

Loan No. 1005597

---

**CACHE VALLEY, LLC,**  
as grantor

to

**FIRST AMERICAN TITLE INSURANCE COMPANY,** as trustee

for the benefit of

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as administrative agent for the benefit of Secured Parties (as defined in the Credit Agreement  
(hereinafter defined)), as beneficiary

---

**DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND  
SECURITY AGREEMENT (AND FIXTURE FILING)**

---

Dated: As of January 12, 2012

Location: 1300 North Main, 170 East 1400 North, 1220, North Main, 170 East Cache Valley  
Boulevard, 1175 0200 East, Logan, Utah, 1136 North Main, Logan, Utah

County: Cache

PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attention: Meryl P. Diamond, Esq.

ARTICLE 1 – GRANTS OF SECURITY .....	5
SECTION 1.1. <u>PROPERTY MORTGAGED</u> .....	5
SECTION 1.2. <u>SECURITY AGREEMENT</u> .....	8
SECTION 1.3. <u>FIXTURE FILING</u> .....	8
SECTION 1.4. <u>CONDITIONS TO GRANT</u> .....	8
ARTICLE 2 – DEFINITIONS; PRINCIPLES OF CONSTRUCTION .....	9
SECTION 2.1. <u>DEFINITIONS</u> .....	9
SECTION 2.2. <u>PRINCIPLES OF CONSTRUCTION</u> .....	11
SECTION 2.3. <u>GENERAL DEFINITIONS</u> .....	11
ARTICLE 3 – ABSOLUTE ASSIGNMENT OF LEASES AND RENTS .....	12
Section 3.1. <u>ASSIGNMENT</u> .....	12
Section 3.2. <u>GRANT OF LICENSE</u> .....	12
Section 3.3. <u>EFFECT OF ASSIGNMENT</u> .....	12
ARTICLE 4 – OBLIGATIONS SECURED.....	13
Section 4.1. <u>OBLIGATIONS</u> .....	13
Section 4.2. <u>PERFORMANCE OF OBLIGATIONS</u> .....	13
Section 4.3. <u>INCORPORATION BY REFERENCE</u> .....	13
ARTICLE 5 – PROPERTY COVENANTS .....	13
Section 5.1. <u>TAXES AND OTHER CHARGES</u> .....	13
SECTION 5.2. <u>WARRANTY OF TITLE</u> .....	14
SECTION 5.3. <u>PAYMENT FOR LABOR AND MATERIALS</u> .....	14
Section 5.4. <u>APPLICABLE LAWS</u> .....	14
SECTION 5.5. <u>MAINTENANCE AND USE OF PROPERTY</u> .....	14
SECTION 5.6. <u>WASTE</u> .....	15
SECTION 5.7. <u>ACCESS TO PROPERTY</u> .....	15
SECTION 5.8. <u>AWARDS</u> .....	15
SECTION 5.9. <u>ESTOPPEL CERTIFICATES</u> .....	15
SECTION 5.10. <u>LEASES AND RENTS</u> .....	16
SECTION 5.11. <u>NO JOINT ASSESSMENT</u> .....	16
SECTION 5.12. <u>REA COVENANTS</u> .....	16
SECTION 5.13. <u>MANAGEMENT OF PROPERTY</u> .....	17
SECTION 5.14. <u>INTENTIONALLY OMITTED</u> .....	17
ARTICLE 6 - REPRESENTATIONS AND WARRANTIES .....	17
SECTION 6.1. <u>AUTHORITY; VALIDITY OF SECURITY INSTRUMENT; AGREEMENTS</u> .....	17
SECTION 6.2. <u>INTENTIONALLY OMITTED</u> .....	17
SECTION 6.3. <u>INTENTIONALLY OMITTED</u> .....	17
SECTION 6.4. <u>INTENTIONALLY OMITTED</u> .....	17
SECTION 6.5. <u>STATUS OF PROPERTY</u> .....	17
SECTION 6.6. <u>CONDEMNATION</u> .....	19
SECTION 6.7. <u>SEPARATE LOTS</u> .....	19
SECTION 6.8. <u>INSURANCE</u> .....	19
SECTION 6.9. <u>USE OF PROPERTY</u> .....	19
SECTION 6.10. <u>LEASE AND RENT ROLL</u> .....	19
SECTION 6.11. <u>FILING AND RECORDING TAXES</u> .....	20
SECTION 6.12. <u>ILLEGAL ACTIVITY/FORFEITURE</u> .....	20

<b>SECTION 6.13.</b>	<u>INTENTIONALLY OMITTED</u> .....	20
<b>SECTION 6.14.</b>	<u>FRAUDULENT CONVEYANCE</u> .....	21
<b>Section 6.15.</b>	<u>REA REPRESENTATIONS</u> .....	21
<b>SECTION 6.16.</b>	<u>INTENTIONALLY OMITTED</u> .....	21
<b>ARTICLE 7 - FURTHER ASSURANCES</b> .....		21
<b>SECTION 7.1.</b>	<u>COMPLIANCE WITH GUARANTY</u> .....	21
<b>SECTION 7.2.</b>	<u>AUTHORIZATION TO FILE FINANCING STATEMENTS; POWER OF ATTORNEY</u> .....	21
<b>SECTION 7.3.</b>	<u>REPLACEMENT DOCUMENTS</u> .....	21
<b>SECTION 7.4.</b>	<u>RECORDING OF SECURITY INSTRUMENT</u> .....	22
<b>SECTION 7.5.</b>	<u>FURTHER ACTS, ETC</u> .....	22
<b>SECTION 7.6.</b>	<u>CHANGES IN TAX, OBLIGATIONS, CREDIT AND DOCUMENTARY STAMP LAWS</u> .....	23
<b>ARTICLE 8 – DUE ON SALE/ENCUMBRANCE</b> .....		23
<b>SECTION 8.1.</b>	<u>NO SALE/ENCUMBRANCE</u> .....	23
<b>ARTICLE 9 – INSURANCE</b> .....		24
<b>SECTION 9.1.</b>	<u>INSURANCE</u> .....	24
<b>SECTION 9.2.</b>	<u>CASUALTY/CONDEMNATION</u> .....	24
<b>SECTION 9.3.</b>	<u>PROCEEDS DISTRIBUTION</u> .....	24
<b>ARTICLE 10 – PREPAYMENT; RELEASE OF PROPERTY</b> .....		25
<b>SECTION 10.1.</b>	<u>PREPAYMENT</u> .....	25
<b>SECTION 10.2.</b>	<u>RELEASE OF PROPERTY</u> .....	25
<b>ARTICLE 11 – DEFAULT</b> .....		26
<b>SECTION 11.1.</b>	<u>EVENT OF DEFAULT</u> .....	26
<b>ARTICLE 12 – RIGHTS AND REMEDIES UPON DEFAULT</b> .....		26
<b>SECTION 12.1.</b>	<u>REMEDIES</u> .....	26
<b>SECTION 12.2.</b>	<u>APPLICATION OF PROCEEDS</u> .....	28
<b>SECTION 12.3.</b>	<u>RIGHT TO CURE DEFAULTS</u> .....	28
<b>SECTION 12.4.</b>	<u>ACTIONS AND PROCEEDINGS</u> .....	28
<b>SECTION 12.5.</b>	<u>RECOVERY OF SUMS REQUIRED TO BE PAID</u> .....	28
<b>SECTION 12.6.</b>	<u>OTHER RIGHTS, ETC</u> .....	29
<b>SECTION 12.7.</b>	<u>RIGHT TO RELEASE ANY PORTION OF THE PROPERTY</u> .....	29
<b>SECTION 12.8.</b>	<u>INTENTIONALLY OMITTED</u> .....	29
<b>SECTION 12.9.</b>	<u>BANKRUPTCY</u> .....	30
<b>SECTION 12.10.</b>	<u>SUBROGATION</u> .....	30
<b>ARTICLE 13 – ENVIRONMENTAL HAZARDS</b> .....		30
<b>SECTION 13.1.</b>	<u>ENVIRONMENTAL COVENANTS</u> .....	30
<b>ARTICLE 14 – INDEMNIFICATIONS</b> .....		30
<b>SECTION 14.1.</b>	<u>GENERAL INDEMNIFICATION</u> .....	30
<b>SECTION 14.2.</b>	<u>MORTGAGE AND INTANGIBLE TAX INDEMNIFICATION</u> .....	31
<b>ARTICLE 15 – INTENTIONALLY OMITTED</b> .....		31
<b>ARTICLE 16 – WAIVERS</b> .....		31
<b>SECTION 16.1.</b>	<u>MARSHALLING AND OTHER MATTERS</u> .....	31
<b>SECTION 16.2.</b>	<u>WAIVER OF NOTICE</u> .....	32
<b>SECTION 16.3.</b>	<u>REMEDIES CUMULATIVE; WAIVERS</u> .....	32
<b>SECTION 16.4.</b>	<u>DISCRETION OF MORTGAGEE</u> .....	32

