by applicable Environmental Law, and (C) the use, sale, and disposal of which are in all respects in accordance with applicable Environmental Law.

(b) Borrower, for itself and its successors and assigns, to the best of their knowledge after reasonable inquiry, represents, warrants and covenants that, except for Permitted Commercial Substances,

(i) No Hazardous Substances have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape or migrate, or shall threaten to be injected, emptied, poured, leached, or spilled on or from the Premises.

(ii) No asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, placed on, or disposed of on the Premises.

(iii) No polychlorinated biphenyls ("PCBs") are or will be located on or in the Premises, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device.

(iv) With the exception of two diesel storage tanks located above the slab in the basement of the Premises, no underground storage tanks are or will be located on the Premises or were located on the Premises and subsequently removed or filled.

(v) No investigation, administrative order, institutional control, decree, consent order and agreement, litigation, settlement, lien or encumbrance with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Premises.

(vi) The Premises and Borrower's operations at the Premises are in compliance with all applicable Environmental Laws including without limitation any, state and local statutes, laws and regulations. No notice has been served on Borrower, or any subsidiary of Borrower, from any entity, government body, or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources. Copies of any such notices received subsequent to the date hereof shall be forwarded to Lender within three (3) days of their receipt.

(vii) There has been no release or threat of release of any Hazardous Substances from any property adjoining or in the immediate vicinity of the Premises.

(viii) No portion of the Premises is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any comparable state statute or local ordinance or regulation defining or protecting wetlands or other special aquatic areas.

(ix) There are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Premises that exceed background ambient air levels.

(x) There have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Premises.

(c) Borrower will give prompt written notice to Lender of:

(i) any proceeding, known investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration thereof to or from adjoining property;

(ii) all claims made or threatened by any individual or entity against Borrower or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and

(iii) the discovery by Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) Lender shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises; and to (ii) have all costs and expenses thereof (including without limitation Lender's reasonable attorneys' fees and costs) paid by Borrower.

(e) Borrower, on its own behalf and on behalf of its successors and assigns, agrees to protect, defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, contractors, sub-contractors, licensees, invitees, participants, successors and assigns (collectively, the "Lender Indemnified Parties"), from and against any Environmental Liability and any and all claims, demands, judgments, settlements, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, losses, penalties, costs, including but not limited to any cleanup costs, remediation costs and response costs, and all expenses of any kind whatsoever including reasonable attorneys' fees and expenses, including

but not limited to those arising out of loss of life, injury to persons, property or business or damage to natural resources in connection with the activities of Borrower, its predecessors in interest, third parties who have trespassed on the Premises, or parties in a contractual relationship with Borrower, and any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of any Lender Indemnified Parties, the foregoing being collectively referred to as "Claims," that:

(i) arise out of the actual, alleged or threatened migration, spill, leaching, pouring, emptying, injection, discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Hazardous Substances onto or from the Premises; or

(ii) actually or allegedly arise out of, in connection with the Premises, the use, specification or inclusion of any product, material or process containing Hazardous Substances, the failure to detect the existence or proportion of Hazardous Substances in the soil, air, surface water or ground water, or the performance of or failure to perform the abatement of any Hazardous Substances source or the replacement or removal of any soil, water, surface water or ground water containing any Hazardous Substances; or

(iii) arise out of the breach of any covenant, warranty or representation contained in any statement or other information given by Borrower to any Lender Indemnified Parties relating to environmental matters, including, but not limited to, those set forth in subsection (b) above; or

(iv) arise out of any Enforcement or Remedial Action or any judicial or administrative action brought pursuant to any Environmental Law.

Borrower, on its own behalf and on behalf of its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against any Lender Indemnified Parties described in this subparagraph (e), shall hold each of such Lender Indemnified Parties harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this subparagraph (e).

Borrower's indemnifications and representations made herein shall survive any termination or expiration of the documents evidencing or securing the Loan and/or the repayment of the Indebtedness, including, but not limited to, any foreclosure on this Deed of Trust or acceptance of a deed in lieu of foreclosure. Notwithstanding, the foregoing, Borrower's indemnifications and representations shall not extend to Hazardous Substances which first originate on the Premises subsequent to Lender's succession to title by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure.

