

12452870
1/12/2017 10:51:00 AM \$77.00
Book - 10520 Pg - 526-559
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 34 P.

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Gardere Wynne Sewell LLP
1000 Louisiana St., Suite 2000
Houston, Texas 77002
Attention: Randall L. Jones

THIS SPACE FOR RECORDER'S USE ONLY

Tax Parcel Nos. 28-08-101-063 and
28-08-101-070

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

THIS COMMERCIAL TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (hereinafter referred to as this "Deed of Trust") is entered into effective as of January 11, 2017, between **FPA SANDY MALL ASSOCIATES, LLC.**, a Delaware limited liability company (hereinafter referred to as "Grantor"), whose address for notice hereunder is 2082 Michelson, Dr., 4th Floor, Irvine, CA 92612, in favor of Robert Strong, Trustee, whose address is 5950 Sherry Lane, Suite 100, Dallas, Texas 75225 (hereinafter referred to in such capacity as "Trustee"), for the benefit of the hereinbelow defined Beneficiary, whose address is 520 Post Oak Blvd., Suite 700, Houston, Texas 77027, Attention: Todd M. Fuller.

WITNESSETH:

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

(a) **Beneficiary:** Mutual of Omaha Bank, a federal savings bank, and the subsequent holder or holders, from time to time, of the Note (as hereinafter defined).

(b) **Borrower:** FPA Sandy Mall Associates, LLC, a Delaware limited liability company.

(c) **Business and Commerce Code:** The Uniform Commercial Code, as adopted in the State of Utah.

(d) **Environmental Indemnity Agreement:** That certain Environmental Indemnity Agreement of even date herewith executed by Borrower and Guarantor for the benefit of Beneficiary.

**DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS – Page 1**

Gardere01 - 9671492v.3

Ent 12452870 BK 10520 PG 526

16-011701

(e) Event of Default: Any happening or occurrence described in Article 6 hereinbelow.

(f) Fixtures: All materials, supplies, equipment, apparatus and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements (as hereinafter defined) or the Land (as hereinafter defined), including but not limited to any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

(g) Governmental Authority shall have the meaning given thereto in the Loan Agreement.

(h) Grantor: The above defined Grantor and any and all subsequent owners of the Mortgaged Property (hereinafter defined) or any part thereof (without hereby implying Beneficiary's consent to, and subject to Beneficiary's right to consent to, any Disposition (hereinafter defined) of the Mortgaged Property).

(i) Guarantor: Gregory A. Fowler, Trustee of The Gregory A. Fowler Living Trust.

(j) Guaranty: That or those instruments of guaranty (other than the Environmental Indemnity Agreement), if any, now or hereafter in effect, from Guarantor to Beneficiary guaranteeing the repayment of all or any part of the Indebtedness (hereinafter defined) or the satisfaction of, or continued compliance with, the Obligations (hereinafter defined).

(k) Impositions: (i) All real estate and personal property taxes, charges, assessments, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the Rents (hereinafter defined) or the ownership, use, occupancy or enjoyment thereof; (ii) any charges, fees, license payments or other sums payable for any easement, license or agreement maintained for the benefit of the Mortgaged Property; and (iii) water, gas, sewer, electricity and other utility charges and fees.

(l) Improvements: Any and all buildings, covered garages, utility sheds, workrooms, air conditioning towers, open parking areas, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(m) Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note, this Deed of Trust, the Loan Agreement, the Guaranty, and any and all other documents now or hereafter executed by Grantor, Guarantor or any other person or party in connection with the loan evidenced by the Note.

(n) Land: The real estate or interest therein described on Exhibit "A" attached hereto and incorporated herein by reference, and all rights, titles and interests appurtenant thereto.

(o) Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, save and except any and all leases, subleases or other agreements pursuant to which Grantor is granted a possessory interest in the Land.

(p) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Grantor, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof, (iii) Grantor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, and (v) any and all leases, other than those described in (iv) above, and other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Grantor or any Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Grantor is granted a possessory interest in the Land.

(q) Loan Agreement: That Loan and Security Agreement, as hereafter amended, among Grantor, Guarantor and Beneficiary, setting forth terms and conditions that effect the Indebtedness, the Obligations, and this Deed of Trust.

(r) Minerals: All substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Land, including without limitation, water, water rights, water stock, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

(s) Mortgaged Property: The Land, Minerals, Improvements, Fixtures, Leases and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, reversion and remainder interests, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof; and all betterments, improvements, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and

(ii) all of Grantor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements or Fixtures, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility districts or other utility costs incurred or deposits made in connection with the Land; and

(iii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Deed of Trust, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(t) Note: That certain Promissory Note of even date herewith, executed by Grantor payable to the order of Beneficiary in the amount of SEVENTEEN MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$17,900,000.00), maturing November 30, 2019, subject to extension as provided therein, the payment of which is secured, in part, by the lien of this Deed of Trust, and any and all renewals, rearrangements, reinstatements, enlargements or extensions of such Promissory Note or of any promissory note or notes given therefor.

(u) Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantor or any other person or party to Beneficiary, Trustee or others as set forth in the Note, this Deed of Trust, the Loan Agreement, the Guaranty, the Leases and all other documents now or hereafter executed by Grantor, Guarantor or any other person or party in connection with the loan evidenced by the Note and in any deed, lease, or other form of conveyance or any other agreement pursuant to which Grantor is granted a possessory interest in the Land.

(v) Permitted Encumbrances: The lien and security interest evidenced hereby and the items shown on Schedule B of the Loan Policy of Title Insurance obtained by Lender insuring the lien of this Deed of Trust.

(w) Principal Balance shall have the meaning given thereto in Section 7.1(a) hereof.

(x) Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

(y) Security Documents: The Note, this Deed of Trust, the Loan Agreement, the Guaranty, the other Security Documents described and defined in the Loan Agreement and any and all other documents now or hereafter executed by Grantor, Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

(z) Solvent: Solvent means, with respect to a particular period of time, that the value of the assets set forth on a person's balance sheet exceeds the value of the liabilities set forth on the same person's balance sheet.

ARTICLE 2

GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, the Mortgaged Property unto Trustee, in trust, with power of sale, for the benefit of Beneficiary, subject,

however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee and Trustee's successors and assigns, forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee and Trustee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Security Documents shall terminate, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Beneficiary confirming that the Indebtedness has not been fully discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE 3

WARRANTIES AND REPRESENTATIONS

Grantor hereby unconditionally warrants and represents to Beneficiary as follows:

3.1 **Financial Matters.** Grantor is Solvent, is not bankrupt and has no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Grantor bankrupt or not Solvent. There has not been filed by or against Grantor a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, a trustee, custodian or liquidator with respect to Grantor or any substantial portion of Grantor's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the United States Bankruptcy Code or any state law. All reports, statements and other data furnished by Grantor to Beneficiary in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor. For the purposes of this Section, Grantor shall also include any guarantor(s) or surety(ies).