<b>SECTION 16.5.</b>	<u>WAIVER OF TRIAL BY JURY</u> .....	32
<b>SECTION 16.6.</b>	<u>WAIVER OF FORECLOSURE DEFENSE</u> .....	32
<b>SECTION 16.7.</b>	<u>MODIFICATION, WAIVER IN WRITING</u> .....	33
<b>SECTION 16.8.</b>	<u>REMEDIES OF OWNER</u> .....	33
<b>SECTION 16.9.</b>	<u>WAIVER OF STATUTE OF LIMITATIONS</u> .....	33
<b>SECTION 16.10.</b>	<u>WAIVER OF COUNTERCLAIM</u> .....	33
ARTICLE 17 – NOTICES .....		33
<b>SECTION 17.1.</b>	<u>NOTICES</u> .....	33
ARTICLE 18 – APPLICABLE LAW .....		33
<b>SECTION 18.1.</b>	<u>GOVERNING LAW</u> .....	33
<b>SECTION 18.2.</b>	<u>PROVISIONS SUBJECT TO APPLICABLE LAW</u> .....	34
ARTICLE 19 – MISCELLANEOUS PROVISIONS .....		35
<b>SECTION 19.1.</b>	<u>NO ORAL CHANGE</u> .....	35
<b>SECTION 19.2.</b>	<u>SUCCESSORS AND ASSIGNS</u> .....	35
<b>SECTION 19.3.</b>	<u>INAPPLICABLE PROVISIONS</u> .....	35
<b>SECTION 19.4.</b>	<u>HEADINGS, ETC</u> .....	35
<b>SECTION 19.5.</b>	<u>NUMBER AND GENDER</u> .....	35
<b>SECTION 19.6.</b>	<u>ENTIRE AGREEMENT</u> .....	35
<b>SECTION 19.7.</b>	<u>LIMITATION ON MORTGAGEE’S RESPONSIBILITY</u> .....	35
<b>SECTION 19.8.</b>	<u>SURVIVAL</u> .....	35
<b>SECTION 19.9.</b>	<u>COST OF ENFORCEMENT</u> .....	36
<b>SECTION 19.10.</b>	<u>OFFSETS, COUNTERCLAIMS AND DEFENSES</u> .....	36
<b>SECTION 19.11.</b>	<u>LIABILITY</u> .....	36
<b>SECTION 19.12.</b>	<u>DUPLICATE ORIGINALS; COUNTERPARTS</u> .....	36
<b>Section 19.13.</b>	<u>ATTORNEYS’S FEES</u> .....	37
ARTICLE 20 –DEED OF TRUST PROVISIONS .....		37
<b>SECTION 20.1.</b>	<u>CONCERNING THE TRUSTEE</u> .....	37
<b>SECTION 20.2.</b>	<u>TRUSTEE’S FEES</u> .....	37
<b>SECTION 20.3.</b>	<u>CERTAIN RIGHTS</u> .....	37
<b>SECTION 20.4.</b>	<u>RETENTION OF MONEY</u> .....	38
<b>SECTION 20.5.</b>	<u>PERFECTION OF APPOINTMENT</u> .....	38
<b>SECTION 20.6.</b>	<u>SUCCESSION INSTRUMENTS</u> .....	38
ARTICLE 21 – STATE-SPECIFIC PROVISIONS .....		38
<b>SECTION 21.1.</b>	<u>INCONSISTENCIES</u> .....	38
<b>SECTION 21.2.</b>	<u>POWER OF SALE</u> .....	38
<b>SECTION 21.3.</b>	<u>INSURANCE</u> .....	39
<b>SECTION 21.4.</b>	<u>QUALIFICATION OF TITLE INSURANCE COMPANY AS TRUSTEE</u> .....	40
ARTICLE 22 – CROSS-COLLATERALIZATION .....		40
<b>SECTION 22.1.</b>	<u>CROSS-COLLATERALIZATION</u> .....	40
ARTICLE 23 –INTENTIONALLY OMITTED .....		41



**THIS DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (AND FIXTURE FILING)** (this "**Security Instrument**") is made as of this 12th day of January, 2012, by CACHE VALLEY, LLC, a Delaware limited liability company, having its principal place of business at c/o Rouse Properties, Inc., 1114 Avenue of the Americas, Suite 2800, New York, New York 10110 (together with its successors and assigns, "**Owner**"), as grantor to FIRST AMERICAN TITLE INSURANCE COMPANY, having an address at 560 South 300 East, Salt Lake City, Utah 84111, as trustee (together with its successors and assigns, "**Trustee**") for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as administrative agent for the benefit of each Secured Party (as defined in the Credit Agreement (as hereinafter defined)) (in such capacity, together with its successors and/or assigns, in such capacity "**Mortgagee**"), as mortgagee, having an address at 123 North Wacker Drive, Suite 1900, Chicago, Illinois 60606. All capitalized terms not defined herein shall have the respective meanings set forth in the Credit Agreement.