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably desirable (in the case of an operation and maintenance program or similar monitoring or preventative programs) or necessary, as determined by an independent environmental consultant selected by Lender under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Premises or any portion thereof, Borrower shall within thirty (30) days after written demand by Lender for the performance (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Lender (which approval in each case shall not be unreasonably withheld or delayed) and under the supervision of a consulting engineer approved in advance by Lender. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Lender's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Borrower. If Borrower shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, Lender may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Lender's counsel), shall be paid by Borrower to Lender forthwith after demand and shall be a part of the Indebtedness.

(g) If recommended by any environmental report, assessment or audit of the Premises, Borrower shall establish and comply with an operations and maintenance program with respect to the Premises, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos containing material or lead based paint that may now or in the future be detected at or on the Premises. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Premises by consultants specified by Lender, (iv) access to the Premises by Lender, its agents or servicer, to review and assess the environmental condition of the Premises and Borrower's compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

32. **Captions.** The captions or headings preceding the text of the paragraphs or subparagraphs of this Deed of Trust are inserted only for convenience of reference and shall not constitute a part of this Deed of Trust, nor shall they in any way affect its meaning, construction or effect.

33. **No Waiver; Modifications in Writing.** No failure or delay on the part of Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further



exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Deed of Trust, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Deed of Trust, any waiver of any provision of this Deed of Trust, and any consent to any departure from the terms of any provision of this Deed of Trust, shall be effective only in the specific instance and for the specific purpose for which made or given.

34. **Relationship.** Lender is only a lender under the Loan Documents, and nothing contained in this Deed of Trust or the other Loan Documents and no action taken by the parties pursuant hereto shall be deemed to constitute Lender and any other of the parties to any of the Loan Documents a partnership, an association, a joint venture or other entity, nor constitute Lender as a fiduciary for any of the parties.

35. **Governing Law.** This Deed of Trust shall be governed by the laws (excluding conflicts of laws rules) of Utah.

36. **Time of Essence.** Time is of the essence in the performance by the parties of this Deed of Trust.

37. **Construction.** Borrower has been represented by its own counsel in this transaction, and this Deed of Trust shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

38. **Gender; Number; Terms.** Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular section, paragraph or provision. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

39. **Integration.** This Deed of Trust, together with the other Loan Documents and the Environmental Indemnification Agreement, constitute the entire agreement between the parties hereto pertaining to the subject matters hereof and thereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the parties hereto in connection with the subject matters hereof and thereof.

40. **General Indemnification.** (a) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any accident, injury to or death of persons or loss of or

damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; (iv) any failure of the Premises to be in compliance with any applicable laws; (v) any and all claims, demands or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (vi) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Deed of Trust; provided, however, notwithstanding the foregoing, such indemnity shall specifically exclude any Losses to the extent such Losses are caused by the gross negligence or willful misconduct of Indemnified Parties. Any amounts payable to Lender by reason of the application of this Paragraph shall become immediately due and payable and shall bear interest at the Default Rate (as defined in the Note) from the date loss or damage is sustained by Lender until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense). The term "Indemnified Parties" shall mean (i) Lender, (ii) any prior owner or holder of the Note, (iii) any servicer or prior servicer of the Loan, (iv) any participant or any prior participant in any portion of the Loan, (v) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any participant or other third party, (vi) any receiver or other fiduciary appointed in a foreclosure or other collection proceeding, (vii) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (viii) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan (solely with respect to acts occurring prior to the date Lender takes leasehold title and actual possession of the Property following such foreclosure).

(b) Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(c) With the exclusion of any state or federal income taxes of Lender, Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted

against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Deed of Trust, the Note or any of the other Loan Documents.

41. Miscellaneous.

(a) This Deed of Trust and all provisions hereof shall extend to and be binding upon Borrower and its heirs, successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Borrower (but this clause shall not be construed as constituting the consent by Lender to the transfer of any interest in the Premises), and the word "Borrower" when used herein shall include any such person and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Deed of Trust. The word "Lender," when used herein, shall include the successors and assigns of Lender, and the holder or holders, from time to time, of the Note secured hereby. In addition, in the event Borrower is a land trust or similar entity, the term "Borrower" as used herein shall include the beneficiary or beneficiaries of such land trust or similar entity.

