

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Carl W. Barton
Holland & Hart LLP
222 South Main Street
Suite 2200

Loan No. 100024720

RETURNED
MAY 19 2014

Tax ID: 02-161-0009
mnt: 40205

(Above space reserved for recording information)

For Tax Parcel I.D. Numbers, see Exhibit "A" attached hereto.

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

DATED AS OF
May 19th, 2014

GRANTED BY

DEERWOOD PROPERTIES UTAH LLC, a
Utah limited liability company

TO

THRIVENT FINANCIAL FOR LUTHERANS,
a Wisconsin corporation

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WHEN RECORDED, MAIL TO:

Carl W. Barton
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222 South Main Street,
Suite 2200
Salt Lake City, Utah 84101

Loan No. 100025200

Tax ID: 02-161-0009

Mnt: 46205

(Space Above for Recorder's Use Only)

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

THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT ("**Mortgage**") is made and delivered as of the 19th day of May, 2014, by **DEERWOOD PROPERTIES UTAH LLC**, a Utah limited liability company ("**Trustor**"), having a mailing address of 3720 South Susan Street, Suite 100, Santa Ana, California, 92704, and whose manager is B.G.N. Kallins, LLC, a Delaware limited liability company ("**Principal**"), to **METRO NATIONAL TITLE** ("**Trustee**") whose address is 345 East 300 South, Salt Lake City, Utah 84111, for the benefit of **THRIVENT FINANCIAL FOR LUTHERANS**, a Wisconsin corporation ("**Beneficiary**"), having a mailing address of: Thrivent Financial for Lutherans, Attention: Loan Administration - Mortgage and Real Estate Investments, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

WITNESSETH:

WHEREAS, Trustor is indebted to Beneficiary, as evidenced by that certain Promissory Note ("**Note**") of even date herewith, in the original principal sum of Five Million and 00/100 Dollars (\$5,000,000.00) ("**Loan**"), both principal and interest of the Note being payable at the office of Beneficiary as more specifically set forth therein.

WHEREAS, Trustor and Beneficiary desire and intend that the Note be secured by: (1) this Mortgage; (2) an Assignment of Leases and Rents from Trustor, as assignor, in favor of Beneficiary, as assignee, of even date herewith; (4) Financing Statements; and (5) other and sundry documents and agreements, excluding that certain Environmental Indemnity Agreement, of even date herewith, executed by Trustor and certain Guarantors, as defined herein, in Beneficiary's favor (the "**Environmental Indemnity**"). This Mortgage and all other documents and agreements given as security for the Note are referred to collectively as the "**Loan Documents**" and singularly as a "**Loan Document**".

NOW, THEREFORE, in consideration of (a) the sums advanced to Trustor under the Note, in hand paid by Beneficiary, the receipt and sufficiency of which is hereby acknowledged, and (b) to secure the payment of the principal, interest, and premium, if any, on the Note the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions or renewals thereof, due and payable with interest thereon as provided therein, the balance of said principal sum together with interest thereon being due and payable in any event on June 15, 2021 ("**Maturity Date**"), and all sums advanced in protecting the lien of this Mortgage, including without limitation (i) payment of taxes on the "**Premises**" (as that term is hereinafter defined), (ii) payment of insurance premiums covering improvements thereon, (iii) payment of principal and interest on prior liens, (iv) payment of waste protection, (v) payment of expenses and actual attorneys' fees herein provided for and (vi) for all sums otherwise advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, being hereinafter collectively referred to as the "**Indebtedness**"), and (c) to secure the performance by Trustor of each and every term, covenant, agreement and condition contained in the Note and the Loan Documents (other than the Environmental Indemnity), Trustor does hereby irrevocably GRANT, CONVEY AND ASSIGN unto Trustee, in trust, with power of sale, for the benefit of Beneficiary, its successors and assigns, forever, AND GRANTS TO TRUSTEE, in trust for BENEFICIARY, A SECURITY INTEREST IN AND LIEN AGAINST the following properties to secure payment of the Indebtedness (all of the following being hereafter collectively referred to as the "**Premises**"):

GRANTING CLAUSES

A. **Real Property.** All the tracts or parcels of real property lying and being in the County of Davis, State of Utah ("**Real Property**") all as more fully described in **Exhibit "A"** attached hereto and which is hereby incorporated into this Mortgage by reference, together with all the estates and rights in and to the Real Property, and in and to lands lying in streets, alleys and roads or gores of land adjoining the Real Property, all minerals, oil, gas and other hydrocarbon substances on, in and under the Real Property, as well as all development rights, air rights, water, water rights, water stock, mineral or oil rights, parking rights and general intangibles relating to, generated from, arising out of or incidental to the Real Property, its ownership, development or use.

B. **Improvements, Fixtures, Equipment and Personal Property.** All buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the Real Property and all proceeds and products derived therefrom whether now owned or hereafter acquired; and all equipment (including Trustor's interest in any lease of such equipment), fixtures, improvements, building supplies and materials and personal property owned by Trustor now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the Real Property including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants, stoves, ranges, ovens,

refrigerators, air conditioners, dishwashers, clothes dryers, washing machines, disposals and compactors (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Trustor in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Trustor at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

C. **Rents, Leases and Profits.** All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Trustor in and to all leases, licenses, subleases, contracts or other kind of occupancy agreements, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Trustor to collect the rents, income and other normal income benefits arising under any agreements. Beneficiary shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Beneficiary, at any time and from time to time, to notify any lessee of the rights of Beneficiary hereunder.

Together with all right, title and interest of Trustor in and to any and all contracts for sale and purchase of all or any part of the property described in these Granting Clauses A, B and C hereof; and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

D. **Judgments, Condemnation Awards, Insurance Proceeds, and Other Rights.** All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of Trustor against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of hazardous substances.

E. **Licenses, Permits, Equipment Leases and Service Agreements.** All right, title and interest of Trustor in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, tradenames, any and all other intangibles, including general intangibles, and all proceeds therefrom; arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.

F. **Proceeds.** All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the Premises described in Granting Clauses A through E herein.

TO HAVE AND TO HOLD THE SAME, together with the possession, right of possession of the Premises, and with full POWER OF SALE, unto Trustee, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if Trustor, Trustor's heirs, administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the full amount of the Indebtedness as and when due, and shall keep and perform all of the covenants and agreements herein contained, then this Mortgage shall become null and void, and shall be released at Trustor's expense, otherwise this Mortgage to remain in full force and effect.

ARTICLE 1.
GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 1.1. Representations and Warranties.

Trustor represents and warrants to Beneficiary, its successors and assigns, that, as of the date hereof:

(a) Trustor, for Trustor, Trustor's administrators, personal representatives, successors and assigns, covenants with Beneficiary, its successors and assigns, that Trustor is lawfully seized of the Premises and has good right to sell and convey the same.

(b) The Premises are free from all encumbrances except as may be set forth in Schedule B of that certain Beneficiary's ALTA Policy of Title Insurance issued to Beneficiary by Mentro National Title and insuring the first lien position of this Mortgage ("**Permitted Encumbrances**").

(c) Trustor, its successors and assigns, will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Mortgage. As used herein the words "**successors and assigns**" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to the Mortgage.

(d) If Trustor is a corporation, partnership, limited liability company or trust, it is duly organized, validly existing and in good standing under the laws of the State or Commonwealth of its organization, is duly qualified to do business in all states in which it is required to be so qualified, and has all requisite power and authority to enter into this Mortgage and to perform its obligations hereunder; the execution, delivery and performance of this Mortgage by Trustor has been duly and validly authorized; and all requisite action has been taken by Trustor to make this Mortgage valid and binding upon Trustor, enforceable in accordance with its terms.

(e) If Trustor is an individual, such individual is of legal age, is under no legal disability and is fully competent to make, execute and deliver this Mortgage.

(f) Neither Trustor nor any manager or member of Trustor is or will become a "Person" described by Section 1 of The Anti-Terrorism Executive Order 13,224 of September 23, 2001 blocking property and prohibiting transactions with Persons who commit, threaten to commit, or support terrorism, 66 Fed. Reg. 49,049 (2001), or described in any rule or regulation implementing the same and, to the best knowledge and belief of the Trustor after due and adequate diligence, neither Trustor nor any limited or general partner of Trustor engages or will engage in any dealings or transactions, or be otherwise associated with, any such Persons.

(g) Trustor and all managers and members of Trustor are in compliance, and will remain in compliance, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA Patriot Act").

(h) If Trustor is a corporation, partnership, limited liability company, trust, or other form of business entity, neither the execution and delivery of this Mortgage nor the performance of the provisions of the agreements herein contained on the part of Trustor will contravene, violate or constitute a default under the organizational and other governing instruments of such Trustor or result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement or other instrument to which Trustor or the Premises is subject or result in the violation of any law, rule, regulation, order, judgment or decree to which Trustor or the Premises is subject.

(i) If Trustor is an individual, neither the execution and delivery of this Mortgage nor the performance of the provisions of the agreements herein contained on the part of such Trustor will result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement or other instrument to which Trustor or the Premises is subject or result in the violation of any law, rule, regulation, order, judgment or decree to which Trustor or the Premises is subject.

(j) There are no (i) bankruptcy proceedings involving Trustor or the Principal; (ii) dissolution proceedings involving Trustor or the Principal; (iii) unsatisfied judgments of record against Trustor or the Principal; or (iv) tax liens filed against Trustor or the Principal.

(k) The Loan Documents have been duly executed and delivered by Trustor and constitute the legal, valid and binding obligations of Trustor, enforceable in accordance with their terms, except as to enforcement of remedies, as may be limited by bankruptcy, insolvency or similar laws affecting generally the enforcement of creditor's remedies.

(l) There are no judgments, suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of Trustor's knowledge, threatened against Trustor or its properties, or both, nor has any judgment, decree or order been issued against Trustor or its properties, or both, which would have a material adverse effect on the Premises or the financial condition of Trustor or Trustor's properties.

(m) No consent or approval of any regulatory authority having jurisdiction over Trustor is necessary or required by law as a prerequisite to the execution, delivery and performance of the terms of the Loan Documents.

(n) Any and all balance sheets, net worth statements and other financial statements and data which have heretofore been given to Beneficiary with respect to Trustor fairly and accurately represent the financial condition of Trustor as of the date thereof, and, since the effective date of such materials, there has been no material adverse change in the financial condition of Trustor.

(o) Trustor is not, as of the date hereof, in default in the payment of any of Trustor's obligations.

(p) The Premises are free from any mechanics' or materialmen's liens or claims. There has been no labor or materials furnished to the Premises that has not been paid for in full.