3.2 **Title and Authority.** Grantor is the lawful owner of good and indefeasible title to the Land and Improvements and has good right and authority to grant, bargain, sell, transfer, assign and mortgage the Land and Improvements and to grant a security interest in the Fixtures.

3.3 **Permitted Encumbrances.** The Mortgaged Property is free and clear from all liens, security interests and encumbrances except the lien and security interest evidenced hereby and the Permitted Encumbrances. There are no mechanic's or materialmen's liens, lienable bills or other claims constituting or that may constitute a lien on the Mortgaged Property, or any part thereof.

3.4 **No Financing Statement.** There is no financing statement covering all or any part of the Mortgaged Property or its proceeds on file in any public office, which has not been terminated or assigned to Beneficiary.

3.5 **Intentionally Omitted.**

3.6 **No Homestead.** No portion of the Mortgaged Property is being used as Grantor's business or residential homestead.

3.7 **No Default or Violation.** The execution, delivery and performance of this Deed of Trust, the Note and all other Security Documents do not contravene, result in a breach of or constitute a

default under any mortgagee, deed of trust, lease, promissory note, loan agreement or other contract or agreement to which Grantor is a party or by which Grantor or any of its properties may be bound or affected and do not violate or contravene any law, order, decree, rule or regulation to which Grantor is subject.

3.8 **Compliance with Covenants and Laws.** The Mortgaged Property and the intended use thereof by Grantor does or will comply with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other applicable Legal Requirements, statutes, ordinances, rules, regulations, orders, determinations and court decisions. Grantor has obtained or will obtain all requisite zoning, utility, building, health and operating permits from the governmental authority or municipality having jurisdiction over the Mortgaged Property. All engineering specifications with respect to the Mortgaged Property are or will be within applicable environmental standards.

3.9 **Condition of Property.** Electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use of the Mortgaged Property as represented by Grantor are or will be available at or within the boundary lines of the Mortgaged Property. All streets, alleys and easements necessary to serve the Mortgaged Property for the use represented by Grantor have been or will be completed and serviceable and such streets have been or will be dedicated and accepted by applicable governmental entities, all in accordance with the terms of the Loan Agreement. None of the Mortgaged Property is within a flood plain. None of the Improvements on the Mortgaged Property will create an encroachment over, across or upon any of the Mortgaged Property boundary lines, rights of way or easements and no building or other improvements on adjoining land create such an encroachment, except as disclosed to and approved by Beneficiary, which approval shall be evidenced by the execution of the Loan Agreement by Beneficiary.

3.10 **Organization.** Grantor is a limited liability company, duly formed and validly existing under the laws of the state of its formation and is duly qualified to do business in the State of Utah. Grantor has or at the relevant times, will have, all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to own and operate its properties and to carry on its business as now conducted and as contemplated to be conducted.

3.11 **Enforceability.** The Note, this Deed of Trust and all other Security Documents constitute the legal, valid and binding obligations of Grantor enforceable in accordance with their terms. The execution and delivery of, and performance under, the Note, this Deed of Trust and all other Security Documents are within Grantor's powers and have been duly authorized by all requisite action and are not in contravention of the powers of Grantor's company agreement.

3.12 **Not a Foreign Person.** Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (hereinafter called the "Tax Code"), Sections 1445 and 7701 (i.e., Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Tax Code and regulations promulgated thereunder).

3.13 **Taxes and Other Payments.** Except for taxes being contested in good faith by appropriate proceedings, Grantor have filed all Federal, state, county, municipal and city income and other tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it. Grantor has paid in full all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture hereunder) and services of every kind and character used, furnished or installed in or on the Mortgaged Property and no claim for same exists or will be permitted to be created.

3.14 **Litigation.** Except as otherwise disclosed in writing to Beneficiary, there are no actions, suits or proceedings pending, or to the knowledge of Grantor threatened, against or affecting the Grantor, or to the knowledge of Grantor, against or affecting the Mortgaged Property, or involving the validity or enforceability of this Deed of Trust or the priority of the liens and security interests created by the Security Documents, and no event has occurred (including specifically Grantor's execution of the Security Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any material Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Grantor's property other than the liens and security interests created by the Security Documents or pursuant to Permitted Encumbrances.

ARTICLE 4

AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary as follows:

4.1 **Payment and Performance.** Subject to any applicable cure periods set forth in the Security Documents, Grantor will pay the Indebtedness, as and when called for in the Security Documents on or before the due dates thereof, and will perform all of the Obligations, in full and on or before the dates same are to be performed.

4.2 **Existence.** Grantor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 **Compliance with Legal Requirements.** Grantor will promptly and faithfully comply with, conform to and obey all present and future applicable Legal Requirements in all material respects, whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 **Lien Status.** Grantor will protect the lien and security interest status of this Deed of Trust and the other Security Documents. If any lien or security interest is asserted against the Mortgaged Property (other than Permitted Encumbrances), Grantor will, and at its own cost and expense, (a) within thirty (30) days of any such lien or security interest being asserted, pay the underlying claim in full or take such other action so as to cause same to be released or, if permitted by Beneficiary in Beneficiary's reasonable discretion, bonded to Beneficiary's satisfaction and (b) within five (5) days from the date Grantor obtains notice of such lien or security interest, give Beneficiary notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.

4.5 **Payment of Impositions.** Grantor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Grantor may, to the extent and in the manner permitted by law (a) pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions if such installment payment would not create or permit the filing of a lien (statutory, constitutional or contractual) against the Mortgaged Property and (b) contest the payment of any Impositions in good faith and by appropriate proceedings; provided, that (i) any such contests shall be prosecuted diligently and in a manner not prejudicial to the rights, liens and security interests of Beneficiary, (ii) if requested by Beneficiary, Grantor shall deposit funds with Beneficiary or obtain a bond in form and substance and with an issuing company satisfactory

to Beneficiary in an amount sufficient to cover any amounts which may be owing in the event the contest may be unsuccessful (Grantor shall make such deposit or obtain such bond, as the case may be, within five (5) days after demand therefor and, if made by payment of funds to Beneficiary, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Grantor or the adverse claimant), (iii) no contest may be conducted and no payment may be delayed beyond the date on which the Mortgaged Property could be sold for nonpayment, and (iv) Beneficiary may pay over to the taxing authority entitled thereto any or all of the funds at any time when, in the opinion of Beneficiary's counsel, the entitlement of such authority to such funds is established. Upon request by Beneficiary, Grantor shall provide Beneficiary with receipts marked "paid" showing payment of Impositions when due.