(b) In the event one or more of the provisions contained in this Deed of Trust or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provision of this Deed of Trust, and this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(c) Borrower will, from time to time, upon ten (10) business days' prior written request from Lender, make, execute, acknowledge and deliver to Lender such supplemental mortgages, certificates and other documents, including without limitation UCC financing statements, as may be necessary for better assuring and confirming unto Lender any of the Premises, or for more particularly identifying and describing the Premises, or to preserve or protect the priority of this Deed of Trust lien, and generally do and perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by Lender to carry out the intentions of this Deed of Trust.

(d) Borrower shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other Improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Borrower shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this paragraph shall be void.

(e) Borrower will, from time to time, upon ten (10) business days' prior written request by Lender, execute, acknowledge and deliver to Lender, a certificate stating that this Deed of Trust is unmodified and in full force and effect (or, if there have been modifications, that this Deed of Trust is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from Borrower shall also state to the best knowledge of Borrower whether any offsets or defenses to the Indebtedness exist and if so shall identify them.

(f) The Note secured hereby includes provisions for the assessment of a Late Charge, as defined therein. Said Late Charge shall be secured hereby as Indebtedness, as that term is used herein.

(g) Lender shall have the right and option to exercise power of sale (to the extent available under applicable law) or to commence a civil action to foreclose this Deed of Trust and to obtain a decree of foreclosure. The failure to join any tenant or tenants as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) At the option of Lender, this Deed of Trust shall become, subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any one or more, or to all, Leases upon the execution by Lender and recording or registration thereof, at any time hereafter, in the Office of the Recorder in and for the county wherein the Premises are situated, or such other office as determined by Lender, of a unilateral declaration to that effect.

(i) In the event that maturity of the Indebtedness is accelerated by Lender because of the occurrence of an Event of Default hereunder and a tender of payment is made by or on behalf of Borrower in the amount necessary to satisfy the Indebtedness at any time prior to judicial confirmation or other conclusion if confirmation is not required, of a foreclosure sale or sale under a power of sale, then such tender shall constitute a prepayment under the Note and shall, to the extent specified in the Note, require payment of the prepayment premium provided for in the Note.

(j) All agreements between Borrower and Lender (including, without limitation, those contained in this Deed of Trust and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Lender exceed the highest lawful rate of interest permissible under the laws of Utah. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the Indebtedness at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of Utah; and if for any reason whatsoever

Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal Indebtedness (whether or not then due and payable) and not to the payment of interest.

(k) Borrower covenants and agrees that it shall constitute an Event of Default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of purchasing or "carrying" any "margin stock" as such terms are defined in Regulation U of the Board of Governors of the Federal Reserve System (12 CFR Part 221) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

(l) Borrower shall exert its best efforts to include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Premises, whereby the property manager waives and releases (to the full extent permitted under applicable law) any and all mechanics' lien rights that he, or anyone claiming through or under such manager, may have. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded in the office of the Clerk of Courts in and for the County wherein the Premises is situated, or such other office as reasonably requested by Lender.

(m) It is specifically agreed that time is of the essence of this Deed of Trust and that no waiver of any obligation hereunder or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the instrument secured hereby.

(n) It is agreed that this Deed of Trust shall also secure such future or additional advances for construction, improvements, preservation, maintenance and operation of the Premises and the security for the loan as may be made by Lender, whether such future advances are obligatory or are to be made at Lender's option to Borrower, or its successor in title, for any purpose, provided that all those advances are to be made within twenty (20) years from the date of this Deed of Trust, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration, to the same extent as if such future advances were made on the date hereof. The total amount of indebtedness secured by this Deed of Trust may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, and any disbursements made for the payment of taxes, levies or insurance on the Premises.

(o) The term "attorneys' fees" as used herein shall be deemed to include any and all legal fees and expenses of Lender, including, without limitation, any and all such fees and expenses incurred in connection with litigation, mediation, arbitration, other alternative dispute processes, administrative proceedings and bankruptcy proceedings, and any and all appeals from any of the foregoing.