#### RECITALS:

WHEREAS, pursuant to that certain Credit Agreement dated as of January 12, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among Rouse Properties, Inc., a Delaware corporation ("**Borrower**"), the financial institutions from time to time party thereto as "**Lenders**", Mortgagee and the other parties thereto, Lenders and Mortgagee have agreed to make available to Borrower certain financial accommodations in an aggregate principal amount not to exceed \$483,500,000.00 (as the same may be increased pursuant to the terms of the Credit Agreement) on the terms and conditions set forth in the Credit Agreement;

WHEREAS, pursuant to the terms of that certain Guaranty dated as of January 12, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "**Guaranty**") made by Owner and each of the other Guarantors in favor of Mortgagee and the Secured Parties, Owner has guaranteed Borrower's obligations to Mortgagee and the Secured Parties on the terms and conditions contained therein; and

WHEREAS, Owner's execution and delivery of this Security Instrument to secure, among other things, its obligations under the Guaranty is a condition to Mortgagee, Lenders and the other Secured Parties making, and continuing to make, such financial accommodations to Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Owner, Owner agrees as follows:

#### Article 1 – GRANTS OF SECURITY

**Section 1.1. PROPERTY MORTGAGED.** Owner does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Trustee, its successors and assigns, for the benefit of Mortgagee and its successors and assigns and to the following property, rights, interests and estates now owned, or hereafter acquired by Owner (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (collectively, the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Owner for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Owner of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Owner, or in which Owner has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Owner, or in which Owner has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the “**Personal Property**”), and the right, title and interest of Owner in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “**Uniform Commercial Code**” or “**UCC**”), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Owner of any petition for relief under any Creditors Rights Laws (collectively, the

“Leases”) and all right, title and interest of Owner, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Owner or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Owner and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Owner of any petition for relief under any Creditors Rights Laws (collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right, in accordance with the terms and provisions hereof, to receive and apply the Rents to the payment of the Obligations;

(g) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, subject to the terms hereof, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (collectively, the “Insurance Proceeds”);

(h) Condemnation Awards. Subject to the terms and provisions hereof, all condemnation awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property (collectively, the “Awards”);

(i) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Rights. The right, in the name and on behalf of Owner, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Owner therein and thereunder, including, without limitation, the right, upon the happening of any Event of Default hereunder, to receive and collect any sums payable to Owner thereunder;

(l) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All reserves, escrows and deposit accounts maintained by Owner with respect to the Property, including without limitation, the Accounts (as defined in the Cash Management Agreement) and all cash; checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(n) Derivatives Contracts. Any interest rate protection agreement entered into by Owner in connection with any Derivatives Contract (as defined in the Credit Agreement) including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing (individually or collectively, as the context may require, the "**Interest Rate Protection Agreement**");

(o) Letters of Credit. Any Letter of Credit issued for the account of Owner;

(p) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (o); and

(q) Other Rights. Any and all other rights of Owner in and to the items set forth in subsections (a) through (p) above.

**Section 1.2. SECURITY AGREEMENT**. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Owner in the Property. By executing and delivering this Security Instrument, Owner hereby grants to Mortgagee and Trustee, as security for the Obligations (hereinafter defined), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

**Section 1.3. FIXTURE FILING**. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.4. CONDITIONS TO GRANT**. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Mortgagee and to the use and benefit of Mortgagee and Trustee and their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Mortgagee and Secured Parties of the Obligations at the time and in the manner provided for its payment in the Note and the Credit Agreement, subject to Permitted Liens; PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagee shall be well and truly paid the Obligations at the time and

in the manner provided in the Note, the Credit Agreement, this Security Instrument, the other Loan Documents and the Specified Derivatives Contracts, these presents and the estate hereby granted shall cease, terminate and be void.

## **Article 2 – DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

### **Section 2.1. DEFINITIONS.**

For all purposes of this Security Instrument, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

**“Applicable Law”** shall mean all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Owner or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto.

**“Award”** shall have the meaning set forth in Section 1.1(h) hereof.

**“Borrower”** has the meaning given that term in the Recitals above.

**“Casualty”** shall have the meaning set forth in Section 9.2 hereof.

**“Condemnation”** shall mean a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

**“Credit Agreement”** shall have the meaning set forth in the Recitals.

**“Creditors Rights Laws”** shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

**“Environmental Indemnity”** shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Owner in connection with the Loans for the benefit of Mortgagee and each Secured Party, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Event of Default”** shall have the meaning set forth in Section 11.1 hereof.

**“Improvements”** shall have the meaning set forth in Section 1.1(c) hereof.

**“Indemnified Parties”** shall mean (a) Mortgagee and any Affiliate of Mortgagee, (b) each Secured Party, (c) any successor owners or holders of the Loans or participations in the

Loans pursuant to the Credit Agreement, (d) any investor or any prior investor in the Loans, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loans for the benefit of any investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business) in all cases whether during the term of the Loans or as part of or following a foreclosure of the Loans.

**“Insurance Proceeds”** shall have the meaning set forth in Section 1.1(g) hereof.

**“Land”** shall have the meaning set forth in Section 1.1(a) hereof.

**“Lease”** shall have the meaning set forth in Section 1.1(f) hereof.

**“License”** shall have the meaning set forth in Section 3.2 hereof.

**“Loans”** mean, individually and/or collectively, as the context may require, each Revolving Loan and each Swingline Loan.

**“Losses”** shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

**“Material Adverse Effect”** shall have the meaning assigned to such term in the Credit Agreement.

**“Obligations”** means, individually and collectively, (i) all indebtedness, liabilities, obligations, covenants and duties of Owner owing to the Mortgagee or any Lender of any kind, nature or description, under or in respect of the Guaranty or any other Loan Document to which Owner is a party, whether direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and including all interest (including, to the extent permitted by Applicable Law, interest, Fees and other amounts that would accrue and become due after the filing of a case or other proceeding under the Bankruptcy Code or other similar Applicable Law but for the commencement of such case or proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case or proceeding), (ii) any and all costs, fees (including attorneys' fees), and expenses which Owner is required to pay or has guaranteed pursuant to any of the foregoing, under Applicable law or otherwise and (iii) all Specified Derivatives Obligations of Owner.

**“Other Charges”** shall have the meaning set forth in Section 5.1(a) hereof.

**“Personal Property”** shall have the meaning set forth in Section 1.1(e) hereof.

**“Policies”** shall have the meaning specified in Section 6.8 hereof.

“**Property**” shall have the meaning set forth in Section 1.1 hereof.

“**REA**” shall mean, individually and/or collectively (as the context may require), each material reciprocal easement, covenant, condition and restriction agreement or similar material agreement affecting the Property (or any portion thereof) and any future material reciprocal easement or similar material agreement affecting the Property (or any portion thereof) entered into in accordance with the applicable terms and conditions hereof.

“**Rent Roll**” shall have the meaning set forth in Section 6.8 hereof.

“**Rents**” shall have the meaning set forth in Section 1.1(f) hereof.

“**Restoration Conditions**” shall have the meaning set forth in Section 9.3 hereof.

“**Security Instrument**” shall mean this Security Instrument (as defined in the Recitals), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Taxes**” shall have the meaning set forth in Section 5.1(a) hereof.

“**Tenant**” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Owner.

“**UCC**” or “**Uniform Commercial Code**” shall have the meaning set forth in Section 1.1(e) hereof.

“**Work Charge**” shall have the meaning set forth in Section 5.3(a) hereof.

**Section 2.2. PRINCIPLES OF CONSTRUCTION.** All references to sections, exhibits and schedules are to sections, exhibits and schedules in or to this Security Instrument unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

**Section 2.3. GENERAL DEFINITIONS.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word “Owner” shall mean “each Owner and any subsequent owner or owners of the Property or any part thereof or any interest therein,” the word “Mortgagee” shall mean “Mortgagee and any of Mortgagee’s successors and assigns,” the word “Note” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” “Trustee” shall mean “Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument, the word “Property” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees”, “legal fees” and “counsel fees” shall include any and all reasonable attorneys’, paralegal and law clerk fees and

disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee or any Secured Parties in protecting their interest in the Property, the Leases and the Rents and enforcing their rights hereunder.