4.6 **Repair and Maintenance.** Except for reasonable wear and tear, Grantor will keep the Mortgaged Property in good order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made and will not allow any of the Mortgaged Property to be misused, abused or wasted or to deteriorate. Grantor will promptly replace all worn-out or obsolete fixtures or personal property covered by this Deed of Trust with fixtures or personal property comparable to the replaced fixtures or personal property when new and will repaint the Mortgaged Property when needed. Grantor will make all renovations, modifications and alterations to the Mortgaged Property in compliance with all Legal Requirements. Notwithstanding any of the foregoing, Grantor will not, without the prior written consent of Beneficiary (such consent not to be unreasonably withheld): (i) remove from the Mortgaged Property any fixtures or personal property covered by this Deed of Trust except such as is replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest (except that created by this Deed of Trust); (ii) make any structural alteration to the Mortgaged Property or any other alterations thereto which impair the value thereof; or, (iii) make any alteration to the Mortgaged Property involving an estimated expenditure exceeding \$150,000.00 except pursuant to plans and specifications or change orders approved in writing by Beneficiary or permitted changes or tenant finish within guidelines set forth in the Loan Agreement. Upon the reasonable request of Beneficiary, Grantor will promptly deliver to Beneficiary an inventory describing and showing the make, model, serial number and location of all Fixtures used in the management, maintenance and operation of the Mortgaged Property with a certification by Grantor that said inventory is a true and complete schedule of all such Fixtures used in the management, maintenance and operation of the Mortgaged Property, that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Mortgaged Property and that all such items are owned by Grantor free and clear of any lien or security interest (except that created by this Deed of Trust).

4.7 **Insurance and Casualty.** Grantor will obtain and maintain insurance as required by the Loan Agreement. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of Grantor in and to such insurance then in force concerning the Mortgaged Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Beneficiary or other transferee in the event of such other transfer of title. In the event any of the Mortgaged Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (i) Beneficiary may, but shall not be obligated to, make proof of loss if not made promptly by Grantor, and (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor. All insurance proceeds, payments and other amounts paid or received by Beneficiary shall be used as provided in the Loan Agreement.

4.8 **Condemnation.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, or any other

proceedings arising out of injury or damage to the Mortgaged Property, or any portion thereof, Grantor will notify Beneficiary of the pendency of such proceedings. Beneficiary may participate in any such proceedings, and Grantor shall from time to time deliver to Beneficiary all instruments reasonably requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings and shall consult with Beneficiary, its attorneys and experts and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property (collectively, "Awards") shall be paid to Beneficiary. Any Awards shall be used as provided in the Loan Agreement. Grantor hereby assigns and transfers all Awards to Beneficiary and agrees to execute such further assignments of all such Awards as Beneficiary may request. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for and to appeal from, any such Award. Beneficiary shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such Awards.

4.9 **Protection and Defense of Lien.** Grantor shall not permit the Mortgaged Property or any part thereof to be taken by execution or other process of law. If the validity or priority of this Deed of Trust or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Mortgaged Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Grantor with respect thereto, Grantor will give prompt written notice thereof to Beneficiary and at Grantor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed and will take all necessary and proper steps for the defense of such legal proceedings, including, without limitation, the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Trustee and Beneficiary, or either of them (whether or not named as parties to legal proceedings with respect thereto) are hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Deed of Trust and the rights, titles, liens and security interests created or evidenced hereby, including, without limitation, the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Mortgaged Property, the purchase of any tax title and the removal of prior liens or security interests (including, without limitation, the payment of debts as they mature or the payment in full of matured or unmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be subject to and covered by the provisions of Sections 11.1 and 11.6 hereof.

4.10 **Intentionally Omitted.**

4.11 **Performance of Leases.** Grantor covenants (i) to duly and punctually perform and comply with any and all material representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (ii) not to do or permit to be done anything to impair the security of any of the Leases, (iii) except for tenant deposits or except in the ordinary course of business, not to collect any of the Rent more than thirty (30) days in advance of the time when the same become due under the terms of such Leases, (iv) not to discount any future accruing Rent, (v) to maintain each of the Leases in full force and effect during the full term thereof unless earlier terminated as a result of tenant's breach thereunder, (vi) to appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants, and agreements of it or the other party or parties thereto, (vii) except in the ordinary course of business, prudently exercised, without the prior written consent of Beneficiary, not to amend, modify, or terminate any of the Leases in any material respect, (viii) except in the ordinary course of business, not enter into any new Leases without the prior written consent of Beneficiary, and (ix) not to assign or grant a security interest

in and to any of the Leases to any party other than Beneficiary without the prior written consent of Beneficiary.

4.12 **Inspection.** Grantor will permit Trustee and Beneficiary, and their agents, representatives and employees, upon reasonable advance notice to inspect the Mortgaged Property during normal business hours.

4.13 **Harmless.** Grantor will defend, at its own cost and expense, and hold Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property or the Security Documents accruing from or after the date hereof and all costs and expenses incurred by Beneficiary in protecting its interests hereunder in such an event (including all court costs and attorneys' fees) shall be borne by Grantor. The above notwithstanding Grantor shall have no obligation to indemnify Beneficiary from claims resulting from the gross negligence or intentional misconduct of Beneficiary.

4.14 **Books and Records.** Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made as to all operations on the Mortgaged Property and will permit all such books and records (including, without limitation, all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the improvements forming a part of the Mortgaged Property) to be inspected and copied by Beneficiary and its duly accredited representatives at all times during reasonable business hours.

4.15 **Financial Statements and Reports.** Grantor shall deliver financial statements and reports in accordance with Section 6.1 of the Loan Agreement.

4.16 **Maintenance of Rights-of-Way, Easements, and Licenses.** Grantor will maintain, preserve and renew all rights-of-way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Mortgaged Property from time to time and will not, without the prior consent of Beneficiary (which consent shall not be unreasonably withheld), initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property. Grantor shall, however, comply with all restrictive covenants which may at any time affect the Mortgaged Property, zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

4.17 **Estoppel Certificate.** Grantor shall at any time and from time to time, but no more frequently than twice in any 12 month period unless an Event of Default has occurred, furnish upon request by Beneficiary a written statement in such form as may be required by Beneficiary stating that the Note, this Deed of Trust and the other Security Documents are valid and binding obligations of Grantor, enforceable against Grantor in accordance with their terms; the unpaid principal balance of the Note; the date to which interest on the Note is paid; that the Note, this Deed of Trust and the other Security Documents have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Note, this Deed of Trust or any other Security Documents, or if any of the foregoing statements are untrue, specifying the reasons therefor.

4.18 **Loan Agreement.** Grantor will punctually perform and discharge each and every obligation and undertaking of Grantor under the Loan Agreement, if any, as from time to time amended or restated, between Grantor and Beneficiary and will not permit a default to occur thereunder. In the event there is any inconsistency between the provisions of this Deed of Trust and the Loan Agreement, the provisions of the Loan Agreement shall control such inconsistency.