(q) This Deed of Trust, the other Loan Documents, and any related loan commitment, constitute the entire agreement between Lender and Borrower with respect to the subject matter

of these agreements, and may not be altered or amended except by written agreement signed by Lender and Borrower. PURSUANT TO UTAH CODE SECTION 25-5-4, LENDER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT BETWEEN BORROWER AND LENDER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

42. **ERISA.** Borrower hereby represents, warrants and agrees that as of the date hereof, none of the investors in or owners of Borrower is an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986 as amended, nor an entity the assets of which are deemed to include plan assets pursuant to Department of Labor regulation Section 2510.3-101 (the "Plan Asset Regulation"). Borrower further represents, warrants and agrees that at all times during the term of the Loan, Borrower shall not be deemed to include plan assets. If at any time during the entire term of the Loan any of the investors in or owners of Borrower shall include a plan or entity described in the first sentence of this Paragraph 42, Borrower shall as soon as reasonably possible following an investment by such a plan or entity, provide Lender with an opinion of counsel reasonably satisfactory to Lender indicating that the assets of Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. In lieu of such an opinion, Lender may in its sole discretion accept such other assurances from Borrower as are necessary to satisfy Lender in its sole discretion that the assets of Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. Borrower understands that the representations and warranties herein are a material inducement to Lender in the making of the Loan, without which Lender would have been unwilling to proceed with the closing of the Loan.

Notwithstanding anything herein to the contrary, any transfer permitted pursuant to the terms of this Deed of Trust (including without limitation, those described in Paragraph 30) shall be subject to compliance with the provisions of this Paragraph 42. Any such proposed transfer that would violate the terms of this Paragraph 42 or otherwise cause the Loan to be characterized as a prohibited transaction under ERISA shall be prohibited under the terms of the Loan Documents.

44. **Marshaling of Assets.** Borrower for itself and all others who may claim by, through or under it, waives any and all rights to have the Premises, or any part thereof, marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. In case any sale under this Deed of Trust occurs by virtue of judicial proceedings, the Premises may be sold in one parcel and as an entity, or in such parcels, manner or order as Lender in its sole discretion may elect.

45. **Non-Merger.** In the event Lender shall acquire title to the Premises by conveyance from Borrower or as a result of foreclosure, this Deed of Trust shall not merge in the fee estate of the Premises but shall remain and continue as an existing and enforceable lien for the Indebtedness secured hereby until the same shall be released of record by Lender in writing.

46. **WAIVER OF JURY TRIAL.** THE PARTIES HERETO, AFTER

CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS DEED OF TRUST, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS DEED OF TRUST SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. BORROWER ACKNOWLEDGES AND AGREES THAT THERE ARE NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT AND NO SUCH OTHER TERMS AND PROVISIONS MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS DEED OF TRUST ONLY BY ANOTHER WRITTEN AGREEMENT.**

47. Concerning the Trustee.

(a) No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Lender.

(b) Trustee's Fees. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

(c) Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and consult with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys,

(iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Borrower will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

(d) Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

(e) Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

(f) Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute Trustee to more fully and



certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

(g) Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

(h) No Representation by Trustee. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee (on its own behalf or on behalf of Lender) pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee, either on its own behalf or on behalf of Lender.

48. Site Lease. Borrower hereby covenants, agrees, represents and warrants for the benefit of Lender as follows:

(a) Borrower represents and warrants that (i) Exhibit A, Part II contains a description of the Site Lease; (ii) Borrower has furnished to Lender a copy of the Site Lease certified as true and correct by Borrower; (iii) except as described in Exhibit A, Part II, the Site Lease has not been modified, assigned by Borrower or, to the knowledge of Borrower, assigned by the landlord thereunder; (iv) the Site Lease is in full force and effect and, to the knowledge of Borrower, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default under the Site Lease; and (v) the execution, delivery and performance of this Deed of Trust do not require any consent under, and will not contravene any provision of or cause a default under, the Site Lease.