(q) Trustor has no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation or restriction, or any judicial, administrative, governmental or quasi-governmental action, or any action by adjacent land owners, or natural or artificial condition existing upon the Premises which would limit, restrict or prevent the contemplated or intended use and purpose of the Premises.

(r) There is no pending condemnation or similar proceeding affecting the Premises, or any portion thereof nor, to the best knowledge of Trustor, is any such action being presently contemplated.

(s) No part of the Premises is being used or will be used principally, or at all, for agricultural or farming purposes.

(t) The Premises is undamaged by fire, windstorm or other casualty.

(u) Neither Trustor nor any affiliated entity has been the subject of foreclosure or insolvency proceedings.

(v) Trustor is neither an "employee benefit plan" as defined under ERISA nor a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the Premises do not constitute "plan assets" within the meaning of the Department of Labor Regulation Section 2510.3-101.

(w) Trustor has complied with all requirements of the Americans with Disabilities Act, 42 U.S.C. Sections 12101 and 12213, as the same may be amended from time to time, with respect to the Premises.

(x) The Premises complies with all zoning ordinances, energy and environmental codes, building and use restrictions and codes, and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Premises.

(y) The heating, electrical, sanitary sewer plumbing, storm sewer plumbing, potable water plumbing and other building equipment, fixtures and fittings are in good condition and working order, are adequate in quantity and quality for normal and usual use, and are fit for the purposes intended and the use contemplated.

(z) The Premises has uninterrupted pedestrian and vehicular access to and from public streets.

(aa) Each of the parcels constituting the Premises is a legally subdivided parcel in accordance with applicable Utah law.

SECTION 1.2. Continuing Obligation.

Trustor further warrants and represents that all statements made hereunder are true and correct and that all financial statements, data and other information provided to Beneficiary by Trustor relating to or provided in connection with this transaction has not and does not contain any statement which, at the time and in the light of the circumstances under which it was made, would be false or misleading with respect to any material fact, or would omit any material fact necessary in order to make any such statement contained therein not false or misleading in any material respect, and since such statement, data or information was provided there has been no material change thereto or to the condition of Trustor. Should Trustor subsequently obtain knowledge that such representation was or is untrue, Trustor shall immediately notify Beneficiary as to the untrue nature of said representation and agrees to take such action as may be necessary to cause such representation to become true.

ARTICLE 2. COVENANTS AND AGREEMENTS

Trustor further covenants and agrees for the benefit of Beneficiary, its successors and assigns, as follows:

SECTION 2.1. Payment of Indebtedness: Observance of Covenants.

Trustor will duly and punctually pay each and every installment of principal, premium, if any, and interest on the Note, all deposits required herein, and all other Indebtedness, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other Loan Documents, as such instrument may be amended, modified, restated and in effect from time to time.

SECTION 2.2. Maintenance: Repairs. Trustor agrees that it will keep and maintain the Premises in good, first class condition, repair and operating condition free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises, which may become damaged or destroyed, to their condition prior to any such damage or destruction. Trustor further agrees that without the prior written consent of Beneficiary, it will not remove or expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, adversely affect the market value or change the existing architectural character of the Premises, and agrees that any other buildings, structures and improvements now or hereafter constructed on or in the Premises or repairs made to the Premises shall be completed in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations, requirements and permits and in accordance with plans and specifications previously delivered to, and approved in advance and in writing by Beneficiary. Trustor agrees not to acquiesce in any rezoning classification, modification or restriction affecting the Premises without the written consent of Beneficiary. Trustor agrees that it will not abandon or vacate the Premises. Trustor agrees that it will provide, improve, grade, surface and thereafter maintain, clean, repair and adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways and curb cuts and sufficient paved areas for ingress and right-of-way to and from the adjacent public thoroughfare necessary or desirable for the use thereof and maintain all landscaping thereon.

SECTION 2.3. Payment of Operating Costs; Liens; and Other Indebtedness.

Trustor agrees that it will pay or cause to be paid all operating costs and expenses of the Premises; keep the Premises, or cause the Premises to be kept, free from mechanics' liens, materialmen's liens, judgment liens and other liens, encumbrances, executions, attachments or levies (hereinafter collectively referred to as "**Liens**"); and will pay when due all permitted indebtedness which may be secured by a mortgage, lien or charge on the Premises, whether prior to, subordinate to or of equal priority with the lien hereof, and upon request will exhibit to Beneficiary satisfactory evidence of such payment and discharge.

SECTION 2.4. Payment of Impositions.

Trustor will pay or cause to be paid when due and before any penalty or interest attaches because of delinquency in payment, all taxes, installments of assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or the Indebtedness (hereinafter collectively referred to as the "**Impositions**"); and will upon demand furnish to Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the Impositions herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in mortgaged premises, so as to impose such Imposition on Beneficiary or on the interest of Beneficiary in the Premises, then, in any such event, Trustor shall bear and pay, or cause to be paid, the full amount of such Imposition,

provided that if for any reason payment by Trustor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness wholly or partially usurious, Beneficiary, at its option, may, upon no less than ninety (90) days notice to Trustor, declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable, without payment of a Reinvestment Charge or Default Premium (as such terms are defined in the Note and hereinafter referred to as the "**Reinvestment Charge**" and the "**Default Premium**"), or Beneficiary, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness unlawful or usurious, in which event Trustor shall concurrently therewith pay, or cause to be paid, the remaining lawful and non-usurious portion or balance of said Imposition.

SECTION 2.5. Contest of Liens and Impositions.

Trustor shall have the right to contest in good faith the validity or amount of any tax assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon (a) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same, (b) Trustor giving Beneficiary written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within thirty (30) days after Trustor receives actual notice of the filing thereof, (c) Trustor making and thereafter maintaining with Beneficiary or such other depository as Beneficiary may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Beneficiary's sole discretion, be acceptable to Beneficiary, and in either case having a present value equal to the amount herein specified) in an amount no less than One Hundred Fifty Percent (150%) of the amount which, in Beneficiary's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Trustor or in the event Trustor fails to prosecute such contest as herein required, or in lieu thereof, Trustor providing to Beneficiary title insurance over such matters in form and substance reasonably acceptable to Beneficiary, and (d) Trustor diligently prosecuting such contest by appropriate legal proceedings. In the event Trustor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Beneficiary may, at its option, liquidate the securities deposited with Beneficiary, and apply the proceeds thereof and other monies deposited with Beneficiary in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

SECTION 2.6. Protection of Security.

Trustor agrees to promptly notify Beneficiary of and appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness or the rights or interest of Beneficiary hereunder. Beneficiary may elect to appear in or defend any such action or proceeding and Trustor agrees to indemnify and reimburse Beneficiary from any and all loss,

damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and actual attorneys' fees.

SECTION 2.7. Annual Statements.

Within one hundred twenty (120) days after the end of each calendar year during the term of this Mortgage, Trustor will furnish to Beneficiary (a) annual financial statements of Trustor, including a balance sheet and income statement, (b) annual financial statements of Trustor, Guarantor, and Principal including balance sheets and income statements, and (c) annual operating statements of the Premises, which shall include at least gross income itemized as to source, operating expenses (itemized), depreciation charges, and net income before and after federal income taxes (if applicable) and such additional information as Beneficiary may from time to time request. The financial statements of Trustor and Principal and the operating statements of the Premises shall be prepared and certified personally by Principal, as the manager of Trustor, shall be satisfactory in form and content to Beneficiary and shall be at the expense of Trustor. The financial statements of Trustor, Guarantor and Principal shall be personally certified by each respective individual, shall be satisfactory in form and content to Beneficiary and shall be prepared without expense to Beneficiary. Trustor covenants that it shall keep true and accurate records of the operation of the Premises. All of the above required statements for the Trustor, Guarantor, and Principal shall be prepared in adequate detail and shall conform to generally accepted accounting principles. In the event the Premises are conveyed to a corporate entity pursuant to the terms of Section 2.9 below, such entity shall submit annual financial statements of the corporation and any supplemental schedules provided stockholders or officers, certified by an officer of the corporation, in addition to the operating statements described above. In the event that the Premises are conveyed to an individual pursuant to the terms of Section 2.9 below, such individual shall submit annual statements certified by each individual or by an independent certified public accountant in good standing and shall include a balance sheet and a profit and loss statement in addition to the operating statements described above. In the event that the Premises shall be conveyed to a partnership, a trust or a limited liability company in accordance with the terms of Section 2.9 below, the partnership, the trust or the limited liability company shall submit annual reports certified by an authorized partner, trustee, manager, or member in addition to the operating statements described above. In the event Trustor fails to furnish any of the above statements Beneficiary may cause an audit to be made of the respective books and records at the sole cost and expense of Trustor. Beneficiary also shall have the right to examine at their place of safekeeping all books, accounts and records relating to the operation of the Premises and make copies thereof or extracts therefrom and to discuss the affairs, finances or accounts with the Principal and employees of Trustor and its independent accountants. Said examination shall be at Beneficiary's expense unless Trustor's statements are found to contain significant discrepancies, in which case the examination shall be at Trustor's expense. Trustor shall also furnish a rent roll of all tenants having leases on the Premises, certified by Trustor, together with the rent schedules, expiration dates, and options to extend for such tenants, on an annual basis along with the operating statements provided for above or at such other times as requested by Beneficiary.

SECTION 2.8. Additional Assurances.

Trustor agrees, and hereby authorizes Beneficiary to file on its behalf, upon request by Beneficiary to execute and deliver further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended so to be. Trustor agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing, the issuance and delivery of the Note, the filing or recording of this Mortgage or the delivery and recording of such further assurances and instruments as may be required pursuant to the terms of this Section.

SECTION 2.9. Due on Sale or Mortgaging, etc.

In the event that without the written consent of Beneficiary being first obtained: (a) Trustor sells, conveys, transfers, further mortgages, changes the form of ownership, or encumbers or disposes of the Premises, or any part thereof, or any interest therein, or agrees to do so either directly or indirectly; or (b) any ownership or beneficial interest in Trustor is sold, conveyed, transferred, pledged or encumbered or there is an agreement to do so either directly or indirectly; or (c) any general or limited partnership interest, any membership or other limited liability company interest, or any other beneficial or ownership interest in any Principal is sold, conveyed, transferred, pledged or encumbered or there is an agreement to do so; whether any such event described in (a), (b), or (c) above is voluntary, involuntary or by operation of law, either directly or indirectly, then at Beneficiary's sole option, Beneficiary may declare the Indebtedness immediately due and payable in full and call for payment of the same at once, together with the Reinvestment Charge and/or Default Premium then in effect under the terms of the Note.