ARTICLE 5

NEGATIVE COVENANTS

Grantor hereby covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 **No Other Liens.** Grantor will not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Mortgaged Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Mortgaged Property without the prior written consent of Beneficiary, Grantor will cause the same to be promptly discharged and released. Without hereby implying the consent of Beneficiary to the existence or creation of the same, Grantor shall not permit the holder of any such deed of trust, mortgage, lien, security interest, encumbrance or other charge on the Mortgaged Property to declare a default thereunder or institute foreclosure or other proceedings for the enforcement of its remedies thereunder. Grantor will own all parts of the Mortgaged Property and except in the ordinary course of business will not acquire any fixtures, equipment or other property forming a part of the Mortgaged Property pursuant to a lease, license or similar agreement, without the prior written consent of Beneficiary.

5.2 **Use Violations.** Grantor will not knowingly use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereto.

5.3 **Alterations.** Grantor will not commit or permit any waste of the Mortgaged Property and will not without the prior written consent of Beneficiary make or permit to be made any alterations or additions to the Mortgaged Property of a material nature, except as contemplated by the Loan Agreement.

5.4 **Replacement of Fixtures.** Grantor will not, without the prior written consent of Beneficiary, permit any of the Fixtures to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and substantially equal value, owned by Grantor, free and clear of any lien or security interest except liens as may be first approved in writing by Beneficiary.

5.5 **Transfer of Mortgaged Property.** Without the prior written consent of Beneficiary, Grantor shall not (i) sell, lease, exchange, assign, transfer, convey or otherwise dispose of all or any part of the Mortgaged Property or any interest therein or attempt to do any of the same (except for the disposition of worn-out or obsolete personal property or fixtures under the circumstances described in Section 4.6 hereof and except in the ordinary course of business, including, without limitation, transfers by option contract, contract of sale or contract for deed, transactions in the nature of assumption, transactions in the nature of a taking subject to, transactions using a wrap-around technique), or (ii) permit legal or equitable title to the Mortgaged Property, or any interest therein, to vest in any other party, in any manner whatsoever, by operation of law or otherwise unless the Indebtedness is paid in full

at the time of such disposition; it being understood that the consent of Beneficiary required hereunder may be refused by Beneficiary in its sole discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole discretion of Beneficiary, including, without limitation, the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the Note and this Deed of Trust.

5.6 **Change of Name, Identity or Structure.** Grantor will not dissolve, liquidate, merge or consolidate or permit a Change in Control (as defined in the Loan Agreement) to occur, voluntarily or involuntarily, including, without limitation, any sale or transfer of a partnership or other ownership interest that would cause a Change in Control, whether same be a profits interest, a capital interest or a combination of same, to any third party or an admission of a new general partner, limited partner or member or any alteration of the distribution of partnership or ownership interests, whether same be a change in the distribution of profits interests, capital interests or a combination of same, or any such attempted sale, transfer, admission or alteration which would cause a Change in Control to occur, without the prior written consent of Beneficiary. Grantor will not change Grantor's name, identity (including its trade name or names) or, if not an individual, Grantor's corporate, partnership or other structure without notifying Beneficiary of such change in writing at least thirty (30) days prior to the effective date of such change. Grantor will execute and deliver to Beneficiary, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Beneficiary to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Beneficiary, Grantor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Grantor intends to operate the Mortgaged Property and representing and warranting that Grantor does business under no other trade name with respect to the Mortgaged Property.

5.7 **Change in Zoning.** Borrower will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Beneficiary's prior written consent.

5.8 **No Drilling.** Borrower will not, without the prior written consent of Beneficiary, consent to any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

ARTICLE 6

EVENTS OF DEFAULT

The term "Event of Default," as used herein or in the Security Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 **Death or Incapacity of Guarantor.** Guarantor dies or becomes legally incapacitated, unless within thirty (30) days of the date of such death or incapacity (a) the representative or legal guardian of such Guarantor or his estate affirms in form and substance satisfactory to Beneficiary the obligations of the estate under the Guaranty and (b) agrees in form and substance satisfactory to Beneficiary that no distributions shall be made from such estate without the prior written consent of Beneficiary, any distribution without such approval being an Event of Default hereunder; provided,

however, it shall not be an Event of Default if a substitute Guarantor satisfactory to Beneficiary, in its sole discretion, executes a Guaranty in form and substance satisfactory to Beneficiary.

6.2 **Change in Control.** A Change in Control (as defined in the Loan Agreement) occurs.

6.3 **Other Liens.** If, without the prior written consent of Beneficiary, Grantor (i) creates or places, permits to be created or placed, attempts to create or place, through any act or failure to act, acquiesces in the creation or placing of, or allows to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Mortgaged Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, (ii) except in the ordinary course of business, acquires any fixtures, equipment or other property forming a part of the Mortgaged Property pursuant to a lease, license or similar agreement, or (iii) grants any easement (other than easements which do not materially or adversely affect the use of the Mortgaged Property) or dedication, seeks or obtains a zoning reclassification or variance, files any plat, condominium declaration or restriction or enters into any lease except in the ordinary course of business, which affects all or any portion of the Mortgaged Property.

6.4 **Disposition of Mortgaged Property, Leases, or Beneficial Interest in Grantor.** If Grantor sells, leases, exchanges, assigns, conveys, transfers or otherwise disposes of (herein collectively referred to as "Disposition") all or any portion of the Mortgaged Property (or any interest therein), except in the ordinary course of business, or enters into a Disposition of all or any part of the beneficial ownership interest in Grantor (if Grantor is a corporation, partnership, joint venture, trust or other type of business association of legal entity).

6.5 **Destruction of Improvements.** If the Mortgaged Property is demolished, destroyed or substantially damaged so that (in Beneficiary's reasonable judgment) it cannot be restored or rebuilt with available funds including cash deposited by Grantor with Beneficiary and funds received under insurance policies to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time.

6.6 **Foreclosure of Other Liens.** If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder unless such liens are being contested in good faith by appropriate proceedings for which adequate reserves have been established.

6.7 **Guaranty.** Any failure of any representation or warranty made in any guaranty of the payment of the Indebtedness or any part thereof to be true and correct in all material respects or any failure to perform or other breach of any covenant in said guaranty.

6.8 **Loan Agreement.** Upon the occurrence of any Event of Default as defined in the Loan Agreement.

6.9 **Abandonment.** If Grantor abandons all or a portion of the Mortgaged Property or suspends or discontinues its business operations.

ARTICLE 7

DEFAULT AND FORECLOSURE

7.1 **Remedies.** Subject to applicable grace or cure periods, if an Event of Default shall occur, Beneficiary may, subject to the provisions of Section 7.9 hereinbelow, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued but unpaid interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, and Beneficiary may execute or cause Trustee to execute a written notice of default (the "Notice of Default") and of election to cause the Mortgaged Property to be sold to satisfy the obligations hereof, and Trustee shall file the Notice of Default for record in Salt Lake County, Utah, and in each other county wherein the Mortgaged Property or some part or parcel thereof is situated. Beneficiary shall also deposit with Trustee the Note and all other documents evidencing the Indebtedness.

(b) **Entry on Mortgaged Property.** Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent thereto, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) **Operation of Mortgaged Property.** Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either by itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Beneficiary shall deem necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 7.8 hereinbelow.