(b) Borrower (i) shall duly and punctually pay, perform and observe all of its obligations under the Site Lease; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve and keep unimpaired all of the rights granted to Borrower under the Site Lease; (iii) shall not modify, change, supplement, alter, or amend any of the terms, conditions, or provisions of the Site Lease or enter into any other agreement or take any other action or fail to take any action that would modify or terminate any rights or obligations of Borrower or of the landlord under the Site Lease or subordinate any right of Borrower under the Site Lease to any deed of trust or other encumbrance of, or lien on, any interest in the Land; (iv) shall notify Lender in writing not later than one hundred twenty (120) days prior to the last date on which

Borrower can exercise (A) any right to extend the term of the Site Lease or (B) any option to purchase or otherwise acquire the interest of the landlord under the Site Lease, of the existence of such right or option; (v) to the extent the current term of the Site Lease does not extend beyond the maturity date of the Loan, shall exercise (not later than thirty (30) days prior to the last date on which Borrower may timely do so) each right or option of Borrower under the Site Lease to extend the term thereof; (vi) shall notify Lender (within three (3) days of service thereof) of the receipt or giving by Borrower of any notice of default under, or any notice of the possible or actual termination of, the Site Lease, accompanied by a copy of such notice (the failure of Borrower to comply with this subclause (vi) shall constitute an Event of Default hereunder); and (vii) shall promptly notify Lender, upon Borrower's acquisition of knowledge thereof, of the occurrence of any event or condition which with the passage of time or giving of notice would constitute a default under the Site Lease. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower and any subsequent owner of the Premises to exercise, in its own name and stead or in the name of Borrower, each right or option of Borrower under the Site Lease to extend the term thereof or to purchase or otherwise acquire the interest of the landlord under the Site Lease, and for that purpose Lender may execute all necessary documents and instruments to exercise each option and may substitute Persons with like power, Borrower or any subsequent owner of the Premises hereby ratifying and confirming all that their said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, Borrower or any subsequent owner of the Premises, if so requested in writing by Lender shall ratify and confirm the exercise of any such option by executing and delivering to Lender or to such purchasers any instrument which, in the judgment of Lender, is suitable or appropriate therefor. Borrower acknowledges (i) that this power of attorney is given to Lender in consideration for Lender's making of the Loan, (ii) that it is reasonable for Lender to require the leasehold term to extend beyond the maturity of the Note; (iii) that if any option is exercised by Lender, Borrower agrees it is and shall remain solely liable with respect thereto as tenant under the Site Lease and releases Lender from any and all liability with respect thereto or claims relating thereto.

(c) So long as any portion of the Loan shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Land and the leasehold estate therein created pursuant to the provisions of the Site Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, or in any other person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Premises, including, but not limited to, the leasehold estate created by the Site Lease, with or without consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Premises not so released.

(d) So long as any portion of the Loan remains unpaid, if Borrower shall become the owner and holder of the fee title to the Land, the lien of this Deed of Trust shall be spread to cover Borrower's fee title to the Land and said fee title shall be deemed to be included in the Premises. Borrower agrees to execute any and all documents or instruments necessary to subject its fee title to the Land to the lien of this Deed of Trust, in form and substance satisfactory to Lender.

(e) Borrower hereby unconditionally assigns, transfers and sets over to Lender all of

Borrower's claims and rights to the payment of damages arising from any rejection by the landlord under the Site Lease ("Site Lease Landlord") of the Site Lease under the Federal Bankruptcy Code. Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Site Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Site Lease Landlord under the Federal Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Indebtedness shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of the rejection of the Site Lease as aforesaid shall be applied first to all costs and expenses of Lender (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies under this Section 48(e).

(f) Borrower shall not, without Lender's prior written consent, elect to treat the Site Lease as terminated under Section 365(h)(1) of the Federal Bankruptcy Code. Any such election made without Lender's prior written consent shall be void.