In the event Trustor shall request the consent of Beneficiary to any transfer in accordance with this **Section 2.9**, Trustor shall deliver a written request to Beneficiary together with complete information regarding such conveyance or encumbrance (including complete information concerning the person or entity to acquire the interest conveyed). Beneficiary shall be allowed thirty (30) days after receipt of all requested information for evaluation of such request. In the event that such request is not approved within such thirty (30) day period, it shall be deemed not approved. Beneficiary may charge an administrative fee to process any such sale, conveyance, transfer, mortgage or other encumbrance. Approval for any transfer permitted hereunder or otherwise granted by Beneficiary shall be conditioned upon payment of a transfer fee of Fifteen Hundred and 00/100 Dollars (\$1,500.00) and such modifications of the loan terms, interest rate, and maturity date as determined by Beneficiary in its sole discretion. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

If the Premises should be transferred to a partnership, to a trust, to a privately held corporation or to a limited liability company pursuant to the terms of this **Section 2.9** during the term of this Mortgage, thereafter a subsequent transfer of a partnership interest, a beneficial interest, a corporate stock interest or a member interest in either the successor entity or in any

entity which holds an ownership interest in such successor entity shall constitute a conveyance for purposes of this Section 2.9, and the consent of Beneficiary shall be required.

Notwithstanding the above restrictions, and provided no default or Event of Default (as such term is hereinafter defined) has occurred and is continuing hereunder, Beneficiary shall not withhold consent to the following:

(a) a one-time transfer of the Premises in its entirety at any time without modification of the interest rate or maturity date stated in the Note, provided all of the following conditions have been met:

(i) The transfer shall be to a reputable and competent transferee who Beneficiary determines, in its sole judgment and discretion:

(1) has experience in the business of owning commercial real estate of similar type, size and quality to the Premises and has a favorable reputation with respect to such business; and

(2) has experience or has retained a property management company with experience in the management of similar projects which is acceptable to Beneficiary; and

(3) along with proposed new guarantor(s), has the necessary creditworthiness and will assume all of Trustor's obligations under the Loan Documents including, without limitation, the Environmental Indemnity.

(ii) The proposed transferee and new guarantor(s) (which shall be acceptable to Beneficiary) must assume and agree to perform all obligations under the Note, this Mortgage, the Assignment of Leases, the Environmental Indemnity and all other Loan Documents pursuant to an assumption agreement and all other agreements, acceptable to Beneficiary. Unless otherwise agreed to by Beneficiary, Trustor shall remain liable for payment of all sums due under the Note and performance of all other terms and conditions of the Note, this Mortgage, the Assignment of Leases, the Environmental Indemnity and any other Loan Documents.

(iii) Beneficiary shall have received a transfer fee equal to one percent (1%) of the outstanding principal balance of the Note at the time such request for transfer is approved by Beneficiary.

(iv) Beneficiary must determine in its sole discretion that the loan-to-value ratio at the time of such transfer is not greater than sixty-five percent (65%).

(v) The purchaser must acknowledge that future transfers and encumbrances will be subject to Beneficiary's approval, which may, at

Beneficiary's sole discretion, be withheld or be conditioned upon payment of a fee and/or modification of the terms of the Note and/or the other Loan Documents.

(vi) Notice of such transfer together with such documentation regarding the transfer and the assuming person or entity as Beneficiary shall request shall be given to Beneficiary at least thirty (30) days prior to such transfer.

(vii) Trustor shall pay all actual fees and expenses incurred by Beneficiary in connection with reviewing and processing the proposed transfer, including, without limitation, all legal, recording and title insurance fees and expenses and the fees of any broker. Trustor acknowledges and agrees that Trustor shall be liable to Beneficiary for such fees and expenses regardless of whether the proposed transfer actually occurs, and such liability shall be secured by the Mortgage and shall bear interest at the "**Default Rate**" (as such term defined under the terms of the Note), until paid.

(viii) Trustor, purchaser, and any new guarantor(s) (approved by Beneficiary) shall (1) execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements to the Loan Documents as Beneficiary may require, (2) deliver such searches and surveys as Beneficiary may require, and (3) shall deliver such endorsements to Beneficiary's title insurance policy as Beneficiary may require including a downdate endorsement to the title insurance policy insuring (A) the first lien position of this Mortgage, subject to no liens or encumbrances other than those shown in the original title insurance policy and current taxes not yet due and payable, and (B) the fact that the transferee person or entity is the fee owner of the Premises.

(ix) Trustor and the transferee shall have satisfied all other requirements as Beneficiary shall reasonably require for providing its consent to such transfers.

The rights described in this Subsection 2.9 (a) shall be available only with respect to a single transfer by the original Trustor and not with respect to subsequent transfers. (A transfer in accordance with such one-time right is hereinafter referred to as a "**One-Time Third Party Transfer**".) The right to make a One-Time Third Party Transfer by the original Trustor may be exercised only with Beneficiary's prior approval of the matters that require its approval, or as to which it is required to be satisfied, as provided above.

(b) transfers of ownership or beneficial interests in Trustor for estate or tax planning purposes to (1) other current owners of Trustor, (2) lineal descendants of current owners of Trustor, (3) spouses of current owners of Trustor, (4) trusts whose sole beneficiaries are lineal descendants or spouses of current owners of Trustor, or (5) to partnerships, corporations or subsidiaries of corporations which are owned solely by current owners of Trustor, provided in each case the following conditions have been met:

(i) Trustor shall remain liable for all sums owing to Beneficiary under the Note and all sums due under the terms of this Mortgage and under the Environmental Indemnity.

(ii) Notice of each such transfer together with such documentation regarding the transfer and the transferee person or entity as Beneficiary shall request shall be given to Beneficiary at least thirty (30) days prior to such transfer.

(iii) Trustor shall pay all out-of-pocket costs and expenses incurred by Beneficiary or Beneficiary's servicing agent in connection with reviewing and processing such transfer, including Beneficiary's actual attorneys' fees (in-house and outside counsel), and the fees of any broker.

(iv) Trustor and the transferee shall have satisfied all other requirements of Beneficiary for providing its consent to such transfers.

(v) Guarantors shall remain liable for all obligations under the terms of that certain Guaranty of even date herewith (the "Guaranty") and the Environmental Indemnity.

(vi) Payment of Beneficiary's then current administrative review fee.

SECTION 2.10. Maintenance of Existence.

Trustor agrees (a) to maintain its existence as a limited liability company in good standing under the laws of the State of Utah, (b) to remain duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Trustor, and (c) not to dissolve, liquidate, wind-up, consolidate or merge during the term hereof, without, in each instance, the prior written consent of Beneficiary. Principal shall remain duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Trustor and shall not be dissolved, liquidated, wound-up, consolidated or merged during the term hereof, without, in each instance, the prior written consent of Beneficiary.

SECTION 2.11. Building Use.

During the entire term of the Note and this Mortgage, Trustor agrees not to (a) convert the Premises to condominium units of any kind or (b) convert the Premises to any use other than as a retail center. In that connection, Trustor covenants that the sale of units and/or recording of condominium documents on the Premises or any part thereof shall constitute an Event of Default hereunder.

ARTICLE 3.

INSURANCE AND ESCROWS

SECTION 3.1. Insurance.

Trustor shall obtain and keep in full force and effect during the term of this Mortgage at its sole cost and expense the following insurance: (a) All Risk Insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, or all perils endorsements, all in the amount of not less than the full replacement cost of the improvements, pursuant to the appraisal submitted to and approved by Beneficiary, on the Premises, and together with an agreed-amount endorsement, a replacement cost endorsement and a waiver of subrogation endorsement; (b) Broad Form Boiler and Machinery Insurance on all equipment and pressure-fired vehicles or apparatus situate on the Premises, and providing for full repair and replacement cost coverage; (c) Flood Insurance in the maximum amount available at any time during the term of this Mortgage unless evidence is provided throughout the term of this Mortgage that the Premises are not within a flood plain as defined by the Federal Insurance Administration and the Premises is not designated as being within a flood plain during the term of this Mortgage; (d) Rental Insurance covering risk of loss due to the occurrence of any hazards insured against under the policies required in Subsections (a), (b) and (c) hereof in an amount equal to the aggregate of: (i) rental for a twelve (12) month period, plus (ii) real estate taxes, special assessments, insurance premiums and other expenses required to be paid to Trustor by the tenants under each lease of the Premises for such twelve (12) month period, but in no event less than Seven Hundred Forty-Two Thousand Five Hundred Ninety-Eight (\$742,598); (e) Commercial General Liability Insurance covering the legal liability of Trustor against claims for bodily injury, death or property damage occurring on, in or about the Premises in a minimum amount of Three Million and No/100ths Dollars (\$3,000,000.00) per occurrence and aggregate; (f) Sprinkler Insurance, if applicable; (g) Builder's Risk Insurance and Worker's Compensation Insurance during the making of any alterations or improvements to the Premises; and (h) such other forms of insurance as Beneficiary may require or as may be required by law, including, without limitation, coverage for acts of terrorism and special coverage of endorsements for mold and mold related damage to the Premises, and/or flood insurance if the Premises are located in a special flood hazard area. Such insurance policies shall be written by insurance companies licensed to do business in the State where the Premises are located, having a minimum noncontingent rating in Best's Key Rating Guide of A, with a financial class size of IX or better and shall otherwise be satisfactory to Beneficiary as to amount, form, deductibles and insurer, and must cover all risks Beneficiary requires. Such insurance policies and endorsements (i) shall be manually signed (unless waived by Beneficiary in writing), (ii) shall name as the insured parties Trustor and Beneficiary as their interests may appear, (iii) shall be in amounts sufficient to prevent Trustor from becoming a co-insurer of any loss thereunder, (iv) shall bear a satisfactory first mortgagee clause in favor of Beneficiary with loss proceeds under any such policies to be made payable to Beneficiary, and (v) shall contain such other endorsements as Beneficiary may require. All required policies of insurance or acceptable certificates thereof, together with evidence of the payment of current premiums therefor, shall be delivered to Beneficiary and shall provide that Beneficiary shall receive at least thirty (30) days' advance written notice prior to cancellation, amendment or termination of any such policy of insurance. Trustor shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefor. Trustor shall at its expense furnish evidence of the replacement value of the improvements on the Premises in form satisfactory to Beneficiary on

renewal of insurance policies or upon request of Beneficiary. Insurance coverage must at all times be maintained in proper relationship to such replacement value and must always provide for agreed amount coverage. Failure to maintain proper insurance shall be an Event of Default hereunder. In the event of a foreclosure of this Mortgage or any acquisition of the Premises by Beneficiary, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, Trustor empowers Beneficiary to effect insurance upon the Premises at Trustor's expense and for the benefit of Beneficiary in the amounts and types aforesaid for such period of time as Beneficiary deems appropriate, including a period of time covering the time of redemption from foreclosure sale, and if necessary therefor, to cancel any or all existing insurance policies. Trustor agrees to furnish Beneficiary copies of all inspection reports and insurance recommendations received by Trustor from any insurer. Beneficiary makes no representations that the above insurance requirements are adequate protection for a prudent company. If a tenant of Trustor is required to maintain insurance under any lease terms and provisions, Beneficiary will accept such policy or policies, provided the same meet the requirements hereinabove recited. In the event that the tenant fails to maintain such insurance, Trustor will obtain the policy or policies required herein.