(d) **Non-Judicial Foreclosure and Sale.** By and through Trustee or otherwise, sell or offer for sale the Mortgaged Property in such portions and parcels as Beneficiary may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction in accordance with the requirements of the applicable sections of the Utah Code Annotated, including, without limitation, Title 57, Chapter 1, and the proceeds of such sale shall also be applied in accordance with the requirements thereof. After lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Grantor, may sell the Mortgaged Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Grantor to direct the order in which the Mortgaged Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient and in accordance with applicable law, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for a time longer than permitted by

applicable law, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser a trustee's deed conveying the Mortgaged Property so sold, but without any covenant of warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. If Beneficiary is the highest bidder at any trustee's sale, Beneficiary may credit the Indebtedness for the amount of Beneficiary's bid in lieu of a cash payment. At any such sale:

(i) whether made under the power herein contained, any other Legal Requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to be physically present, or to have constructive possession of, the Mortgaged Property (Grantor hereby covenanting and agreeing to deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale;

(ii) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed;

(iii) the receipt of Trustee or of such other party or officer making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof; and

(iv) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against any and all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor.

(e) Judicial Foreclosure. Foreclose this Deed of Trust judicially as a mortgage.

(f) Trustee or Receiver. Prior to, upon or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.8 hereinbelow.

(g) Other. Exercise any and all other rights, remedies and recourses granted under the Security Documents (including, without limitation, those set forth in Sections 8.3 and 9.5 hereinbelow) or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels (but subject to Grantor's statutory right to direct the order in which the Mortgaged Property, if consisting of several known parcels or lots, shall be sold), it being expressly understood and agreed that the right of

sale arising out of any Event of Default shall not be exhausted by any one or more sales until all of the Mortgaged Property shall have been sold.

7.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the Business and Commerce Code in effect and applicable to the Mortgaged Property, the Leases or any portion thereof) and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor, any Guarantor or others obligated under the Note, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse and (d) are intended to be, and shall be, nonexclusive.

7.4 **No Conditions Precedent to Exercise of Remedies.** Neither Grantor, any Guarantor nor any other person hereafter obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Trustee to comply with any request of Grantor, Guarantor or of any other person so obligated to foreclose the lien of this Deed of Trust or to enforce any provisions of the other Security Documents, (b) the release, regardless of consideration, of the Mortgaged Property or the addition of any other property to the Mortgaged Property, or (c) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Beneficiary extending, renewing, rearranging or in any other way modifying the terms of the Security Documents without first having obtained the consent of, given notice to or paid any consideration to Grantor, any Guarantor or such other person, and in such event Grantor, Guarantor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Beneficiary, or (d) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

7.5 **Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security therefor held by Trustee in such order and manner as Beneficiary may elect. Beneficiary may, without the necessity of the joinder of Grantor or any third party, and without in any way impairing, affecting or subordinating the lien or security interests created in or evidenced by the Security Documents covering the remainder of the Mortgaged Property, subordinate the lien of this Deed of Trust and the other Security Documents to any Lease or other interest of any third party in and to the Mortgaged Property (at any time prior to full payment of the Indebtedness and the discharge of the performance of the Obligations).

7.6 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as expressly provided in the Security Documents all notices of any Event of Default, notices of acceleration of maturity or intent to accelerate maturity, or of Trustee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Security Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

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

7.8 **Application of Proceeds.** Subject to the requirements of Utah Code Annotated Section 57-1-29, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property or the Leases shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) to the extent that funds are so available therefrom to the following in the order of priority that Beneficiary, in its sole discretion, may determine:

(a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) reasonable trustees' and receivers' fees, (ii) court costs, (iii) reasonable attorneys' and accountants' fees, (iv) costs of advertisement, and (v) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Mortgaged Property has been sold subject to and without in any way implying Beneficiary's prior consent to the creation thereof);

(b) to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein;

(c) to the payment of all accrued but unpaid interest due on the Note;

(d) to the payment of the Principal Balance;

(e) to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Beneficiary and permitted by law, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(f) to Grantor.

7.9 **Acceleration Following Certain Events.** Notwithstanding anything to the contrary herein contained or inferable from any provision hereof, upon the occurrence of an Event of Default as defined in either Section 6.6 hereinabove or in Sections 10(g) or 10(h) of the Loan Agreement, the Principal Balance, unpaid accrued interest and any other accrued but unpaid portion of the Indebtedness shall immediately become due and payable in full without the necessity of further action on the part of Trustee or Beneficiary, and, except to the extent required by applicable Legal Requirements, Grantor hereby expressly waives any requirement of notice of intent to accelerate maturity and notice of acceleration of maturity of the Indebtedness.

7.10 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 7.1(d) or (e) shall become the legal owner of the Mortgaged Property. All occupants (except those which have previously executed a prior written agreement with purchaser or a subordination and non-disturbance agreement with the Beneficiary) of the Mortgaged Property or any part thereof shall become tenants at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to

bring any action for possession of the Mortgaged Property other than any statutorily required action of forcible entry and detainer in any court having jurisdiction over the Mortgaged Property.

7.11 **Waiver of Right of Redemption.** Grantor hereby waives all rights of redemption provided by the laws of the State of Utah.

ARTICLE 8

SECURITY AGREEMENT

8.1 **Security Interest.** This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article 2 hereinabove, a first and prior security interest under Article 9 of the Business and Commerce Code with respect to the Fixtures. To this end, Grantor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Beneficiary, a first and prior security interest in all of Grantor's right, title and interest in, to, under and with respect to the Fixtures to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

8.2 **Financing Statements.** Grantor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted and Grantor hereby authorizes Beneficiary to cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

8.3 **Business and Commerce Code Remedies.** Beneficiary and/or Trustee shall have all the rights, remedies and recourses with respect to the Fixtures afforded to it by the Business and Commerce Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Security Documents.

8.4 **No Obligation of Trustee or Beneficiary.** The assignment and security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Mortgaged Property, to obligate Trustee or Beneficiary to lease the Mortgaged Property or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

8.5 **Fixture Filing.** This Deed of Trust constitutes a "fixture filing" under Sections 70A-9a-334 and 70A-9a-502 of the Utah Uniform Commercial Code, as amended or recodified from time to time ("UCC"). All or part of the Mortgaged Property is or is to become fixtures; information concerning the security interest herein granted may be obtained at the addresses set forth herein. For purposes of the security interest herein granted, the address of Debtor (Grantor) is set forth in the first paragraph of this Deed of Trust and the address of the Secured Party (Beneficiary) is set forth in Section 11.5 herein.

8.6 **Reproduction as Financing Statement.** A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement.