(g) If pursuant to Section 365(h)(1) of the Federal Bankruptcy Code, Borrower seeks to offset against the rent reserved in the Site Lease the amount of any damages caused by the non-performance by the Site Lease Landlord of any of Site Lease Landlord's obligations under the Site Lease after the rejection by Site Lease Landlord of the Site Lease under the Federal Bankruptcy Code, Borrower shall, prior to effecting such offset, notify Lender of its intention to do so, setting forth the amounts proposed to be so offset and the basis therefor. Lender shall have the right, within (10) days after receipt of such notice from Borrower, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Borrower shall not effect any offset of the amounts so objected to by Lender for a period of thirty (30) days after Lender has delivered its objection notice to Borrower during which time Lender shall have the right to bring its objections to the attention of any court supervising the bankruptcy of Site Lease Landlord and both Lender and Borrower agree to abide by the decision of any such court. If (A) Lender has failed to object as aforesaid within ten (10) days after notice from Borrower or (B) the court fails to render its decision within the above-mentioned thirty (30) day period, Borrower may proceed to effect such offset in the amounts set forth in Borrower's notice. Neither Lender's failure to object as aforesaid nor any objection or other communication between Lender and Borrower relating to such offset shall constitute an approval of any such offset by Lender.

(h) If any action, proceeding, motion or notice shall be commenced or filed in respect of Borrower, Site Lease Landlord, or the Premises in connection with any case under the Federal Bankruptcy Code (other than a case under the Federal Bankruptcy Code commenced with respect to Borrower), Lender shall have the option, to the exclusion of Borrower, exercisable upon notice from Lender to Borrower, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents and other documents required by Lender in connection therewith. Borrower shall pay to Lender all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Lender in connection with the prosecution or conduct of any

such proceedings within five (5) days after notice from Lender setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by Borrower as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Borrower shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Site Lease in any such case under the Federal Bankruptcy Code (other than a case under the Federal Bankruptcy Code commenced with respect to Borrower) without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(i) Borrower shall promptly, after obtaining knowledge thereof, notify Lender of any filing by or against Site Lease Landlord of a petition under the Federal Bankruptcy Code, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Lender following receipt any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating thereto.

(j) If there shall be filed by or against Borrower a petition under the Federal Bankruptcy Code, and Borrower, as the tenant under the Site Lease, shall determine to reject the Site Lease pursuant to Section 365(a) of the Federal Bankruptcy Code, then Borrower shall give Lender not less than thirty (30) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Site Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such thirty (30)-day period a notice stating that (i) Lender demands that Borrower assume and assign the Site Lease to Lender pursuant to Section 365 of the Federal Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance of Borrower's obligations under the Site Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Site Lease and shall seek court approval to comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

(k) Effective upon the entry of an order for relief in respect of Borrower under the Federal Bankruptcy Code, Borrower hereby assigns and transfers to Lender a non-exclusive right to apply to the bankruptcy court under Section 365(d)(4) of the Federal Bankruptcy Code for an order extending the period during which the Site Lease may be rejected or assumed.

49. **State Specific Provisions.** Notwithstanding anything contained in this Deed of Trust, in the event of a conflict between the provisions of this Section 49 and any other part of this Deed of Trust, the terms and provisions of this Section 49 shall modify and supersede and shall govern with control over such other confliction portion(s) of this Deed of Trust.

(a) **Acceleration Upon Event of Default; Additional Remedies.** Upon or at any time after the occurrence of any Event of Default under this Deed of Trust, Lender may declare the Note and all indebtedness secured by this Deed of Trust to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind, and in the event of the occurrence of an Event of Default, the Note shall automatically

become due and payable immediately as provided therein. Thereafter the Trustee and Lender may exercise any one or more of the following remedies:

(i) Lender, either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, may enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Deed of Trust; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, Lender shall be entitled to exercise every right provided for in this Deed of Trust or any of the other Loan Documents or by law upon occurrence of any Event of Default.

(ii) Lender may elect to have the Trustee proceed under the power of sale granted to the Trustee herein in accordance with applicable Utah law, and Lender and the Trustee may pursue any other remedies permitted by Utah law or provided in this Deed of Trust or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Deed of Trust may be exercised without prior judicial hearing. Notice of any sale and the postponement of any sale shall be given in the manner prescribed by Utah law. The person making a sale shall deliver to the purchaser at the sale a deed conveying the property so sold without any express or implied covenant or warranty. The recitals in such Trustee's deed shall be prima facie evidence of the truth of the statements made in those recitals.