SECTION 3.2. Escrows.

Trustor shall deposit with Beneficiary, or at Beneficiary's request, with its servicing agent, on the fifteenth (15th) day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness, a deposit to pay the Impositions and insurance premiums (hereinafter collectively referred to as the "Charges") in an amount equal to:

(a) One-twelfth (1/12) of the annual Impositions next to become due upon the Premises; provided that, with the first such deposit, there shall be deposited in addition an amount as estimated by Beneficiary which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Beneficiary's satisfaction that there will be sufficient funds on deposit to pay the Impositions as they come due; plus

(b) One-twelfth (1/12) of the annual premiums on each policy of insurance required to be maintained hereunder; provided that with the first such deposit there shall be deposited, in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits shall be based upon Beneficiary's estimate as to the amount of Impositions and premiums of insurance next to be payable and may require that the full amount of such payment will be available to Beneficiary at least one month in advance of the due date. Beneficiary, or its servicing agent, will, upon timely presentation to Beneficiary by Trustor of the bills therefor, pay the Charges from such deposits. Trustor agrees to cooperate and assist in obtaining of tax bills when requested by Beneficiary or its servicing agent. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently

estimated monthly amounts, then Trustor shall immediately pay to Beneficiary, or its servicing agent, on demand, any amount necessary to make up the deficiency. The excess of any such deposits shall be credited towards subsequent Charges.

If an Event of Default shall occur under the terms of this Mortgage, Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the payment of Charges whether then due or not or to the Indebtedness, in such order and manner as Beneficiary may elect. When the Indebtedness has been fully paid any remaining deposits shall be returned to Trustor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent, shall be held without allowance of interest thereon and without fiduciary responsibility on the part of Beneficiary or its agents and shall not be subject to the direction or control of Trustor. Neither Beneficiary nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill, and any payment of taxes based on a larger parcel shall be paid by Trustor and Trustor shall expeditiously cause a tax subdivision to be made.

ARTICLE 4.
UNIFORM COMMERCIAL CODE

SECTION 4.1. Security Agreement.

This Mortgage shall constitute a security agreement as defined in the Uniform Commercial Code in effect in the State or Commonwealth wherein the Premises are located, as amended from time to time ("Code"), and Trustor hereby grants to Beneficiary a security interest within the meaning of the Code in favor of Beneficiary on its interest in the Improvements, Fixtures, Equipment and Personal Property, the Rents, Leases and Profits, the Judgments, Condemnation Awards and Insurance Proceeds and Other Rights, the Licenses, Permits, Equipment Leases and Service Agreements and the Proceeds described in Granting Clauses B, C, D, E, and F of this Mortgage ("Collateral").

SECTION 4.2. Fixture Filing.

As to those items of Collateral described in this Mortgage that are, or are to become fixtures related to the real estate mortgaged herein, and all products and proceeds thereof, it is intended as to those items that THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Premises are situated. This document covers goods which are or are to become fixtures. The name of the record owner of said real estate is Trustor set forth in Page 1 to this Mortgage. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at its address as set forth in Page 1 of this Mortgage. The address of Trustor, as debtor, is as set forth in Page 1 to this Mortgage. Trustor is a limited liability company organized under the laws of the State of Utah. Trustor's

entity number is 8932362-0160, and Principal's entity number is 4132751. Except as specifically disclosed by Trustor to Beneficiary prior to the execution of this Mortgage, Trustor and Principal have not been known by any legal name different from the ones set forth in the first paragraph of this Mortgage, nor has Trustor been the subject of any merger, consolidation or other organizational reorganization during such period of time. Trustor hereby authorizes Beneficiary to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Trustor on such financing statement or fixture filing.

SECTION 4.3. Representations and Agreements.

Trustor represents and agrees: (a) Trustor is and will be the true and lawful owner of the Collateral, subject to no liens, Charges, security interest and encumbrances other than the lien hereof and the Permitted Encumbrances; (b) the Collateral is to be used by Trustor solely for business purposes being installed upon the Premises for Trustor's own use or as the equipment and furnishings leased or furnished by Trustor, as landlord, to tenants of the Premises; (c) the Collateral will not be removed from the Premises without the consent of Beneficiary except in accordance with **Section 4.4** hereof; (d) unless stated otherwise in this Mortgage the only persons having any interest in the Collateral are Trustor and Beneficiary and no financing statement covering any such property and any proceeds thereof is on file in any public office except pursuant hereto; (e) the remedies of Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Beneficiary including having such Collateral deemed part of the realty upon any foreclosure thereof; (f) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Beneficiary; (g) Trustor will from time to time provide Beneficiary on request with itemizations of all such Collateral on the Premises; (h) the filing of a financing statement pursuant to the Code shall never impair the stated intention of this Mortgage that all Improvements, Fixtures, Equipment and Personal Property described in Granting Clause B hereof are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement; (i) (j) Trustor shall give Beneficiary at least thirty (30) days prior written notice of any proposed change in Trustor's name, identity, state of registration for a registered organization, principal place of business, or structure and authorizes Beneficiary to file prior to or concurrently with such change all additional financing statements that Beneficiary may require to establish and perfect the priority of Beneficiary's security interest in the Collateral; and (k) by signing this Mortgage, Trustor authorizes Beneficiary to file such financing statements, either before, on or after the date hereof, as Beneficiary determines necessary or desirable to perfect the lien of Beneficiary's security interest in the Collateral. Trustor further authorizes Beneficiary to file such amendments or continuation statements as Beneficiary determines necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Collateral.

SECTION 4.4. Maintenance of Premises.

Subject to the provisions of this Section, in any instance where Trustor in its discretion determines that any item subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Trustor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall be of comparable quality and shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of this Mortgage. Any amounts received or allowed Trustor upon the sale or other disposition of the removed items of property shall be applied only against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant or subtenant from removing from the Premises trade fixtures, furniture and equipment installed by it and removable by such tenant under its terms of the lease, on the condition, however, that all damages to the Premises resulting from or caused by the removal thereof be repaired at the sole cost of Trustor if such tenant shall fail to so repair.

SECTION 4.5. Pledge of Monies Held.

Trustor hereby pledges to Beneficiary any and all monies now or hereafter held by Beneficiary or its servicing agent or escrow agent, including, without limitation, any sums deposited in the account for Charges in accordance with Section 3.2 hereof, any net insurance proceeds or condemnation awards deposited with Beneficiary in accordance with Sections 5.1 and 5.2 hereof (collectively, "**Deposits**"), as additional security for the Indebtedness until expended or applied as provided in this Mortgage.

ARTICLE 5.
APPLICATION OF INSURANCE AND AWARDS

SECTION 5.1. Damage or Destruction of the Premises.

Trustor will give Beneficiary prompt notice of damage to or destruction of the Premises, and in case of loss covered by policies of insurance, Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, if Trustor is not in default hereunder, Trustor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of Five Hundred Thousand and No/100ths Dollars (\$500,000.00). Any expense incurred by Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to Beneficiary first out of any such insurance proceeds. Except as specifically provided in Section 5.3 below, the insurance proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. In the event Beneficiary does not make insurance proceeds available for restoration and applies the insurance proceeds to payment of the Indebtedness no Reinvestment Charge or Default Premium shall be due on the insurance proceeds so applied.

SECTION 5.2. Condemnation.

Trustor will give Beneficiary prompt notice of any action, actual or threatened, in Condemnation (as defined herein) or eminent domain and hereby assigns, transfers, and sets over to Beneficiary the entire proceeds of any award or claim for damages for all or any part of the Premises taken or damaged under the power of eminent domain or condemnation ("Condemnation"), Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Trustor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises unless prior written consent of Beneficiary is obtained, which consent shall not be unreasonably withheld. Any expenses incurred by Beneficiary in intervening in such action or collecting Condemnation proceeds (including the cost of any independent appraisal) shall be reimbursed to Beneficiary first out of the Condemnation proceeds prior to other payments or disbursements. Trustor shall deliver all Condemnation proceeds to Beneficiary within five (5) days of receipt thereof and shall at Beneficiary's request direct the condemning authority to deliver the Condemnation proceeds to Beneficiary. The Condemnation proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness then most remotely to be paid, whether due or not, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. In the event Beneficiary does not make Condemnation proceeds available for restoration and applies the Condemnation proceeds to payment of debt, no Reinvestment Charge or Default Premium shall be due on the Condemnation proceeds so applied.

SECTION 5.3. Beneficiary to Make Insurance Proceeds Available Under Certain Conditions.

Notwithstanding the provisions of Section 5.1 above, in the event of insured damage to the improvements on the Premises, Beneficiary agrees to make the proceeds available to the restoration or repair of the improvements on the Premises in accordance with the provisions of Section 5.4 hereof, provided: (a) satisfactory evidence is delivered to Beneficiary that the buildings and improvements shall be so restored or rebuilt as to be substantially the same size, condition and character as those originally financed and with restoration and repair, can continue to be operated for the purposes utilized prior to such damage or destruction; (b) no Event of Default shall exist under this Mortgage, the Note, or other Loan Documents; (c) the appraised value of the Premises after such restoration or repair will not have been reduced from its value prior to such damage; (d) except in the case of apartment buildings or other multi-tenant residential properties, the tenants under leases of the Premises which are acceptable to Beneficiary certify to Beneficiary their intention to occupy the Premises without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair); (e) no mechanics' or other liens of any nature shall exist or be created; (f) Trustor shall be responsible for and shall have deposited (or cause to be deposited) with Beneficiary funds to cover any shortfall between the actual cost to repair or restore and the amount of such insurance proceeds; (g) all fees and expenses incurred by Beneficiary in connection with the disbursement of the insurance proceeds shall be paid by Trustor; (h) the loss does not occur during the last two (2) years of the Loan; and (i) the loss does not exceed fifty percent (50%) of the outstanding principal balance then owing on the Loan.