### **Article 3 – ABSOLUTE ASSIGNMENT OF LEASES AND RENTS**

**Section 3.1.** ASSIGNMENT. Owner hereby irrevocably and absolutely assigns to Mortgagee and Trustee all of Owner's right, title and interest in, to and under all current and future Leases and Rents. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Property. The assignment of the Rents herein granted is not a pledge of Rents but is an absolute assignment of all rents, issues, profits, leases now or hereafter arising from the ownership, occupancy or use of the Property and is primary security for the Obligations and shall be effective from the date hereof and not just in the event of an Event of Default. The rights of Mortgagee to collect and receive the Rents assigned hereunder or to exercise any of the rights or powers herein granted to Mortgagee shall, to the extent not prohibited by law, extend from the date hereof through the filing of any suit to foreclose the lien of this Security Instrument, the obtaining of any judgment foreclosing the lien of this Security Instrument, and any period allowed by law for the redemption of the Property after any foreclosure sale.

**Section 3.2.** GRANT OF LICENSE. Mortgagee confers upon Owner a revocable license (the "License") to collect and retain the Rents as they become due and payable, until the occurrence of an Event of Default. Upon an Event of Default, the License shall be automatically revoked and Mortgagee or Trustee may collect and apply the Rents pursuant to the terms hereof without notice and without taking possession of the Property. All Rents thereafter collected by Owner shall be held by Owner as trustee under a constructive trust for the benefit of Mortgagee and the Secured Parties. Owner hereby irrevocably authorizes and directs the Tenants to rely upon and comply with any written notice or demand by Mortgagee or Trustee for the payment to Mortgagee or Trustee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the Tenants' undertakings under the Leases, and the Tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing. Owner hereby relieves the Tenants from any liability to Owner by reason of relying upon and complying with any such notice or demand by Mortgagee. Subject to the terms of the Loan Documents, Mortgagee may apply, in its sole discretion, any Rents so collected by Mortgagee against any Obligation. Collection of any Rents by Mortgagee or Trustee shall not cure or waive any Event of Default or notice of default or invalidate any acts done pursuant to such notice. If and when the Event of Default is cured by Borrower or waived by Mortgagee, Mortgagee or Trustee shall re-confer the License upon Owner until the occurrence of another Event of Default.

**Section 3.3.** EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) prior to Mortgagee taking title to the Property, responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) prior to Mortgagee taking title to the Property, responsible or liable for any waste committed on the Property by the



Tenants or by any other parties or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) prior to Mortgagee taking title to the Property, responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Owner or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) prior to Mortgagee taking title to the Property, the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Owner arising under the Leases.

#### **Article 4 – OBLIGATIONS SECURED**

**Section 4.1.** OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations.

**Section 4.2.** PERFORMANCE OF OBLIGATIONS. Owner shall perform its Obligations at the time and in the manner provided in this Security Instrument and the other Loan Documents to which it is a party.

**Section 4.3.** INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in the Guaranty and all and any of the other Loan Documents to which Owner is a party, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### **Article 5 – PROPERTY COVENANTS**

Owner covenants and agrees that:

**Section 5.1.** TAXES AND OTHER CHARGES.

(a) Owner shall pay all real estate and personal property taxes, assessments, water rates or sewer rents (collectively “**Taxes**”), ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property (collectively, “**Other Charges**”), now or hereafter levied or assessed or imposed against the Property or any part thereof in accordance with the Credit Agreement and this Security Instrument. At Mortgagee’s request, Owner shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent. Subject to the terms of Section 7.6 of the Credit Agreement, Owner shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property (or any portion thereof), and shall promptly pay for all utility services provided to the Property (or any portion thereof).

(b) Owner, at its own cost and expense, may contest Taxes and Other Charges in accordance with Section 7.6 of the Credit Agreement.

**Section 5.2. WARRANTY OF TITLE.** Owner has good and insurable title to the Property, subject to Permitted Liens, and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, subject to Permitted Liens. Owner possesses an unencumbered fee simple absolute estate in the Land and the Improvements except for the Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. Owner shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Mortgagee against the claims of all Persons whomsoever.

**Section 5.3. PAYMENT FOR LABOR AND MATERIALS.** (a) Subject to Section 5.3(b) below, Owner shall pay (or cause to be paid) all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (each, a “**Work Charge**”) in accordance with the Credit Agreement.

(b) Owner, at its own expense, may contest any Work Charge in accordance with Section 7.6 of the Credit Agreement.

**Section 5.4. APPLICABLE LAWS.**

(a) Owner shall promptly comply and shall cause the Property to comply with all Applicable Laws in accordance with Section 7.2 of the Credit Agreement.

(b) Owner shall give prompt notice to Mortgagee of the receipt by Owner of any notice related to a material violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws, if such violation, proceeding or investigation, if adversely determined, will result in a Material Adverse Effect or will otherwise result in a material adverse effect on the use, value or operation of the Property.

**Section 5.5. MAINTENANCE AND USE OF PROPERTY.** Owner shall cause the Property to be maintained in accordance with Section 7.3 of the Credit Agreement. The Improvements shall not be altered or demolished except in accordance with Section 9.16 of the Credit Agreement. The Personal Property shall not be removed (except for normal replacements thereof) without the consent of Mortgagee, except as set forth in Section 9.16 of the Credit Agreement. Owner shall promptly repair, replace or rebuild any part of the Property which may be damaged or destroyed by any casualty, or which may be affected by any proceeding of the character referred to in Section 6.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Owner shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, if such change would be reasonably likely to result in a Material Adverse Effect or would be reasonably likely to result in a material adverse effect on the use, value or operation of the Property. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Owner will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned if such discontinuance or abandonment would be reasonably likely to result in a Material Adverse Effect or would be reasonably likely to result in a material adverse effect on the use, value or operation of the Property without the express written consent of the Mortgagee.

**Section 5.6. WASTE.** Owner shall not commit any intentional physical waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that would give cause for cancellation of any Policy, or do or permit to be done thereon anything that would be reasonably likely to result in a Material Adverse Effect or would be reasonably likely to result in a material adverse effect on the use, value or operation of the Property. Owner will not, without the prior written consent of the Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 5.7. ACCESS TO PROPERTY.** Owner shall permit, not more often than one (1) time per calendar year unless an Event of Default exists, representatives and employees of Mortgagee to inspect the Property (in the presence of an officer of Owner if any Event of Default does not then exist), all at such reasonable times during business hours with reasonable prior notice and subject to the rights of Tenants. Owner shall be obligated to reimburse Mortgagee for its costs and expenses incurred in connection with the exercise of its rights under this Section only if such exercise occurs while an Event of Default exists.

**Section 5.8. AWARDS.** Owner shall reasonably cooperate with Mortgagee in obtaining for the benefit of Secured Parties the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Mortgagee shall be reimbursed for any expenses incurred in connection therewith (including reasonable, actual out-of-pocket attorneys' fees and disbursements, and the payment by Mortgagee of the expense of an appraisal on behalf of Owner in case of a Casualty or Condemnation affecting the Property or any part thereto) out of such Awards or Insurance Proceeds.

**Section 5.9. ESTOPPEL CERTIFICATES.**

(a) Owner shall use commercially reasonable efforts (without resorting to litigation) to deliver to Mortgagee for the benefit of Secured Parties, promptly upon request, duly executed estoppel certificates from any one or more Tenants, if any, as required by Mortgagee attesting to such facts regarding the Lease as Mortgagee may require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one (1) month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(b) Owner shall use commercially reasonable efforts (without resorting to litigation) to deliver to Mortgagee for the benefit of Secured Parties, upon request, estoppel certificates from each party under the REAs in form and substance reasonably acceptable to Mortgagee.