Without limitation on the generality of the foregoing, if the power of sale is exercised, the Trustee shall execute a written notice of the occurrence of an Event of Default and of the election to cause the Premises to be sold and shall record such notice in each county in which any part of the Premises are located. Lender or the Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. In the event Borrower does not cure the default within the period then prescribed by applicable law, the Trustee shall give public notice of the sale to the persons and in the manner prescribed by applicable law.

(iii) After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Annotated § 57-1-25 and § 57-1-26 or other applicable law, the Trustee, without demand on Borrower, shall sell the Premises on the date and at the time and

place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to Borrower's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than 45 days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. The Trustee shall execute and deliver to the purchaser a trustee's deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Premises so sold, but without any covenant of warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. The Trustee shall apply the proceeds of the sale as follows:

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

SECOND: To payment of the obligations secured by the trust deed.

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

(iv) Upon any sale made under or by virtue of this Section 49, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Lender may bid for and acquire the trust estate, whether by payment of cash or by credit bid in accordance with Utah Annotated Code § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting upon the obligations of Borrower secured by this Deed of Trust such credit bid amount. Lender, upon so acquiring the Premises or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

(v) For purposes of Utah Code Annotated § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the Premises, and (ii) Lender may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all

unpaid late charges in any credit bid Lender may make at a foreclosure sale of the Premises pursuant to this Deed of Trust.

(vi) Borrower agrees to pay any deficiency, arising from any cause, to which Lender may be entitled after applications of the proceeds of any sale, and Lender may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law.

(vii) If Borrower, Borrower's successor in interest or any other person having a subordinate lien or encumbrance of record on the Premises, reinstates this Deed of Trust and the Loan within three months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31-(2), as delivered by Lender, in accordance with its then current policies and procedures, whereupon the Trustee shall record a notice of cancellation of the pending sale.

(viii) Lender hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 5.13 hereof.

(ix) Lender may exercise any or all of the remedies available to a secured party under the Utah Code Annotated and any notice of sale, disposition or other intended action by the Trustee or Lender, sent to Borrower at the address specified in Section 22 hereof, at least five days prior to such action, shall constitute reasonable notice to Borrower.

(x) Lender may exercise any of the rights and remedies provided for in this Deed of Trust, in any of the other Loan Documents or by applicable law, including, without limitation, the right of set off.

To the extent permitted under and in accordance with the applicable laws of the State of Utah, the following provisions shall, as Lender or the Trustee may determine in its or their sole discretion, apply to any sales under this Deed of Trust, whether by judicial proceeding, judgment, decree, power of sale, foreclosure or otherwise: (i) Lender or the Trustee may conduct multiple sales of any part of the property to be sold in separate tracts or in its entirety and Borrower waives any right to require otherwise; (ii) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice; and (iii) Lender may acquire the property being sold and, in lieu of paying cash, may pay by crediting against the obligations secured by this Deed of Trust the amount of its bid, after deducting therefrom any sums which Lender or the Trustee is authorized to deduct under the provisions of this Deed of Trust or any of the other Loan Documents.

(b) Foreclosure; Expense of Litigation. In any suit or other proceeding to foreclose the lien hereof or enforce any other remedy of the Trustee and/or Lender 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 the Trustee and/or Lender for attorneys' fees, appraiser's fees, 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 the Trustee and/or Lender 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 or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Deed of Trust, including the fees of any attorney employed by the Trustee and/or Lender in any litigation or proceeding affecting this Deed of Trust, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Deed of Trust, immediately due and payable, with interest thereon from the date due until paid at a variable rate 5% above the highest interest rate from time to time prevailing on the Note.

(c) Application of Proceeds of Sale and Other Remedies. Except as otherwise provided in Section 49(a)(ii) hereof or by applicable law, the proceeds of any sale or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to such sale or other remedy, including all such items as are mentioned in Section 49(b) hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Deed of Trust additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any remainder to Borrower, its successors or assigns, as their rights may appear.

Borrower acknowledges receipt of a copy of this Deed of Trust at the time of execution hereof.