SECTION 5.4. Disbursement of Insurance and Condemnation Proceeds.

Should any insurance or condemnation proceeds be applied to the restoration or repair of the Premises in accordance with this Article 5, the restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to site and building plans and specifications approved by Beneficiary. The proceeds shall be held by Beneficiary for such purposes and will from time to time (but not less than monthly) be disbursed by Beneficiary through a title company or other servicing agent acceptable to Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may require and in accordance with standard construction loan procedures. All costs and expenses associated with the disbursement of such proceeds shall be paid by Trustor. Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises, Beneficiary shall be entitled to receive the following:

(a) Evidence that no Event of Default exists under any of the terms, covenants and conditions of this Mortgage, the Note, or other collateral security documents.

(b) Evidence that all leasing requirements for the Premises as established by Beneficiary have been met.

(c) Satisfactory proof that such improvements have been fully restored, or that the expenditure of money as may be received from such insurance proceeds or eminent domain award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, except the lien of this Mortgage. In the event such insurance proceeds or eminent domain award shall be insufficient to repair, restore or rebuild the said improvements, Trustor or its lessee shall deposit with Beneficiary, or a title company designated by Beneficiary, funds equaling such deficiency, which, together with the insurance proceeds or eminent domain award, shall be sufficient to restore, repair and rebuild the Premises.

(d) A statement of Trustor's architect, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date in conformity with the plans and specifications approved by Beneficiary, together with appropriate evidence of payment for labor or materials furnished to the Premises for prior disbursements made by Beneficiary, and total or partial lien waivers (in the form required by applicable law), substantiating such payments.

(e) A waiver of subrogation from any insurer who claims that it has no claim as to Trustor or the then owner or other insured under the policy of insurance in question.

(f) Such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Beneficiary.

In the event Trustor shall fail to commence and diligently pursue the restoration, repair or rebuilding of the improvements upon the Premises, then Beneficiary, at its option, and upon not

less than thirty (30) days written notice to Trustor, may commence to restore, repair or rebuild the said improvements for or on behalf of said Trustor, and its tenants, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or an eminent domain award shall exceed the amount necessary to complete the repair, restoration or the rebuilding of the improvements upon the Premises, such excess may, at Beneficiary's option, be applied on account of the last maturing installments of the Indebtedness, irrespective of whether such installments are then due and payable without application of a Reinvestment Charge or Default Premium, or be returned to Trustor. In the event Trustor shall fail to commence and diligently pursue the restoration, repair or rebuilding of the improvements upon the Premises, and if Beneficiary does not restore, repair or rebuild the said improvements as herein provided, then Beneficiary may, at its option, apply all or any part of the insurance proceeds or condemnation or eminent domain award on account of the last maturing installments of the Indebtedness whether then due or not, without application of a Reinvestment Charge, or return the same to Trustor.

ARTICLE 6.
LEASES AND RENTS

SECTION 6.1. Leases.

Trustor will, at its own cost and expense, perform, comply with and discharge all of the obligations of Trustor under any leases and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Trustor's interest in any leases of the Premises. Trustor will not borrow against, pledge or assign any rentals due under the leases, nor consent to a subordination or assignment of the interest of the tenants thereunder to any party other than Beneficiary, nor anticipate the rents thereunder for more than one (1) month in advance or reduce the amount of rents and other payments thereunder without the prior written consent of Beneficiary. With respect to all leases of the Premises which either (i) demise more than 8,300 square feet at the Premises to any single tenant; or (ii) provide for a lease term of more than ten (10) years ("**Major Leases**"), Trustor agrees that it will not modify, extend, renew, terminate, accept a surrender of or in any way alter the terms of the Major Leases nor waive, excuse, condone or in any manner release or discharge the tenants of or from their obligations, covenants and agreements to be performed without the prior written consent of Beneficiary. Notwithstanding the above restrictions, Trustor may, without the prior written consent of Beneficiary, (i) modify, renew, extend, and terminate the terms of existing leases that are not Major Leases and reduce the amount of rents or other payments thereunder, provided that any such action is made in the ordinary course of Trustor's business, in conformance with commercially reasonable, prudent and sound business practice; (ii) renew or extend the terms of the leases in effect as of the date of this Mortgage with Pier 1 Imports (U.S.), Inc., a Delaware corporation ("**Pier 1**"), or Big 5 Corp., a Delaware corporation ("**Big 5**") on then-current market rate terms and conditions; and (iii) modify the terms of leases in effect as of the date of this Mortgage with Pier 1 or Big 5 provided that no such modification may reduce rent, shorten the term of the lease, or impose additional material obligations on Trustor. Trustor will not enter into any additional Major Leases without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld. In addition, Trustor covenants and agrees that, with respect

to Major Leases: (a) it shall use its best efforts to use the standard form lease which has been delivered to and approved by Beneficiary as the basis for all new leases or renewals of existing leases executed on the Premises without material modification, it being understood that certain prospective tenants will insist on using their own leases as a condition to transacting business; (b) it shall use its best efforts to lease all space on the Premises at market rental rates; and (c) any action taken with respect to any lease shall be taken in the ordinary course of Trustor's business in conformance with commercially reasonable, prudent and sound business practice. Trustor will deliver copies of all fully-executed lease amendments and new leases to Beneficiary within thirty (30) days after execution whether or not the prior written consent of Beneficiary was required for such amendment or new lease. Trustor may enter into new leases that are not Major Leases without the prior consent of Beneficiary, so long as the net operating income for the Premises (including such proposed new lease), as determined by Beneficiary is not less than 1.1 times the annual debt service payments due on the Note. If the net operating income for the Premises is less than 1.1 times the annual debt service on the Note, as calculated above, Trustor shall notify Beneficiary in writing of such occurrence, and Beneficiary shall have the right to require Trustor to provide a current rental survey report to be prepared by a mutually-agreeable third-party consultant acceptable to Beneficiary in its sole discretion, which shall be used to establish the then current market rent and as a basis for formulating a mutually agreeable market/leasing plan for the Premises. Borrower's failure to provide such written notice shall constitute an Event of Default.

SECTION 6.2. Beneficiary's Right to Perform Under Leases.

Should Trustor fail to perform, comply with or discharge any obligations of Trustor under any lease of all or any part of the Premises or should Beneficiary become aware of or be notified by any tenant under any such lease of a failure on the part of Trustor to so perform, comply with or discharge its obligations under said lease, Beneficiary may, but shall not be obligated to, and without further demand upon Trustor and without waiving or releasing Trustor from any obligation contained in this Mortgage, remedy such failure, and Trustor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure including, without limitation, Beneficiary's attorneys' fee together with interest at the Default Rate. All such sums, together with interest as aforesaid shall become so much additional Indebtedness, but no such advance shall be deemed to relieve Trustor from any default hereunder.

SECTION 6.3. Assignment of Leases and Rents.

Trustor does hereby unconditionally and absolutely sell, assign and transfer unto Beneficiary all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement or license for the use or occupancy of the Premises, whether now existing or entered into at any time during the term of this Mortgage, all guaranties of any lessee's obligations under any such lease and all security deposits, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such leases and agreements and all of the rents and profits from the Premises and/or Trustor's operation or ownership thereof unto Beneficiary and Trustor does hereby appoint irrevocably Beneficiary as Trustor's true and lawful attorney in Trustor's name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Trustor is hereby given a license by Beneficiary to collect and retain such rents and

profits unless and until an Event of Default exists under this Mortgage. Trustor assigns to Beneficiary all guarantees of lessee's obligation under leases and all proceeds from settlements relating to terminations of leases and all claims for damages arising from rejection of any lease under the bankruptcy laws. Upon the occurrence of an Event of Default and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder or during any period of redemption existing by law, forthwith, upon demand of Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary shall be entitled to enter upon and take and maintain possession of the Premises and any leases thereunder and collect and retain any rents and profits from the Premises and hold, operate, manage and control the Premises and any such leases and to do such things in its discretion as may be deemed proper or necessary to enforce the payment or security of the rents and profits of the Premises and the performance of the tenants' obligations under any leases of the Premises, with full power to cancel or terminate any lease for any cause or on any grounds which would entitle Trustor to cancel the same and to elect to disaffirm any lease made subsequent to this Mortgage or subordinated to the lien hereof. All rents and payments received by Trustor after Beneficiary has exercised any of its rights under this assignment shall be held by Trustor in trust for Beneficiary and shall be delivered to Beneficiary immediately without demand.

Beneficiary shall not be obligated to perform or discharge any obligation or liability of the landlord under any of said leases and Trustor shall and does hereby agree to indemnify and hold Beneficiary harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or under or by reason of this Mortgage. Any amounts incurred by Beneficiary in connection with its rights hereunder, including costs, expenses and actual attorneys' fees, shall bear interest thereon at the Default Rate, shall be additional Indebtedness and Trustor shall reimburse Beneficiary therefor immediately upon demand. Beneficiary may apply any of said rents and profits received to the costs and expenses of collection, including receivers' fees and actual attorneys' fees, to the payment of taxes, assessments and insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligations under the lease, to the performance of any of Trustor's covenants hereunder, and to any Indebtedness in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any Event of Default under this Mortgage nor in any way operate to prevent Beneficiary from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage nor shall it in any way be deemed to constitute Beneficiary a mortgagee-in-possession. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Indebtedness. Trustor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by Trustor. Trustor waives any right of set off against any person in possession of any portion of the Premises. Trustor further agrees that Trustor will not execute or agree to any subsequent assignment of any of the rents or profits from the Premises without the prior written consent of Beneficiary. The rights contained herein are in addition to and shall be cumulative with the rights given in that certain Assignment of Leases and Rents ("**Assignment of Leases**") dated of even date herewith from Trustor to Beneficiary,

assigning any leases, rents and profits of the Premises. To the extent inconsistent with the terms of this Article 6, the terms of the Assignment of Leases shall control.

SECTION 6.4 INTENTIONALLY OMITTED.

**ARTICLE 7.
RIGHTS OF BENEFICIARY**

SECTION 7.1. No Claim Against Beneficiary.

Nothing contained in this Mortgage shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Trustor or any party in interest with Trustor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

SECTION 7.2. Inspection.

Subject to the rights of tenants set forth in applicable law, Beneficiary or its authorized representatives shall have the right to enter the Premises at all times during normal business hours for the purpose of inspecting the same; provided Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

SECTION 7.3. Dishonored Payments.

In the event any funds for any two (2) or more monthly payments in any twelve (12) month period are not paid to Beneficiary when due, Beneficiary shall have the right, at its sole option, to require that all future payments be made in a form other than as is presently prescribed in the Note. For example, Beneficiary may at any time require payment by preauthorized Automated Clearinghouse transaction, by certified check, by wire transfer or other method of delivering immediately available funds.