8.7 **Foreclosure of Security Interest.** If an Event of Default shall occur, Beneficiary may elect, in addition to exercising any and all other rights, remedies and recourses set forth in Article 7 or Article 9 hereof, or referred to in Section 8.3 hereinabove, to collect and receive all Rents and to proceed in the manner set forth in Section 70A-9a-604 of the UCC relating to the procedure to be followed when a Security Agreement covers both real and personal property. Except as otherwise set forth in this Section 8.7, at any foreclosure and sale as described in Section 7.1(d) or (e) hereinabove, it shall be deemed that the Trustee proceeded under such Section 70A-9a-604(1)(b) of the UCC, as to types of property covered thereby, and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser thereat, including without limitation the Fixtures. Beneficiary, acting by and through the Trustee or any other representative, may elect either prior to or at such sale not to proceed under such Section 70A-9a-604(1)(b) of the UCC by notifying Grantor of the manner in which Beneficiary intends to proceed with regard to the Fixtures.

8.8 **HOLD HARMLESS.** BENEFICIARY SHALL NOT BE OBLIGATED TO PERFORM OR DISCHARGE, NOR DOES IT HEREBY UNDERTAKE TO PERFORM OR DISCHARGE, ANY OBLIGATION, DUTY OR LIABILITY UNDER THE LEASES OR UNDER OR BY REASON OF THIS DEED OF TRUST, AND GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR AND TO HOLD BENEFICIARY HARMLESS FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH IT MAY OR MIGHT INCUR UNDER ANY OF THE LEASES OR UNDER OR BY REASON OF THIS DEED OF TRUST AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST IT (EXCEPT FOR ACTS OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT ON THE PART OF BENEFICIARY) BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY OF THE LEASES. SHOULD BENEFICIARY INCUR ANY SUCH LIABILITY, LOSS OR DAMAGE UNDER ANY OF THE LEASES OR UNDER OR BY REASON OF THIS DEED OF TRUST OR IN THE DEFENSE OF ANY SUCH CLAIMS OR DEMANDS, THE AMOUNT THEREOF, INCLUDING ALL COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES, SHALL BE SECURED HEREBY, AND GRANTOR SHALL REIMBURSE BENEFICIARY THEREFOR IMMEDIATELY UPON DEMAND.

ARTICLE 9

ASSIGNMENT OF LEASES AND RENTS

9.1 **Assignment.** For Ten and No/Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY absolutely unto Beneficiary the Leases and the Rents subject only to the Permitted Encumbrances applicable thereto and the hereinafter referenced License. TO HAVE AND TO HOLD the Leases and the Rents unto Beneficiary, forever, and Grantor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, if Grantor shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Obligations on or before the date same are to be performed and discharged then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Grantor without the necessity of any further act or requirement by Grantor, Trustee or Beneficiary.

9.2 **Limited License.** Beneficiary hereby grants to Grantor a limited license (the "License"), nonexclusive with the rights of Beneficiary reserved in this Article 9, hereof, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Grantor hereby agrees to receive all Rents as trustee for Beneficiary, and to apply the Rent so collected, first to the payment of the Indebtedness as hereinabove set forth and the satisfaction and discharge of the Obligations. Thereafter, Grantor may use the balance of the Rent collected in any manner not inconsistent with the Security Documents.

9.3 **Enforcement of Leases.** So long as the License is in effect, Grantor shall (a) duly and punctually perform and comply with any and all material representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, provided that tenant under such Lease is not in default thereunder, (c) appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Beneficiary executed counterparts of all Leases, and (e) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the Leases as Beneficiary may from time to time reasonably request. Without Beneficiary's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for deposits not to exceed one month's rent for any one lessee, (or except in the ordinary course of Grantor's business) collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rent, (iv) except in the ordinary course of business, amend, modify or terminate any Lease, (v) assign or grant a security interest in or to the License or any of the Leases, or (vi) execute any Lease except in the ordinary course of business, granting a leasehold interest in the Mortgaged Property, other than in accordance herewith.

9.4 **Suits; Attornment.** Upon and following the occurrence of any Event of Default and subject to applicable law, Beneficiary hereby reserves and may exercise the right and Grantor hereby acknowledges that Beneficiary has the right (but not the obligation) to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of the Indebtedness selected by Beneficiary, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Upon and following the occurrence of an Event of Default, Grantor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Beneficiary. Beneficiary may, without necessity of the joinder of Grantor or any third party, and without in any way impairing, affecting or subordinating the lien or security interests created in or evidenced by the Security Documents covering the remainder of the Mortgaged Property, subordinate the lien of this Deed of Trust and the other Security Documents to any Lease or other interest of any third party in and to the Mortgaged Property (at any time prior to full payment of the Indebtedness and the discharge of the performance of the Obligations). Grantor hereby ratifies and confirms all that Beneficiary shall do or cause to be done by virtue of this Article 9. No lessee shall be required to inquire into the authority of Beneficiary to collect any Rent, and any lessee's obligation to Grantor shall be absolutely discharged to the extent of its payment to Beneficiary.

9.5 **Remedies.** Upon or at any time after the occurrence of any Event of Default, Beneficiary, at its option and in addition to the remedies provided in Articles 7 and 8 hereof, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Grantor. Upon Beneficiary's giving of such notice, the License shall immediately terminate without any further action being required of Beneficiary. Thereafter, Beneficiary shall have the exclusive right, power and authority to take any and all action as

described in Section 9.4 hereof, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Deed of Trust, or whether Beneficiary or Trustee has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to in Section 9.4 or this Section 9.5 taken by Beneficiary or Trustee shall constitute an election of remedy.

9.6 **No Obligation of Trustee or Beneficiary.** Neither the acceptance by Beneficiary of the assignment granted in this Article 9, nor the granting of any other right, power, privilege or authority in this Article 9 or elsewhere in this Deed of Trust, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Beneficiary or Trustee, be deemed to constitute Beneficiary or Trustee as a "mortgagee in possession" or (b) at any time thereafter, obligate Beneficiary or Trustee (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to extend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Beneficiary or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property.

9.7 **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

9.8 **Intentionally Omitted.**

9.9 **Conflict.** It is the intent of the parties that no conflict exists between the absolute assignment contained in this Article 9 and the collateral conveyance contained in Article 2 hereof. However, if and to the extent any such conflict be perceived to exist as to the Leases or the Rents, such conflict shall be resolved in favor of the absolute assignment contained in this Article 9.

9.10 **GRANTOR INDEMNITIES. EXCEPT FOR A LOSS, COST, DAMAGE, OR EXPENSE THAT IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BENEFICIARY, SO LONG AS THE LICENSE IS IN EFFECT, GRANTOR SHALL INDEMNIFY AND HOLD HARMLESS BENEFICIARY AND TRUSTEE FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE WHICH EITHER MAY INCUR UNDER OR BY REASON OF THIS ASSIGNMENT, OR FOR ANY ACTION TAKEN BY BENEFICIARY AND/OR TRUSTEE HEREUNDER, OR BY REASON OF OR IN DEFENSE OF ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY AND/OR TRUSTEE ARISING OUT OF THE LEASES OR WITH RESPECT TO THE RENTS. IN THE EVENT BENEFICIARY AND/OR TRUSTEE INCURS ANY SUCH LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE, THE AMOUNT THEREOF TOGETHER WITH ALL REASONABLE ATTORNEYS' FEES AND INTEREST THEREON AT THE DEFAULT RATE SHALL BE PAYABLE BY GRANTOR TO BENEFICIARY AND/OR TRUSTEE IMMEDIATELY, WITHOUT DEMAND, AND SHALL BE DEEMED A PART OF THE INDEBTEDNESS AND SECURED HEREBY.**

ARTICLE 10

CONCERNING THE TRUSTEE

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

10.2 **Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (d) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered.