(c) Intentionally omitted.

(d) Notwithstanding the foregoing or anything to the contrary herein, (i to the extent that a particular Lease or REA provides for a specific form of estoppel, Mortgagee shall accept

such estoppel to satisfy this Section 5.9, (ii) Owner shall be required to deliver any estoppel pursuant to clauses (a) and (b) above only to the extent such estoppel is required to be delivered pursuant to such lease, or REA, as applicable, and (iii) Mortgagee shall not exercise its rights under this Section 5.9 more than one (1) time during each calendar year unless an Event of Default has occurred and is continuing.

**Section 5.10. LEASES AND RENTS.**

(a) Owner shall not be bound by or enter into any Lease (other than an Affiliate Office Lease (as defined in the Credit Agreement)) if such Lease does not satisfy the Leasing Guidelines (as defined in the Credit Agreement). Additionally, Owner shall not amend, restate, supplement or otherwise modify, or waive, any provision of (i) any Lease (other than an Affiliate Office Lease) if, after giving effect to such amendment, restatement, supplement, other modification or waiver, such Lease would fail to satisfy the Leasing Guidelines or (ii) any Material Lease without the prior written consent of the Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) Owner (i) shall observe and perform in all material respects the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall, subject to Owner's commercially reasonable discretion, enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner, provided, however, Owner shall not terminate or accept a surrender of a Material Lease without the Mortgagee's consent (which consent shall not be unreasonably withheld, conditioned or delayed); (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); and (v) shall hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Owner shall furnish Mortgagee with executed copies of all Leases.

(c) If requested by a tenant, Mortgagee shall provide a subordination, non-disturbance and attornment agreement on the form attached to the Credit Agreement, which shall be a form that Owner has used with its Tenants and which, among other things, recognizes Tenant's right to offset rent if Owner fails to pay allowances or perform tenant improvements.

**Section 5.11. NO JOINT ASSESSMENT.** Owner shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

**Section 5.12. REA COVENANTS.** Owner agrees that without the Mortgagee's prior written consent, Owner will not enter into any new REA or execute modifications to any existing REA if such new REA or such modifications will have a Material Adverse Effect or would be reasonably likely to result in a material adverse effect on the use, value or operation of the Property. Owner shall enforce in all material respects the terms and

conditions of each REA. Owner shall comply, and Owner shall use commercially reasonable efforts to cause each of the parties to each REA to comply, in all material respects with the terms and conditions contained in such REA. Mortgagee on behalf of the Secured Parties agrees to subordinate, in accordance with Section 2.17 of the Credit Agreement, the lien of this Security Instrument and the other Loan Documents to any new REA and/or amended REA, so long as any such new REA and/or amended REA is entered into pursuant to the terms of this Section 5.12.

**Section 5.13. MANAGEMENT OF PROPERTY.** Except as permitted by the terms and provisions of the Credit Agreement, Owner shall not (i) enter into any agreement providing for the management, leasing or operation of the Property (a “**Management Agreement**”), or (ii) otherwise cause the Property to be managed, in each case, without the prior written consent of the Mortgagee. In the event Owner enters into a Management Agreement, Owner and the manager thereunder shall execute an assignment of management agreement substantially in the form attached to the Credit Agreement.

**Section 5.14. INTENTIONALLY OMITTED.- REPRESENTATIONS AND WARRANTIES**

**Section 6.1. AUTHORITY; VALIDITY OF SECURITY INSTRUMENT; AGREEMENTS.** Owner hereby makes each of the representations and warranties made by Borrower in Sections 6.1(a), 6.1(c) – 6.1(f), 6.1(n) and 6.1(aa) of the Credit Agreement to the extent applicable to Owner.

**Section 6.2. INTENTIONALLY OMITTED.**

**Section 6.3. INTENTIONALLY OMITTED.**

**Section 6.4. INTENTIONALLY OMITTED.**

**Section 6.5. STATUS OF PROPERTY.**

(a) Owner has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business, except where the failure to have obtained such certificates, licenses and other approvals would not be reasonably likely to result in a Material Adverse Effect, and Owner has obtained all required zoning, building code, land use, environmental and other similar permits or approvals, except where the failure to have obtained such certificates, licenses and other approvals would not be reasonably likely to result in a Material Adverse Effect, all of which are in full force and effect in all material respects as of the date hereof and not subject to revocation, suspension, forfeiture or modification unless such revocation, suspension, forfeiture or modification would not be reasonably likely to result in a Material Adverse Effect.

(b) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable REAs, zoning ordinances, building codes, land use laws, and other similar Applicable Laws, except where the failure to be in compliance would not be reasonably likely to result in a Material Adverse Effect.

(c) The Property is served by all utilities required for the current use thereof, except for intermittent interruptions in service which do not have a Material Adverse Effect.

(d) The Property is served by water and sewer systems, except for intermittent interruptions in service which do not have a Material Adverse Effect.

(e) The Property has either direct access to a public road or street or access to a public road or street by virtue of a perpetual easement or similar agreement inuring in favor of Owner and any subsequent owners of the Property, except for intermittent interruptions to such access which do not have a Material Adverse Effect.

(f) The Property is free from material damage caused by fire or other casualty as of the Agreement Date. Except as set forth in the property condition reports delivered to Mortgagee or otherwise disclosed to Mortgagee, to Owner's knowledge, (a) the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, is in working condition, order and repair in all material respects, (b) there exists no structural or other material defects or damages in the Property, whether latent or otherwise, the presence of which would be reasonably likely to result in a Material Adverse Effect, and (c) Owner has not received notice from any insurance company or bonding company of any material defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(g) Except (i) for Permitted Liens, (ii) as set forth in lender's policies of title insurance issued to Mortgagee for the benefit of the Secured Parties in connection with the closing of the transactions contemplated by the Loan Documents (or as may have been removed from such title policies as a result of any indemnity or other undertaking by any Person), and (iii) as otherwise disclosed to Mortgagee, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents, except for liens which have been insured over in the lender's policies of title insurance issued to Mortgagee for the benefit of the Secured Parties or are being contested in accordance with Section 7.6 of the Credit Agreement.

(h) Owner is the owner, lessee or licensee of, all furnishings, fixtures and equipment (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by the Credit Agreement, the Note, this Security Instrument, the Guaranty and the other Loan Documents and the Permitted Liens.

(i) Except as shown on the survey delivered to Mortgagee or as otherwise disclosed to Mortgagee in writing, no portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Owner has obtained and will maintain flood insurance in accordance with the terms of the Credit Agreement. Except as shown on the survey delivered to Mortgagee

or as otherwise disclosed to Mortgagee in writing, to Mortgagor's actual knowledge, no part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(k) Except (i) as set forth on the survey delivered to Mortgagee, (ii) for any items insured over in the lender's policies of title insurance issued to Mortgagee for the benefit of the Secured Parties or (iii) otherwise disclosed to Mortgagee in writing, to Owner's knowledge, all the Improvements lie within (x) the boundaries of the Land and any easements appurtenant thereto and (y) any building restriction lines applicable to the Land.

(l) To Owner's knowledge, there are no pending or proposed special or other material assessments for public improvements or otherwise affecting the Property that would materially increase the Taxes and Other Charges payable with respect to the Property.