SECTION 7.4. Waivers; Releases; Resort to Other Security.

Without affecting the liability of any party liable for payment of any Indebtedness or performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary shall have the right, at any time and without notice to or the consent of Trustor or any party in interest with respect to the Premises or the Note, to: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any

property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

SECTION 7.5. Waiver of Appraisalment, Homestead, Marshaling.

Trustor hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or hereinafter in force. Trustor hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require Beneficiary to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel. To the extent permitted by applicable law, Trustor, on behalf of Trustor and all other persons or entities acquiring any interest in the Premises subsequent to the date of this Mortgage, also hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure pursuant to rights herein granted.

**ARTICLE 8.
EVENTS OF DEFAULT AND REMEDIES**

SECTION 8.1. Events Of Default.

The occurrence of any of the following shall be deemed an event of default under this Mortgage (each hereinafter referred to as an "Event of Default"):

(a) Any principal, interest, Reinvestment Charge, or Default Premium payable under the terms of the Note is not paid on the date the same is due or within ten (10) days of its due date (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or

(b) Any other sum of money required to be paid pursuant to the terms of the Note, this Mortgage or any other Loan Document is not paid on the date the same is due and such default is not remedied within three (3) business days after notice thereof by Beneficiary; or

(c) Trustor shall fail to comply with any non-monetary term, covenant or condition of the Note, this Mortgage or any other Loan Document other than a default described in Sections 8.1(a), 8.1(b) and 8.1(d) through 8.1(j) hereof and such default shall continue for a period of thirty (30) days after written notice to Trustor from Beneficiary specifying the nature of such default; provided, however, that if such default is of a nature that it cannot be cured, in Beneficiary's good faith reasonable discretion, within such thirty (30) day period, then Trustor shall not be in default hereunder if it commences good faith efforts to cure the default within such thirty (30) day period, demonstrates continuous diligent efforts to cure the default in a manner satisfactory to Beneficiary and, within a reasonable time, not to exceed ninety (90) days after the date of the original written notice of default, completes the cure of such default; or

(d) Trustor shall fail to comply with any term, covenant or condition contained in Sections 2.9, 2.10 or 3.1 of this Mortgage; or

(e) Any representation or warranty made to Beneficiary by Principal or on behalf of Trustor, or any person or entity guaranteeing any portion of the obligations of Trustor, including, without limitation on the date hereof George J. Kallins, an individual, JGNK Investments, LLC, a California limited liability company, BGN Properties, Ltd., a California limited partnership, The Kallins Family Trust dated March 4, 2005, and JGKallins Investments, L.P., a California limited partnership (individually and collectively, as the context requires, the "Guarantor") in connection with the Loan secured hereby proves to be untrue; or

(f) If (i) Trustor, any Principal or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or Trustor, any Principal or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Trustor, any Principal or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of sixty (60) days; or (iii) there shall be commenced against Trustor, any Principal or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Trustor, any Principal or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Trustor, any Principal or any Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) Any judgment in excess of Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) is entered in any court against Trustor, any Principal or any Guarantor and is not satisfied in full within thirty (30) days after all rights to appeal from the same have expired, or any writ of execution or attachment or similar process is issued or levied against any part of the Premises or any interest therein; or

(h) Any Guarantor shall fail to comply with any term, covenant or condition of the Environmental Indemnity or the Guaranty, which default shall have extended beyond any period of grace provided therein; or

(i) Any Principal or any Guarantor shall dissolve, liquidate, wind-up, consolidate or merge during the term hereof without the prior written consent of Beneficiary; or

(j) Any Guarantor shall die and Trustor either (i) has failed to notify Beneficiary of such death within thirty (30) days thereof or (ii) has failed to provide Beneficiary with an acceptable substitute guarantor, in the sole judgment of Beneficiary, who shall have executed a Guaranty and an Environmental Indemnity in the forms of those executed by Guarantor, before the earlier to occur of (A) ninety (90) days from the date of such person's death or (B) the date on which the first distribution of assets has been made from such person's estate to any devisee, heir or other beneficiary.

SECTION 8.2. Remedies.

Upon the occurrence of any Event of Default, Trustor agrees that Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) declare the entire unpaid principal balance of the Note together with all other Indebtedness to be immediately due and payable, which unpaid sums shall bear interest at the Default Rate from the due date until paid; and/or

(b) with or without entry, institute proceedings, by judicial action, advertisement or such other statutory procedures as are available in the state where the Premises is located, for the complete or partial foreclosure of this Mortgage under any applicable provision of law in which case the Premises or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Mortgage for the balance of the Indebtedness not then due, unimpaired and without loss of priority; and/or

(c) sell for cash or upon credit the Premises or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale, judicial decree or otherwise, at one or more sales, as an entirety or in one or more parcels; and/or

(d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; and/or

(e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents; and/or

(f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Premises, without notice and without regard for the adequacy of the

security for the Indebtedness and without regard for the solvency of Trustor, any principal or any Guarantor or of any other person, firm or other entity liable for the payment of the Indebtedness in accordance with and in the manner prescribed by applicable law in the state where the Premises is located and in accordance with the terms of Section 8.5 below; and/or

(g) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Premises and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may exercise all rights and powers of Trustor with respect to the Premises including, without limitation:

(1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; and/or

(2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Premises as Beneficiary deems advisable; and/or

(3) the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Premises and every part thereof;

(h) require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be occupied by Trustor; and/or

(i) require Trustor to vacate and surrender possession of the Premises to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and/or

(j) apply the receipts from the Premises, any Charges and interest thereon and/or any unearned Insurance Premiums paid to Beneficiary upon the surrender of any insurance policies maintained pursuant to Section 3.1 hereof (it being agreed that Beneficiary shall have the right to surrender such insurance policies upon the occurrence of an Event of Default), to the payment of the Indebtedness, in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion; and/or

(k) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code in accordance with the terms of Section 8.6 below, including, without limiting the generality of the foregoing:

(1) the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral, and

(2) request Trustor at its expense to assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Trustor. Upon any foreclosure or other sale of the Premises pursuant to the terms hereof, Beneficiary may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a credit against the purchase price.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Premises, this Mortgage shall continue as a lien and security interest on the remaining portion of the Premises unimpaired and without loss of priority. Notwithstanding the provisions of this Section 8.2 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 8.1(f) shall occur, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or other action by Beneficiary.

SECTION 8.3. Application of Proceeds.

The proceeds and avails of any disposition of the Premises, or any part thereof, or any other sums collected by Beneficiary pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Beneficiary to the payment of the Indebtedness in such priority and proportions as Beneficiary in its discretion shall deem proper.

SECTION 8.4. Right to Cure Defaults.

Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Premises for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Premises or to foreclose this Mortgage or collect the Indebtedness, and the cost and expense thereof (including actual attorneys' fees to the extent permitted by law), with interest as provided in this **Section 8.4**, shall constitute a portion of the Indebtedness and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by

this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

SECTION 8.5. Receiver.

Upon the occurrence of an Event of Default, Beneficiary shall be entitled as a matter of right without notice to, request of and without regard to the solvency or insolvency of Trustor, or the existence of waste of the Premises or adequacy of the security of the Premises, and without giving bond to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Premises so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Premises and perform the terms of this Mortgage and apply the rents, issues, income and profits to the costs and expenses of the receivership, including actual attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Premises, including payment of taxes on the Premises and payments of premiums of insurance on the Premises and any other rights permitted by law. Trustor does hereby irrevocably consent to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove Trustor or any other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Premises, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

SECTION 8.6. Rights Under Uniform Commercial Code.

In addition to the rights available to a mortgagee of real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Code including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Mortgage which may be included on the Premises or which may be deemed nonrealty in a foreclosure of this Mortgage or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

SECTION 8.7. Right to Discontinue Proceedings.

In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Trustor and Beneficiary shall be restored to their former positions with respect to the Indebtedness in which case this Mortgage and all rights, remedies and recourse of Beneficiary shall continue as if such action or exercise of a right had not been invoked.

SECTION 8.8. Waivers.

Trustor also waives the benefit of all laws now existing or that may hereinafter be enacted providing for (i) any appraisal before sale of any portion of the Premises, and (ii) in any way extending the time for the enforcement and collection of the Note or this Mortgage or creating or extending a period of redemption from any sale made in collecting said debt. To the

full extent Trustor may do so under applicable law, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, evaluation, stay, extension or redemption and Trustor, to the extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of this Mortgage and marshaling in the event of foreclosure of the liens hereby created.

Acceptance by Beneficiary of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Beneficiary's right to demand payment of the balance due, or any other rights of Beneficiary at that time or any subsequent time.

SECTION 8.9. Default Interest and Late Charges.

Trustor acknowledges that, without limitation to any of Beneficiary's rights or remedies set forth in this Mortgage, Beneficiary has the right following an Event of Default to demand interest on the principal amount of the Note at the Default Rate and late payment charges in accordance with the terms of the Note.

SECTION 8.10. Rights Cumulative.

The rights and remedies of Beneficiary as provided in this Mortgage, the Note and any other Loan Document and the warranties contained herein or therein shall be cumulative and concurrent, may be pursued singly, successively or together at the sole discretion of Beneficiary, may be exercised as often as occasion for their exercise shall occur and in no event shall the failure to exercise any such right or remedy be construed as a waiver or release of such right or remedy. No remedy under this Mortgage, the Note or any other Loan Document conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy provided in this Mortgage, the Note or any other Loan Document or provided by law, but each shall be cumulative and shall be in addition to every other remedy given under this Mortgage, the Note or any other Loan Document or now or hereafter existing at law or in equity or by statute.

SECTION 8.11. Trustor Not Released.

No delay or omission by Beneficiary in the exercise of any rights or remedies arising under this Mortgage, the Note or any other Loan Document at any time following the happening of an Event of Default shall constitute a waiver of the right of Beneficiary to exercise such rights and remedies at a later time by reason of such Event of Default or by reason of any subsequently occurring Event of Default.

**ARTICLE 9.
HAZARDOUS MATERIALS**

SECTION 9.1. Definition.

As used in this Mortgage, the following terms shall have the following meanings:

(a) The term "**Hazardous Substances or Wastes**" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, mold, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives and mold.

(b) The term "**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances or Wastes, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or Wastes or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "**Environmental Law**" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "**Environmental Law**" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law which conditions transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property, requires notification or disclosure of Releases of Hazardous Substances or Wastes or other environmental condition of the Premises to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property, imposes conditions or requirements in connection with permits or other authorization for lawful activity, relates to nuisance, trespass or other causes of action related to the existence of Hazardous Materials or Wastes located on the Premises, and relates to wrongful death, personal injury, or property or other damage as a result of the existence of any Hazardous Materials or Wastes on the Premises.