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

10.4 **Substitution of Trustee.** Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by Utah Code Annotated § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. -Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee and all other information required by Utah Code Annotated § 57-1-22 or any successor statute. In compliance with Utah Code Annotated § 57-1-21.5, the Trustee

shall not require the trustor reinstating or paying off the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

10.5 **Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such new Trustee such estates, rights, powers and duties, then, upon request by such Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

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

10.7 **No Representation by Trustee or Beneficiary.** By accepting or approving anything required to be observed, performed or fulfilled or to be given to Trustee or Beneficiary pursuant to the Security Documents, including (but not limited to) any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

ARTICLE 11

MISCELLANEOUS

11.1 **Performance at Grantor's Expense.** Grantor shall (i) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced or incurred by Beneficiary to satisfy any obligation of Grantor under the Security Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal or other proceedings); and (ii) pay any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that certain costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

11.2 **Survival of Obligations.** Each and all of the Obligations shall survive the execution and delivery of the Security Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 11.2 shall limit the obligations of Grantor as set forth in Sections 4.13, 8.8 and 9.10 hereof.

11.3 **Further Assurances.** Grantor, upon the reasonable request of Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Security Documents and to subject to the liens and security interests thereof any property intended by

the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.

11.4 **Recording and Filing.** Grantor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, rerecorded and refiled in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, rerecording and refiling taxes, fees and other charges.

11.5 **Notices.** All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective three (3) Business Days after its deposit with the United States Postal Service or any successor thereto; notice given by personal delivery shall be effective only if and when received by the addressee; notice sent by such a commercial delivery service shall be effective one (1) Business Day after delivery to such commercial delivery service; and notice given by other means shall be effective only if and when received at the office or designated place of the intended addressee. For purposes of notice, the address of the Grantor and the address of Beneficiary is as follows:

If to Grantor: FPA Sandy Mall Associates, LLC
2082 Michelson Dr., 4th Floor
Irvine, California 92612
Attn: Gregory A. Fowler

With copy to: Nancy Dubonnet, Esq.
2082 Michelson Dr., Suite 450
Irvine, California 92612

If to Beneficiary: Mutual of Omaha Bank
520 Post Oak Blvd., Suite 700
Houston, Texas 77027
Attn: Todd M. Fuller

With copy to: Gardere, Wynne Sewell, LLP
1000 Louisiana St., Suite 2000
Houston, Texas 77002
Attn: Randall L. Jones

Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of written notice to the other party in the manner set forth herein.

11.6 **Beneficiary's Right to Perform the Obligations.** If Grantor shall fail, refuse or neglect to make any payment or perform any act as required by the Security Documents then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter upon the Land and into the Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Property, as it may deem necessary or

appropriate. If Beneficiary shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Beneficiary may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Beneficiary shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Grantor shall indemnify Beneficiary for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Beneficiary pursuant to the provisions of this Section 11.6 or by reason of any other provision in the Security Documents unless caused by Beneficiary's gross negligence or intentional misconduct. All sums paid by Beneficiary pursuant to this Section 11.6, and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as defined in the Note) from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Grantor to Beneficiary upon demand.

11.7 **Covenants Running with the Land.** All Obligations contained in the Security Documents are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Property until the Indebtedness is discharged and this Deed of Trust is released by Beneficiary.

11.8 **Successors and Assigns.** Subject to the provisions of Section 5.6 hereof, all of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

11.9 **No Waiver; Severability.** Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other terms, provisions or conditions thereof and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions and conditions. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.10 **Modification.** The Security Documents may not be amended, revised, waived, discharged, released or terminated orally, but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

11.11 **Execution by Counterparts.** To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on

behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

11.12 **Applicable Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF UTAH APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN (EXCLUDING CHOICE OF LAW PRINCIPLES) EXCEPT TO THE EXTENT PREEMPTED BY UNITED STATES FEDERAL LAW.

11.13 **Reserve for Impositions and Insurance Premiums.** If required by and in accordance with the terms and conditions of the Loan Agreement, Borrower shall create a fund or reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property.

11.14 **INDEMNITY.** GRANTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS BENEFICIARY FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY BENEFICIARY, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:

(a) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER SECURITY DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR BENEFICIARY THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR BENEFICIARY, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT;

(b) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF BORROWER IF BORROWER IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS OF BORROWER IF BORROWER IS A CORPORATION, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF BORROWER IS A LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST OR OTHER ENTITY;

(c) EXCEPT FOR THOSE ACTIONS THAT ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BENEFICIARY OR TRUSTEE, ANY ACTION TAKEN OR NOT TAKEN BY BENEFICIARY OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER SECURITY DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE SECURITY DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER SECURITY DOCUMENTS;
AND

(d) ANY ACTION PROPERLY BROUGHT BY BENEFICIARY OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER SECURITY DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT.

BENEFICIARY AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE THEIR RESPECTIVE RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER SECURITY DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE BENEFICIARY AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BENEFICIARY AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN FIVE (5) BUSINESS DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 11.14 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE) AND THE EXERCISE BY BENEFICIARY OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE SECURITY DOCUMENTS.

11.15 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

11.16 Headings. The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

11.17 ENTIRE AGREEMENT. THIS DEED OF TRUST AND THE OTHER SECURITY DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

11.18 WAIVER OF RIGHT TO TRIAL BY JURY. GRANTOR AND BENEFICIARY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO

OR ARISES OUT OF ANY OF THE SECURITY DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER SECURITY DOCUMENTS.

11.19 TEXAS FINANCE CODE 4307.052 COLLATERAL PROTECTION INSURANCE NOTICE:

(a) GRANTOR IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT BENEFICIARY SPECIFIES; AND (ii) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS;

(b) GRANTOR MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND

(c) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

ARTICLE 12

STATE-SPECIFIC PROVISIONS

12.1 **Determination of Fair Market Value.** For purposes of the application of the provisions of Utah Code Ann., Section 57-1-32, to the extent permitted by applicable law Grantor acknowledges, stipulates, confirms and agrees that the fair market value of the Mortgaged Property on the date of a sale under the power of sale granted under this Deed of Trust shall be the fair market value specified in any appraisal of the Mortgaged Property obtained by Beneficiary at any time within six (6) months preceding such sale or at any time within eighty-nine (89) days following such sale, so long as such appraisal is completed by an MAI appraiser having reasonable experience and expertise in evaluating commercial and retail real estate.