**Section 6.6.** CONDEMNATION. No Condemnation or other proceeding has commenced or, to Owner's knowledge, is threatened or contemplated with respect to all or any material portion of the Property as of the Agreement Date or for the relocation of the access to the Property which relocation would be reasonably likely to result in a Material Adverse Effect.

**Section 6.7.** SEPARATE LOTS. Except as set forth in the survey and the tax bills delivered to Mortgagee, to Owner's knowledge, the Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, except where the failure of the Property to be independently and separately assessed for real estate tax purposes would not be reasonably likely to result in a Material Adverse Effect, and except as set forth in the survey and the tax bills delivered to Mortgagee in connection with the origination or the Loan, to Owner's knowledge, no other land or improvements is assessed and taxed together with the Property or any portion thereof, except where the assessment or taxation of other land or improvements with the Property or any portion thereof would not be reasonably likely to result in a Material Adverse Effect.

**Section 6.8.** INSURANCE. Owner has obtained and has delivered to Mortgagee certificates of insurance evidencing the insurance policies (collectively, the "**Policies**") reflecting the insurance coverages, amounts and other requirements set forth in Section 7.5 of the Credit Agreement. As of the Agreement Date, there are no present claims of any material nature under any of the Policies, and to Owner's knowledge, no Person, including Owner, has done, by act or omission, anything which would impair the coverage of any of the Policies.

**Section 6.9.** USE OF PROPERTY. The Property is used exclusively as a regional shopping mall and other appurtenant and related uses. Owner shall not change the use of the Property as a regional shopping center without the Mortgagee's consent.

**Section 6.10.** LEASE AND RENT ROLL. Except (x) as disclosed in the rent roll for the Property delivered to Mortgagee on or before the Agreement Date (the "**Rent Roll**"), (y) as disclosed in the accounts receivable aging report delivered to Mortgagee on or before the Agreement Date, or (z) as otherwise set forth in any tenant estoppel certificates delivered to

Mortgagee on or before the Agreement Date, as of the Agreement Date, (a) Owner is the sole owner of the entire lessor's interest in the Tenant Leases (as defined in the Credit Agreement); (b) to Owner's knowledge, the Tenant Leases are valid and enforceable and in full force and effect; (c) all of the Tenant Leases are arms-length agreements with bona fide, independent third parties (other than any Affiliate Office Lease); (d) no landlord under any Tenant Lease is in material default and, to Owner's knowledge, no Tenant under any Tenant Lease is in material default; (e) none of the Rents reserved in the Tenant Leases have been assigned or otherwise pledged or hypothecated (other than in connection with prior financings, all of which assignments shall be released and terminated on the date hereof); (f) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (g) there are no material agreements with the Tenants under the Tenant Leases other than expressly set forth in each Tenant Lease; (h) except as set forth in the Tenant Leases, no Tenant Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to lease additional space at the Property, or any other similar provision; and (i) no Tenant under a Material Lease is, to Owner's actual knowledge, a debtor in any state or federal bankruptcy or insolvency proceeding.

**Section 6.11. FILING AND RECORDING TAXES.** All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Credit Agreement, this Security Instrument, the Note, the other Loan Documents and the Specified Derivatives Contracts, including, without limitation, this Security Instrument, if any, have been paid or will be paid, and, under current Legal Requirements, this Security Instrument is enforceable in accordance with its terms by Mortgagee (or any subsequent holder thereof) on behalf of the Lender, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditor's Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 6.12. ILLEGAL ACTIVITY/FORFEITURE.**

(a) To Owner's actual knowledge, no portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to Owner's actual knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

(b) To Owner's actual knowledge, there has not been committed by Owner or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Owner's obligations under the Credit Agreement, the Note, the Guaranty, this Security Instrument, the other Loan Documents or the Specified Derivatives Contracts. Owner hereby covenants and agrees not to commit or permit any act or omission affording such right of forfeiture.

**Section 6.13. INTENTIONALLY OMITTED.**



**Section 6.14. FRAUDULENT CONVEYANCE.** Neither Owner, Borrower nor any other Guarantor (a) has entered into the Loans or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) not received reasonably equivalent value in exchange for its obligations under the Loan Documents as of the Agreement Date.

**Section 6.15. REA REPRESENTATIONS.** Except as disclosed in any estoppel certificate delivered to Mortgagee in connection with any REA or otherwise disclosed to Mortgagee in writing, to Owner's knowledge, each REA is in full force and effect in all material respects and neither Owner nor, to Owner's knowledge, any other party to any REA, is in material default thereunder.

**Section 6.16. INTENTIONALLY OMITTED.**

### **Article 7- FURTHER ASSURANCES**

**Section 7.1. COMPLIANCE WITH GUARANTY.** Owner shall comply with all covenants set forth in the Guaranty relating to acts or other further assurances to be made on the part of Owner in order to protect and perfect the lien or security interest hereof upon, and in the interest of Mortgagee in the Property.

**Section 7.2. AUTHORIZATION TO FILE FINANCING STATEMENTS; POWER OF ATTORNEY.** Owner hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property and as necessary or required in connection herewith. For purposes of such filings, Owner agrees to furnish any information reasonably requested by Mortgagee promptly upon request by Mortgagee. Owner also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. Owner hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Owner or in Owner's own name to execute in Owner's name any such documents and otherwise to carry out the purposes of this Section 7.2, to the extent that Owner's authorization above is not sufficient and Owner fails or refuses to promptly execute such documents. This power of attorney is a power coupled with an interest and shall be irrevocable. Owner shall not be required to incur any cost or expense (other than to a de minimis extent) in performing its obligations under this Section 7.2 and no instruments or agreements executed or delivered in connection with this Section 7.2 shall increase the obligations, or decrease the rights, of Owner under the Loan Documents.

**Section 7.3. REPLACEMENT DOCUMENTS.** Upon receipt of an affidavit and indemnity of an officer of Mortgagee or any Lender as to the loss, theft, destruction or mutilation of the Note, this Security Instrument or any of the other Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note, this Security Instrument or such other Loan Document, Owner will issue, at Lender's sole cost and expense, in lieu thereof, an identical replacement thereof, dated the date of the Note, this Security Instrument or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

**Section 7.4. RECORDING OF SECURITY INSTRUMENT.**

(a) Owner forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Mortgagee, for the benefit of Lenders, in, the Property. Owner will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Guaranty, this Security Instrument, the Credit Agreement, the other Loan Documents, the Specified Derivatives Contracts, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by Applicable Law so to do.

(b) Subject to the terms of Section 7.6(c) herein, if at any time Mortgagee determines, based on Applicable Law, that Lenders are not being afforded the maximum amount of security available from the Property as a direct or indirect result of applicable taxes not having been paid with respect the Property, Owner agrees that Owner will execute, acknowledge and deliver to Mortgagee, immediately upon Mortgagee's request, supplemental affidavits increasing the amount of the Obligations attributable to the Property to an amount determined by Mortgagee to be equal to the lesser of (i) the greater of the fair market value of the Property (1) as of the date hereof and (2) as of the date such supplemental affidavits are to be delivered to Mortgagee, and (ii) the amount of the Obligations attributable to the Property, and Owner shall, on demand, pay any additional taxes.