(c) The term "**Release**" with respect to any Hazardous Substances or Wastes includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances or Wastes.

(d) The term "**Remediation**" includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify,

decontaminate, contain or otherwise remediate any Hazardous Substances or Wastes; any actions to prevent, cure or mitigate any Release of any Hazardous Substances or Wastes; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or Wastes or to anything referred to herein.

(e) The term “**Legal Action**” means any claim, suit or proceeding, whether administrative or judicial in nature.

(f) The term “**Indemnified Parties**” includes Beneficiary, any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by the Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, including, but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties.

(g) The term “**Losses**” includes any losses, damages, costs, actual fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, actual attorneys’ fees, engineers’ fees, environmental consultants’ fees, and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

SECTION 9.2. Environmental Representations and Warranties.

To the best of Trustor’s knowledge, after due inquiry, (a) there are no Hazardous Substances or Wastes or underground storage tanks in, on, or under the Premises, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto and (ii) fully disclosed to Beneficiary in writing pursuant to the written report(s) resulting from the environmental assessment(s) of the Premises delivered to Beneficiary (such report(s) are identified in Exhibit “B” attached hereto and are referred to below collectively as the “**Environmental Report**”); (b) there are no past, present or threatened Releases of Hazardous Substances or Wastes in, on, under or from the Premises except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Substances or Wastes migrating to the Premises except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises, except as described in the Environmental Report; (e) Trustor does not know of, and has not received, any written notice or other communication from any person or entity (including, but not limited to, a governmental entity) relating to Hazardous Substances or Wastes or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any

actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Trustor has truthfully and fully provided to Beneficiary, in writing, any and all information relating to conditions in, on, under or from the Premises that is known to Trustor and that is contained in files and records of Trustor including, but not limited to, any reports relating to Hazardous Substances or Wastes in, on, under or from the Premises and/or to the environmental condition of the Premises.

SECTION 9.3. Environmental Covenants.

Trustor covenants and agrees that: (a) all uses and operations on or of the Premises by Trustor or any other person or entity shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances or Wastes in, on, under or from the Premises by Trustor or anyone controlled by, controlling or under common control with Trustor; (c) Trustor shall keep the Premises free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Trustor or any other person or entity ("**Environmental Liens**"); (d) Trustor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Premises, pursuant to any written request of Beneficiary (provided that such request is made based upon Beneficiary's reasonable belief that there are Hazardous Substances or Wastes in, or under the Premises which are not in compliance with Environmental Laws), and share with Beneficiary the reports and other results thereof, and Beneficiary and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (e) Trustor shall, at its sole cost and expense, comply with all written requests of Beneficiary to (i) effectuate Remediation of any condition (including, but not limited to, a Release of a Hazardous Substance) in, on, under or from the Premises; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other action necessary or appropriate for protection of human health or the environment; (f) Trustor shall not do or allow any tenant or other user of the Premises to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), impairs or may impair the value of the Premises, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Premises; and (g) Trustor shall immediately notify Beneficiary in writing of (i) any presence or Releases or threatened Releases of Hazardous Substances or Wastes in, on, under, from or migrating towards the Premises; (ii) any non-compliance with any Environmental Laws related in any way to the Premises; (iii) any actual or potential Environmental Lien; (iv) any required or proposed Remediation of environmental conditions relating to the Premises; and (v) any written or oral notice or other communication of which Trustor becomes aware from any source whatsoever (including, but not limited to, a governmental entity) relating in any way to Hazardous Substances or Wastes or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Mortgage.

SECTION 9.4. Beneficiary's Right to Inspect and Conduct Testing.

The Indemnified Parties and any other person or entity designated by Indemnified Parties (including, but not limited to, any receiver, any representative of a governmental entity and any environmental consultant), shall have the right but not the obligation to enter upon the Premises at all reasonable times to assess any and all aspects of the environmental condition of the Premises and its use including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Beneficiary's sole and absolute discretion) and taking samples of soil, groundwater or other water, air or building materials, and conducting other invasive testing. Trustor shall cooperate with and provide access to the Indemnified Parties and any such person or entity designated by the Indemnified Parties. All such investigations shall be performed at Trustor's sole cost and expense.

ARTICLE 10.
MISCELLANEOUS

SECTION 10.1. Release of Mortgage.

When all Indebtedness has been paid, this Mortgage and all assignments herein contained shall, except as otherwise provided herein, terminate and shall be released by Beneficiary at Trustor's expense.

SECTION 10.2. Time of the Essence.

Time is of the essence with regard to the performance of the obligations of Trustor in this Mortgage and each and every term, covenant and condition herein by or applicable to Trustor.

SECTION 10.3. Governing Law.

This Mortgage and the rights and obligations of all parties hereunder shall be governed by and construed in accordance with the laws of the State or Commonwealth in which the Premises are located.

SECTION 10.4. Jurisdiction.

The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Mortgage may be brought in a court of record in the state or commonwealth in which the Premises is located or in the courts of the United States of America located in such state or commonwealth, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained herein shall prevent Beneficiary from bringing any action or exercising any rights against any security given to Beneficiary by Trustor, or against Trustor personally, or against any property of Trustor, within any other state. Commencement of any such action or proceeding in any other state or commonwealth shall not constitute a waiver of the agreement as to the laws of the state which shall govern the rights and obligations of Trustor and Beneficiary hereunder.

SECTION 10.5. Interest Limitation.

All agreements between Trustor and Beneficiary are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Indebtedness or otherwise, shall the amount paid or agreed to be paid to Beneficiary for the use, forbearance, loaning or detention of the Indebtedness exceed the maximum permissible under applicable law. If from any circumstances whatsoever, fulfillment of any provisions of this Mortgage, the Note or of the other Loan Documents at any time given shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to an amount which complies with applicable law, and if from any circumstances Beneficiary should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Trustor and Beneficiary and shall also be binding upon and available to any subsequent holder of the Note. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding.

SECTION 10.6. Use of Loan and Premises.

Trustor represents and warrants to Beneficiary that the Indebtedness evidenced by the Note is a business loan transacted solely for the purpose of carrying on the business of Trustor and not a consumer transaction, that the Premises does not constitute the homestead of Trustor, and that the Premises are not used for agricultural purposes.

SECTION 10.7. Captions.

The captions to the sections of this Mortgage are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Mortgage.

SECTION 10.8. Notices.

Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and either (a) mailed by certified mail, return receipt requested, or (b) sent by an overnight carrier which provides for a return receipt. Any such notice shall be sent to the respective party's address as set forth in the initial paragraph of this Mortgage or to such other address as such party may, by notice in writing, designate as its address. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail or one (1) day after the sending thereof by overnight carrier.

SECTION 10.9. Severability.

The parties hereto intend and believe that each provision of this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Mortgage is held by a court of law to be invalid,

illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and the rights, obligations and interests of Trustor and Beneficiary under the remainder of this Mortgage shall continue in full force and effect.

SECTION 10.10. Successors and Assigns.

This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Trustor and its successors and assigns, including, without limitation each and every person or entity that may, from time to time, be record owner of the Premises or any other person having an interest therein, shall run with the land and shall inure to the benefit of Beneficiary and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Mortgage. Nothing in this Section shall be construed to constitute consent by Beneficiary to assignment of this Mortgage by Trustor.

SECTION 10.11. No Oral Modification.

This Mortgage may not be modified or discharged orally, but only by an agreement in writing signed by Trustor and Beneficiary.

SECTION 10.12. Indemnity.

Trustor agrees to indemnify, protect, hold harmless and defend Beneficiary from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including actual attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against Beneficiary by reason or on account of, or in connection with, (a) the construction, reconstruction or alteration of the Premises, (b) any negligence of Trustor or any tenant of any portion of the Premises or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licensees or invitees, or (c) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the willful misconduct of Beneficiary. Any amount payable to Beneficiary under this Section shall be due and payable upon demand therefor and receipt by Trustor of a statement from Beneficiary setting forth in reasonable detail the amount claimed and the basis therefor. Trustor's obligations under this Section shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Beneficiary which is subject to the indemnity set forth in this Section, Trustor shall resist or defend against the same, in its own name or, if necessary, in the name of Beneficiary, by attorneys for Trustor's insurance carrier (if the same is covered by insurance) approved by Beneficiary or otherwise by attorneys retained by Trustor and approved by Beneficiary. Notwithstanding the foregoing, Beneficiary, in its discretion, if it disapproves of the

attorneys provided by Trustor or Trustor's insurance carrier, may engage its own attorneys to resist or defend, or to assist therein, and Trustor shall pay or, on demand, shall reimburse Beneficiary for the payment of, all actual fees and disbursements of said attorneys.

SECTION 10.13. Representations of Trustor.

Trustor affirmatively represents and warrants that the written terms of the Loan Documents, and each of them, accurately reflect the mutual understanding of Trustor and Beneficiary, as to all matters addressed therein, and Trustor further represents and warrants that there are no other agreements or understandings, written or oral, which exist between Trustor and Beneficiary relating to the matters addressed in the Loan Documents.

SECTION 10.14. Beneficiary's Expenses.

Should Beneficiary make any payments hereunder or under the Note or under any other Loan Documents or incur any liability, loss or damage under or by reason of this Mortgage, the Note or any other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Indebtedness, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, actual attorneys' fees, and any and all costs and expenses incurred in connection with making, performing, or collecting the Indebtedness or exercising any of Beneficiary's rights under the Note, this Mortgage or any other Loan Documents, including actual attorneys' fees, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, together with interest thereon, at the Default Rate, shall become part of the Indebtedness and shall be secured by this Mortgage and the other Loan Documents and Trustor hereby agrees to reimburse Beneficiary therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and Beneficiary shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by Trustor, for an accounting for the proceeds of a foreclosure sale or of insurance proceeds or for apportionment of an eminent domain damage award.

SECTION 10.15. Beneficiary's Right to Counsel.

If Beneficiary retains attorneys to enforce any of the terms of the Loan Documents or because of the breach by Trustor of any of the terms hereof or of any of the other Loan Documents, or for the recovery of any Indebtedness, Trustor shall pay to Beneficiary actual attorneys' fees and all costs and expenses, whether or not an action is actually commenced and the right to such actual attorneys' fees and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation, bankruptcy and/or administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Mortgage include all paralegal, electronic research, legal specialists and all other costs in connection with that performance of Beneficiary's attorneys.