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EXHIBIT A, PART I  
LEGAL DESCRIPTION

Tax Parcel No. 16-06-154-048

PARCEL 2:

A Leasehold Estate, as created by that certain Restated Lease Agreement for Parking Facilities dated March 27, 1991 and any amendments, supplements and/or assignments thereto, executed by the Redevelopment Agency of Salt Lake City, a public entity, as Lessor and Broadway Centre Limited, a Utah limited partnership, as Lessee, disclosed by that certain Memorandum of Lease recorded June 6, 1991 as Entry No. 5077645 in Book 6323 at Page 1789 of official records, as to the following:

A part of Lots 2 and 3 of Block 56, Plat "A", Salt Lake City Survey, in Salt Lake City, Salt Lake County, Utah:

Beginning at the Southeast corner of Lot 3, said Block 56 and running thence South 89°58'47" West 75.16 feet (South 89°58'22" West 75.11 feet record) along the South line of said Block 56 to the Southwest corner of Warranty Deed recorded March 8, 1991 as Entry No. 5036165 in Book 6296 at Page 1271, records of Salt Lake County, Utah; thence along the Westerly line of said Westerly Deed the following three courses: North 00°00'25" East 188.04 feet (North 188 feet record) along the Westerly edge of an existing multi-story concrete parking structure; South 89°58'38" West 6.77 feet (South 89°58'22" West 6.75 feet record) to the centerline of vacated Floral Street; and North 00°02'42" East 8.00 feet (North 00°02'31" East record) along said centerline; thence North 89°58'37" East 82.05 feet (North 89°58'22" East 82 feet record) to the lot line common to Lots 2 and 3 of said Block 56; thence North 00°02'45" East 1.00 feet (North 00°02'31" East record) along said common lot line; thence North 89°58'37" East 50.33 feet (North 89°58'22" East 50.35 feet record) to the West line of Edison Street as it exists at 30.00 foot right-of-way width; thence South 00°08'00" West 197.05 feet (South 00°07'44" West 197 feet record) along said West line of Edison Street to the South line of said Block 56; thence South 89°58'47" West 50.03 feet (South 89°58'22" West 50.00 feet record) along said South line of Block 56 to the point of beginning.

PARCEL 3:

A non exclusive easement for pedestrian and vehicular access as disclosed in that certain Cross Easement Agreement recorded April 11, 2012 as Entry No. 11368179 in Book 10007 at Page 5320 of official records.

EXHIBIT A, PART II  
LEASE DESCRIPTION

1. The Lease Agreement for Parking Facilities dated April 16, 1990, between Broadway Centre Limited, a Utah limited partnership, as tenant, and Redevelopment Agency of Salt Lake City, a public entity, as landlord.
2. First Restated Lease Agreement for Parking Facilities dated March 27, 1991 between Broadway Centre Limited, a Utah limited partnership, as tenant and Redevelopment Agency of Salt Lake City, a public entity, as landlord.
3. Second Restated Lease Agreement for Parking Facilities dated April 12, 1991 between Broadway Centre Limited, a Utah limited partnership, as tenant and Redevelopment Agency of Salt Lake City, a public entity, as landlord.
4. Third Amendment to Lease Agreement for Parking Facilities dated October 9, 1992 between Broadway Centre Limited, a Utah limited partnership, as tenant and Redevelopment Agency of Salt Lake City, a public entity, as landlord.
5. Lease Assignment dated January 1, 1993 between Broadway Centre Limited, a Utah limited partnership, as assignor, and New Broadway Centre, L.P., a Delaware limited partnership, as assignee.
6. Warranty Deed dated November 12, 2003 between New Broadway Centre, L.P., a Delaware limited partnership, as grantor, and Broadway Centre Limited II, a Utah limited partnership, as grantee.
7. Certificate of Conversion dated July 11, 2007 converting Broadway Centre Limited II, a Utah limited partnership to Broadway Centre Investment Limited Partnership, a Delaware limited partnership.
8. First [sic] Amendment to Lease Agreement and Agreement Regarding Exterior Improvements dated June 10, 2013 between Redevelopment Agency of Salt Lake, a public entity, as landlord, Broadway Centre Limited, a Utah limited partnership, as tenant, and Daily Green LLC, a Utah limited liability company d.b.a. Plum Alley, as sub-tenant.