**Section 7.5. FURTHER ACTS, ETC.** Owner will, at the cost of Owner, and without expense to Mortgagee or any Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as are necessary for assuring, conveying, assigning, transferring, and confirming unto Lenders and/or Mortgagee, for the benefit of Lenders, the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Owner may be or may hereafter become bound to convey or assign to Lenders and/or Mortgagee, for the benefit of Lenders, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Owner hereby authorizes Mortgagee to file one or more financing statements to evidence more effectively the security interest of Lenders in the Property. To the extent Owner fails or refuses to promptly perform such further acts as required by Mortgagee for the benefit of Lenders, Owner grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee and Lenders pursuant to this Section 7.5.

**Section 7.6. CHANGES IN TAX, OBLIGATIONS, CREDIT AND DOCUMENTARY STAMP LAWS.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in the Property, Owner will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Owner would be unlawful or taxable to Mortgagee or Lenders or unenforceable or provide the basis for a defense of usury then Mortgagee shall have the option by written notice of not less than one hundred twenty (120) days to declare the portion of the Obligations affected thereby immediately due and payable without the payment of any fee, premium or penalty.

(b) Owner will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by Applicable Law, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the portion of the Obligations affected thereby immediately due and payable without the payment of any fee, premium or penalty.

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Guaranty, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Owner will pay for the same, with interest and penalties thereon, if any. In furtherance of the preceding sentence, Mortgagee (on behalf of itself and the Secured Parties) agrees to cooperate with Owner and the other Loan Parties to minimize any such mortgage taxes which may be or become payable with respect to this Security Instrument, the Note or any other Loan Documents, as the same maybe amended from time to time, which cooperation shall include, without limitation, limiting the amount of the Obligations secured by this Security Instrument and/or reallocating a portion of the Obligations secured by this Security Instrument to the Obligations secured by the security instruments encumbering the other Mortgaged Properties.

**Article 8 – DUE ON SALE/ENCUMBRANCE**

**Section 8.1. NO SALE/ENCUMBRANCE.** Except in accordance with the express terms and conditions contained in the Credit Agreement, this Security Instrument and the other Loan Documents, Owner shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Owner, any constituent owner or other holder of a direct or indirect equity interest in Owner, any indemnitor or other guarantor of the Loans, any constituent owner or other holder of a direct or indirect equity interest in such indemnitor or guarantor, any manager or operating lessee of the Property that is affiliated with Owner or any constituent

owner or other holder of a direct or indirect equity interest in such manager or such operating lessee.

## Article 9 – INSURANCE

**Section 9.1.** INSURANCE. Owner shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Owner and the Property as required pursuant to the Credit Agreement and this Security Instrument.

**Section 9.2.** CASUALTY/CONDEMNATION.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), Owner shall give prompt notice of such damage to Mortgagee.

(b) Owner shall promptly give Mortgagee notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property (or any portion thereof) of which Owner has knowledge and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. At its election, Mortgagee may participate in any such proceedings, and Owner shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. If the Property (or any portion thereof) is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee, for the benefit of Lenders, of the Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof.

**Section 9.3.** PROCEEDS DISTRIBUTION. The following provisions shall apply in connection with the restoration of the Property:

(a) Application of Proceeds. After deducting from the insurance proceeds received in connection with a casualty (exclusive of proceeds of business interruption insurance which shall in all cases be paid in accordance with the terms of the Cash Management Agreement) all of its out-of-pocket expenses incurred in the collection and administration of such sums, including reasonable attorneys’ fees (the “**Net Proceeds**”), Mortgagee shall apply the Net Proceeds or any part thereof:

(i) upon the written request of Owner, towards the restoration of the Property provided that the following conditions (the “**Restoration Conditions**”) are met to the reasonable satisfaction of Mortgagee:

(1) in Mortgagee’s judgment, the Property can with diligent restoration, be returned to a condition at least equal to the condition thereof that existed prior to the casualty within the earlier to occur of (x) 18 months after the occurrence of the casualty or (y) sixty (60) days prior to the Revolving Termination Date;

(2) no Event of Default shall have occurred and be continuing;

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property;

(4) there are sufficient sums available (through Net Proceeds and contributions by Owner, the full amount of which shall, at Mortgagee's option, have been deposited with Mortgagee) for restoration or repair; and

(5) any Tenant of any Material Lease affected by such casualty either (x) does not have or has waived the right to terminate its Material Lease, or (y) has reaffirmed such Material Lease and its obligations thereunder (in either case subject to completion of the restoration);

(ii) if the Restoration Conditions are not satisfied, to the payment of the Obligations, whether or not due and as provided in Section 10.5 of the Credit Agreement or for any other purposes or objects for which Agent is expressly entitled to advance or apply funds under the Loan Documents; and

(iii) all without affecting the Lien of this Security Instrument, any balance of such moneys then remaining after restoration of the Property shall be paid to Owner or whomever may be legally entitled thereto. Mortgagee and the other Lenders shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(b) Notwithstanding anything herein to the contrary, if (i) the Property can be restored to a condition at least equal to the condition thereof that existed prior to the casualty within less than 12 months after the occurrence of the casualty and at least three (3) months prior to the Revolving Termination Date, (ii) the cost of restoration is less than fifteen percent (15%) of the Appraised Value of the Property, and (iii) no Event of Default has occurred and is continuing, then any applicable insurance proceeds shall be paid directly to Owner; provided however, that at the option of Owner, after providing notice to Mortgagee, such insurance proceeds shall be applied to the restoration of the Property or to payment of the Obligations.

#### **Article 10 – PREPAYMENT; RELEASE OF PROPERTY**

**Section 10.1. PREPAYMENT.** The Obligations may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Credit Agreement.

**Section 10.2. RELEASE OF PROPERTY.** Owner shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Credit Agreement.

## Article 11 – DEFAULT

**Section 11.1.** EVENT OF DEFAULT. The term “**Event of Default**” as used in this Security Instrument, shall mean the occurrence of an Event of Default under the Credit Agreement or any other Loan Document.

## Article 12 – RIGHTS AND REMEDIES UPON DEFAULT

**Section 12.1.** REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Owner agrees that Mortgagee may or acting by or through Trustee may, on the terms set forth in the Credit Agreement, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Owner and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee or Trustee:

- (a) declare the outstanding Obligations to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Owner therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Guaranty, the Credit Agreement or in the other Loan Documents;
- (f) recover judgment on the Guaranty either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Owner, any guarantor or indemnitor under the Loans or any other Person liable for the payment of the Obligations;

(h) the license granted to Owner under Section 3.2 hereof shall automatically be revoked and Mortgagee may enter into or upon the Property, subject to the rights of Tenants, either personally or by its agents, nominees or attorneys and dispossess Owner and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Owner and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Owner agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Owner with respect to the Property, whether in the name of Owner or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Owner to pay monthly in advance to Mortgagee or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Owner; (vi) require Owner to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Owner may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, counsel, agents and employees;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Credit Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Security Instrument;

(j) surrender the insurance policies maintained pursuant to the Credit Agreement and this Security Instrument, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Obligations in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Owner hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Owner to collect such insurance premiums;

(k) subject to the rights of Tenants, apply the undisbursed balance of any deposit made by Owner with Mortgagee in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion; and/or

(l) pursue such other remedies as Mortgagee and Lenders may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default shall have occurred and be continuing, the entire amount of the outstanding Obligations shall be automatically due and payable, without any further notice, demand or other action by Mortgagee or Secured Parties.