If Beneficiary is, by reason of being the holder of this Mortgage, made a party defendant of any litigation, action, proceeding, (including without limitation condemnation or insurance loss matters) concerning this Mortgage or the Premises or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from and against all liability by reason of said litigation, including actual attorneys' fees and all costs and expenses incurred by Beneficiary in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

SECTION 10.16. Other Representations and Warranties.

All statements contained in the Commitment or in any loan application, certificate or other instrument delivered by or on behalf of Trustor to Beneficiary or Beneficiary's representatives in connection with the Indebtedness shall constitute representations and warranties made by Trustor hereunder. Such representations and warranties made hereunder and thereunder shall survive the delivery of this Mortgage, and any misrepresentations thereunder shall be deemed as misrepresentations hereunder.

SECTION 10.17. Survival of Representations Warranties and Covenants.

All representations, covenants and warranties contained herein or in any of the other Loan Documents shall survive the delivery of the Note, this Mortgage and all other Loan Documents executed in connection herewith and the provisions hereof shall continue to inure to the benefit of Beneficiary, its successors and assigns.

SECTION 10.18. Waiver of Jury Trial.

BENEFICIARY BY ITS ACCEPTANCE HEREOF AND TRUSTOR HEREBY VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS MORTGAGE OR CONCERNING THE INDEBTEDNESS AND/OR ANY COLLATERAL SECURING SUCH INDEBTEDNESS, REGARDLESS OF WHETHER SUCH ACTION OR PROCEEDING CONCERNS ANY CONTRACTUAL OR TORTIOUS OR OTHER CLAIM. TRUSTOR ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO BENEFICIARY IN EXTENDING CREDIT TO TRUSTOR, THAT MORTGAGEE WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT TRUSTOR HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

SECTION 10.19. Minimum Requirement.

Trustor recognizes that the requirements imposed upon Trustor hereunder, including, without limitation, insurance requirements, are minimum requirements as determined by Beneficiary and do not constitute a representation that the requirements are complete or

adequate. Trustor understands that it is Trustor's duty and responsibility to act prudently and responsibly at all times for Trustor's protection and for the protection of the Premises.

SECTION 10.20. Reproduction of Documents.

This Mortgage and all documents relating thereto, specifically excluding the Note but including, without limitation, consents, waivers and modifications which may hereafter be executed, financial and operating statements, certificates and other information previously or hereafter furnished to Beneficiary, may be reproduced by Beneficiary by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Beneficiary may destroy any original document ("Master") so reproduced. Trustor agrees and stipulates that any such reproduction is an original and shall be admissible in evidence as the Master in any judicial or administrative proceeding (whether or not the Master is in existence and whether or not such reproduction was made or preserved by Beneficiary in the regular course of business) and any enlargement, facsimile or further reproduction of such a reproduction shall be no less admissible.

SECTION 10.21. Partial Non-Recourse to Trustor.

Notwithstanding anything to the contrary contained in this Mortgage, the liability of Trustor for the Indebtedness and for the performance of the other agreements, covenants and obligations contained in the Note, this Mortgage and the other Loan Documents shall be limited as set forth in Section 28 (but subject to Section 29) of the Note. Nothing contained herein shall be deemed to release any entity or person from their obligations under the terms of any separate Environmental Indemnity or Guaranty executed in connection with the Loan secured by this Mortgage.

**ARTICLE 11.
STATE SPECIFIC PROVISIONS**

SECTION 11.1. Incorporation of State Law Provisions.

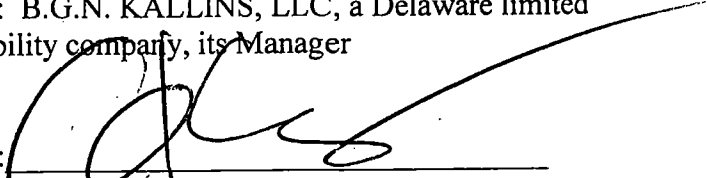
Certain provisions/sections of this Security Instrument and certain additional provisions/sections that are required by laws of the State or Commonwealth in which the Premises are located may be amended, described and/or otherwise set forth in more detail on Exhibit "C" attached hereto, which such Exhibit by this reference, is incorporated into and made a part of this Security Instrument. In the event of any conflict between such state law provisions and any provision herein, the state law provisions shall control.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURES ARE CONTAINED ON THE FOLLOWING PAGE.]

Trustor has caused this Mortgage to be executed as of the date first above written.

DEERWOOD PROPERTIES UTAH LLC,
a Utah limited liability company

By: B.G.N. KALLINS, LLC, a Delaware limited liability company, its Manager

By: 
Name: GEORGE J. KALLINS
Title: Manager

STATE OF CALIFORNIA)

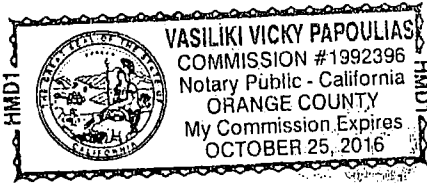
:SS.

COUNTY OF ORANGE)

On this 2nd day of May, 2014, before me personally appeared George J. Kallins, M.D., to me personally known, who being by me duly sworn did say that he is the Manager of B.G.N. Kallins, LLC, a Delaware limited liability company, the Manager of Deerwood Properties Utah LLC, a Utah limited liability company, which persons acknowledged to me that he executed the within instrument in his capacity on behalf of Deerwood Properties Utah, LLC, and did say that the within instrument was executed by him for and on behalf of said limited liability company by virtue of its operating agreement.

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

WITNESS my hand and official seal.



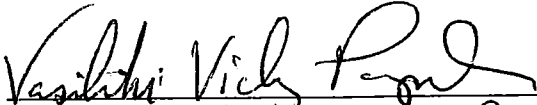

Notary Public Vasiliki Vicky Papoulias,
a notary public.

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

All of Lot 9, CENTERVILLE MARKETPLACE SUBDIVISION, according to the official plat thereof, recorded April 24, 1995, as Entry No. 1175742 in Book 1867 at Page 32 in the office of the Davis County Recorder.

Parcel 1A:

Together to the terms and conditions of that certain Declaration of Restrictive Covenants, Conditions and Restrictions for CENTERVILLE MARKETPLACE SUBDIVISION, recorded April 24, 1995 as Entry No. 1175743 in Book 1867 at Page 33 and the First Amendment to Declaration of Restrictive Covenants, Conditions and Restrictions for CENTERVILLE MARKETPLACE SUBDIVISION, recorded February 4, 1998 as Entry No. 1378981 in Book 2235 at Page 1220 of official records.

Parcel 1B:

Non-exclusive easements, appurtenant to Parcel 1, for ingress, egress, parking, utility lines and connections and construction, over, under and across that certain adjoining property, as set forth and described in that certain Operation and Easement Agreement, dated February 4, 1998, made by Dayton Hudson Corporation, a Minnesota corporation, recorded February 4, 1998 as Entry No. 1378982 in Book 2235 at page 1228 of the official records of Davis County, Utah, as modified by that certain First Amendment to Operation and Easement Agreement, dated March 22, 1999, by and between Dayton Hudson Corporation, a Minnesota corporation, and Home Depot U.S.A., Inc., a Delaware corporation, recorded March 23, 1999, as Entry No. 1498440, in Book 2469 at Page 805 of the aforesaid records, that certain Second Amendment to Operation and Easement Agreement dated April 7, 1999 made by Dayton Hudson Corporation, a Minnesota corporation, recorded April 13, 1999, as Entry No. 1504315, in Book 2480, at page 1308 of the aforesaid records, and that certain Third Amendment to Operation and Easement Agreement, dated January 25, 2001, by and between Target Corporation, a Minnesota corporation, and Home Depot U.S.A., Inc, a Delaware corporation, recorded January 25, 2001, in Book 2740, at Page 173 of the aforesaid records.

Tax ID No.: 02-161-0009

EXHIBIT "B"

That certain Phase I Environmental Site Assessment prepared by Partner Engineering and Science, Inc., dated March 18, 2014, Partner Project No. 14-116522.1, and covering the Real Property Encumbered by this Mortgage.

EXHIBIT "C"

APPLICABLE STATE LAWS
(Utah)

1. Additional Remedies. In addition to those remedies described in Section 8.2 hereof, Beneficiary shall have the following remedies upon the occurrence of an Event of Default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Premises, or any part thereof, to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Premises or some part or parcel thereof is situated. If Beneficiary invokes the power of sale, Trustee and Beneficiary shall take such action regarding notice of sale and shall give such notices to Trustor and to other persons as applicable law may require. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such portion of the Premises on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine 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 he deems 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, unless otherwise required by law. Trustee shall execute and deliver to the purchaser a deed conveying said property so sold without any covenant or 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 the Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale in the following order: (1) reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps or similar taxes on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the Note secured hereby from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in his discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place. In the event of exercise of the power of sale, or in the event of a sale under a judicial foreclosure of this Security Instrument, Trustor agrees to surrender possession of the Premises to the purchaser at said sale, immediately after said sale, in the event such possession has not previously been surrendered by Trustor. Notwithstanding any other provision set forth herein, Beneficiary's rights and remedies shall be governed by applicable Utah statutes, laws, rules, and regulations, including, without limitation, the Utah Code Annotated, Title 57, Chapter 1, as amended and in effect from time to time.

2. Trustee Provisions. Beneficiary may appoint a successor trustee at any time by complying with the statutory requirements therefor. The new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Trustee accepts this Trust when this Mortgage, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any

other trust deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

3. Request for Notice of Default. Trustor requests that one copy of any notice of default and of any notice of sale required hereunder or by applicable law be mailed to Trustor at its address hereinbefore set forth, and notice of any change of Trustor's address shall only be effective if given by Trustor to both the Trustee and to the Beneficiary in the manner required by Section 10.8 of this Mortgage.

4. Environmental Indemnity Agreement Not Secured. Notwithstanding anything to the contrary in this Mortgage or in any other the other Loan Agreements, the obligations under the Environmental Indemnity Agreement and any similar indemnity provisions contained in the Loan Documents and relating to the subject matter contained in the Environmental Indemnity Agreement are not secured by this Mortgage.

5. Integration. PURSUANT TO *UTAH CODE ANNOTATED* § 25-5-4, TRUSTOR IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6. Utah Uniform Assignment of Rents Act. Notwithstanding any other provision set forth herein, Beneficiary's and Trustor's rights and remedies with respect to the assignment of leases and rents set forth in Section 6.3 hereof shall be governed by the provisions of the Utah Uniform Assignment of Rents Act, Utah Code Annotated Chapter 57, Title 26.