12.2 **Acknowledgment of Utah Uniform Assignment of Rents Act.** Grantor hereby expressly acknowledges that Grantor is bound by the terms and provisions of the Utah Uniform Assignment of Rents Act (Utah Code Ann. § 57-26-101, et seq.) and that Grantor shall, in all respects fully abide by and act to accommodate and comply fully with all the provisions of that Act and the rights and remedies of Beneficiary arising thereunder by reason of the assignment of rents provided in this Deed of Trust. In this regard Grantor hereby expressly agrees and covenants that it will bring no action of any kind to assert that actions by Beneficiary to collect or receive assigned rents is contravened by any security-first, one-action or similar other security or collateral-first claim or assertion and any such action by the Grantor shall be deemed to be in bad faith and subject to immediate dismissal on motion of

the Beneficiary, with the right of Beneficiary to recover all costs and attorneys' fees incurred in connection with disposing of any such action.

12.3 **Recourse to Non-Real Estate Security.** To the extent permitted by applicable law, Grantor also hereby acknowledges, agrees and stipulates that the provisions of Utah Code Ann. Section 78B-6-901 (the so-called "One-Action Rule") shall not apply to abridge, inhibit, prohibit or otherwise bar Beneficiary from proceeding at any time after an Event of Default to exercise its remedies with respect to any and all non-real property Mortgaged Property and assets in which a lien, security interest, pledge or charge has been created in favor of Beneficiary hereunder or under the Security Documents, including the Fixtures, that is security for the Indebtedness and Obligations.

12.4 **Remedies of Beneficiary.** To the extent of any conflict or inconsistency between any provision of this Section 12.4 and the other provisions of this Deed of Trust, the provisions of this Section 12.4 shall control. Upon the occurrence and during the continuance of an Event of Default, the following provisions apply, to the extent permitted by applicable law:

(a) **Acceleration.** Upon the occurrence and during the continuance of an Event of Default the Indebtedness secured hereby shall immediately become due and payable and Beneficiary may execute or cause Trustee to execute a written notice of default (the "Notice of Default") and of election to cause the Mortgaged Property to be sold to satisfy the obligations hereof, and Trustee shall file the Notice of Default for record in Salt Lake County, Utah, and in each other county wherein the Mortgaged Property or some part or parcel thereof is situated. Beneficiary shall also deposit with Trustee the Note and all other documents evidencing the Indebtedness secured hereby.

(b) **Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 or other applicable law following the recordation of the Notice of Default, and Notice of Default and notice of sale (the "Notice of Sale") having been given as then required by Utah Code Annotated § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Grantor, shall sell the Mortgaged Property on the date and at the time and place designated in the Notice of Sale, in such order as Beneficiary may determine (but subject to Grantor's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the Mortgaged Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the Notice of Sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the Notice of Sale, notice of the time, date, and place of sale shall be given in the same manner as the original Notice of Sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Mortgaged Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

First: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees.

Second: To the cost of any evidence of title procured in connection with such sale.

Third: To all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of interest applicable under the Notes secured hereby from date of expenditure.

Fourth: To all other sums then secured hereby.

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

Grantor agrees to surrender possession of the Mortgaged Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by the Grantor.

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

For purposes of Utah Code Annotated §57-1-28, Grantor agrees that all interest at the Default Rate defined and set forth in the Loan Agreement and all late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Mortgaged Property, and (ii) Beneficiary may add all interest at such Default Rate and all late charges, any prepayment premiums and similar amounts, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust.

In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(c) Election to Foreclose as a Mortgage. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the option to declare all Indebtedness secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be fixed by the court. Grantor hereby waives all rights to the marshalling of Grantor's assets encumbered by this Deed of Trust to the fullest extent permitted by law, including the Mortgaged Property, or any portion thereof, and all rights to require the Mortgaged Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Mortgaged Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the Indebtedness with interest at the applicable rate set forth in the Note, and third to the Person so entitled. Beneficiary may purchase all or

any part of the Mortgaged Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Beneficiary's bid entered at such sale shall bear interest at the Default Rate of interest set forth in the Loan Agreement.

(d) Deficiency. Grantor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law. Grantor agrees for purposes of Utah Code Annotated § 57-1-32 that the value of the Mortgaged Property as determined and set forth in an MAI appraisal of the Mortgaged Property as obtained by Beneficiary on or about the date of the sale or the recording of a Notice of Default and election to sell shall constitute the "fair market value" of the Mortgaged Property for purposes of Utah Code Annotated § 57-1-32.

(e) Indebtedness Secured. For purposes of Utah Code Annotated §§ 57-1-32 and 57-1-28, the total indebtedness secured by this Deed of Trust shall include all amounts payable by Grantor hereunder, including any increased rate of interest, any defeasance or prepayment payments or other amounts or obligations, all of which shall constitute "beneficiary's lien on the trust property."

(f) One Action Rule and Deficiency Statute. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under Utah Code Annotated §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(g) Reinstatement. If Grantor, Grantor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Mortgaged Property, reinstates this Deed of Trust and the Indebtedness within three (3) months of the recordation of a Notice of Default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

12.5 Trustee's Fees and Expenses. In no event shall Grantor be required to pay to Trustee any fees or compensation in excess of amounts permitted by Utah Code Annotated § 57-1-21.5.

12.6 Time Is Of The Essence. Time is of the essence of this Deed of Trust.

12.7 Fixture Filings. This Deed of Trust covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE MORTGAGED PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH MORTGAGED PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND GRANTOR IS THE "DEBTOR." GRANTOR IS THE RECORD OWNER OF THE MORTGAGED PROPERTY.

12.8 **Integration.** PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, GRANTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

12.9 **Qualification of Title Insurance Company as Trustee.** Should the "Trustee" as used throughout this Deed of Trust be a title insurance company or agency, such Trustee shall be qualified in the State of Utah in the following manner, consistent with the provisions of Utah Code Ann. § 57-1-21: (a) Trustee must hold a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the State of Utah, (b) Trustee must actually be doing business in the State of Utah, and (c) Trustee must maintain a bona fide office in the State of Utah. In the event of any express conflict between the provisions of this Deed of Trust and the provisions of Utah Code Ann. § 57-1-21 with regard to the qualifications of the Trustee, the provisions of Utah Code Ann. § 57-1-21 shall apply.

EXECUTED as of the date of the acknowledgment to be effective as of the date and year first above written.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT "A"

Legal Description

1. Lots 1 and 8 of Sandy Mall Subdivision, according to the official plat recorded May 23, 2016 as Entry No. 12284382 in Book 2016P of Plats at Page 113, of the Official Records of Salt Lake County Utah.
2. Benefits, easements and parking rights contained in that certain Restrictive Covenants, Easements and Maintenance Agreement recorded March 18, 1998 as Entry No. 6895233 in Book 7913 at Page 635, of the Official Records of Salt Lake County, Utah.