**Section 12.2. APPLICATION OF PROCEEDS.** The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Mortgagee for its own account or for the account of Secured Parties pursuant to the Note, the Credit Agreement, this Security Instrument, the other Loan Documents or the Specified Derivatives Contracts, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as set forth in the Credit Agreement or otherwise determined by Secured Parties.

**Section 12.3. RIGHT TO CURE DEFAULTS.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Owner and without releasing Owner from any obligation hereunder, make any payment or do any act required of Owner hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee or Trustee is authorized, subject to the rights of Tenants, to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 12.3, shall constitute a portion of the Obligations and shall be due and payable to Mortgagee within ten (10) days following demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding, shall bear interest at the otherwise applicable interest rate for Base Rate Loans under the Credit Agreement, including any interest accruing at the Post Default Rate thereupon for the period after demand by Mortgagee for the payment of such cost or expense by Owner. All such costs and expenses incurred by Mortgagee or Trustee together with interest thereon calculated in accordance at the otherwise applicable interest rate for Base Rate Loans under the Credit Agreement, including any interest accruing at the Post Default Rate thereupon shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

**Section 12.4. ACTIONS AND PROCEEDINGS.** Mortgagee or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Owner, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

**Section 12.5. RECOVERY OF SUMS REQUIRED TO BE PAID.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute



a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Owner existing at the time such earlier action was commenced.

**Section 12.6. OTHER RIGHTS, ETC.** (a) The failure of Mortgagee or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Owner shall not be relieved of Owner's obligations hereunder by reason of (i) the failure of Mortgagee or Trustee to comply with any request of Owner or any guarantor or indemnitor with respect to the Loans to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Guaranty or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee and/or Lenders extending the time of payment or otherwise modifying or supplementing the terms of the Guaranty, this Security Instrument or the other Loan Documents. It is agreed that the risk of loss or damage to the Property is on Owner, and Mortgagee and Secured Parties shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Credit Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(b) Mortgagee may resort for the payment of the Obligations to any other security held by Mortgagee in such order and manner as set forth in the Credit Agreement or as otherwise determined by Secured Parties. Mortgagee or Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee or Trustee thereafter to foreclose this Security Instrument. The rights of Mortgagee or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Mortgagee nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 12.7. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY.** Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 12.8. INTENTIONALLY OMITTED.**

**Section 12.9. BANKRUPTCY.** (a) Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Owner in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Owner, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. If there shall be filed by or against Owner a petition under the Bankruptcy Code and Owner, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Owner shall give Mortgagee not less than ten (10) days' prior notice of the date on which Owner shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Owner within such ten-day period a notice stating that (i) Mortgagee demands that Owner assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Owner the notice described in the preceding sentence, Owner shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

**Section 12.10. 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 Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the 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 Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment, performance and discharge of the Obligations.

### **Article 13 – ENVIRONMENTAL HAZARDS**

**Section 13.1. ENVIRONMENTAL COVENANTS.** Owner has provided representations, warranties and covenants regarding environmental matters set forth in the Environmental Indemnity and Owner shall comply with the aforesaid covenants regarding environmental matters.

### **Article 14 – INDEMNIFICATIONS**

**Section 14.1. GENERAL INDEMNIFICATION.** Owner shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) the failure of Owner to perform any obligations as and when required by this Security Instrument; (b) any failure at any time of any of Owner's representations or warranties made under this Security Instrument to be true and correct; (c) any act or omission by Owner, any Affiliate of Owner, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Property or Improvements; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part

thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) any failure of the Property or any part thereof to be in compliance with any applicable Legal Requirements; (h) any and all claims and demands whatsoever which may be asserted against Lender 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 Lease; and/or (i) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loans; provided, however, that Owner shall not be obligated to indemnify any Indemnified Party for any acts or omissions of such Indemnified Party in connection with matters described in this subsection to the extent arising from the (1) bad faith, gross negligence or willful misconduct of such Indemnified Party, or (2) material breach by an Indemnified Party of this Security Instrument, in the case of each of (1) and (2), as determined by a court of competent jurisdiction in a final, non-appealable judgment. Any amounts payable to Indemnified Parties by reason of the application of this Section 14.1 shall become immediately due and payable and Owner shall bear interest at the otherwise applicable interest rate for Base Rate Loans under the Credit Agreement, including any interest accruing at the Post Default Rate from the date loss or damage is sustained by Indemnified Parties until paid. Owner will reimburse each Indemnified Party for all out-of-pocket expenses (including reasonable attorneys' fees, expenses and charges) within thirty (30) days following a written demand (together with invoices or other customary backup documentation supporting such reimbursement request) as they are incurred in connection with any of the foregoing.

**Section 14.2. MORTGAGE AND INTANGIBLE TAX INDEMNIFICATION.**

Owner shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents.

**Article 15– INTENTIONALLY OMITTED**

**Article 16 – WAIVERS**

**Section 16.1. MARSHALLING AND OTHER MATTERS.** Owner hereby waives, to the extent permitted by law, the benefit of all Applicable Laws now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Owner hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Owner, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Applicable Laws.

**Section 16.2. WAIVER OF NOTICE.** Owner shall not be entitled to any notices of any nature whatsoever from Mortgagee or Trustee except with respect to matters for which this Security Instrument or the Credit Agreement specifically and expressly provides for the giving of notice by Mortgagee or Trustee to Owner and except with respect to matters for which Owner is not permitted by Applicable Laws to waive its right to receive notice, and Owner hereby expressly waives the right to receive any notice from Mortgagee or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee or Trustee to Owner.

**Section 16.3. REMEDIES CUMULATIVE; WAIVERS.** The rights, powers and remedies of Mortgagee and Lenders under this Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Mortgagee and Lenders may have against Owner pursuant to the Credit Agreement, this Security Instrument, the Guaranty, the Specified Derivatives Contracts or the other Loan Documents, or existing at law or in equity or otherwise. Mortgagee's and Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Mortgagee and Lenders may determine in their sole discretion. No delay or omission to exercise any remedy, right or power accruing upon the occurrence and during the continuance of an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Event of Default with respect to Owner shall not be construed to be a waiver of any subsequent Event of Default by Owner or to impair any remedy, right or power consequent thereon.

**Section 16.4. DISCRETION OF MORTGAGEE.** Whenever pursuant to this Security Instrument, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the reasonable discretion of Mortgagee and shall be final and conclusive.

**Section 16.5. WAIVER OF TRIAL BY JURY.** TO THE EXTENT PERMITTED BY LAW, OWNER, MORTGAGEE AND SECURED PARTIES EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY OWNER, MORTGAGEE AND SECURED PARTIES, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDERS, MORTGAGEE AND OWNER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY OWNER, MORTGAGEE AND LENDERS.

**Section 16.6. WAIVER OF FORECLOSURE DEFENSE.** Owner hereby waives any defense Owner might assert or have by reason of Mortgagee's failure to make any tenant or

lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Mortgagee.

**Section 16.7. MODIFICATION, WAIVER IN WRITING.** No modification, amendment, extension, discharge, termination or waiver of any provision of the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, nor consent to any departure by Owner therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein or in the other Loan Documents, no notice to, or demand on Owner, shall entitle Owner to any other or future notice or demand in the same, similar or other circumstances.

**Section 16.8. REMEDIES OF OWNER.** In the event that a claim or adjudication is made that Mortgagee, any Secured Party or any of their agents have acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under the this Security Instrument, such Secured Party, Mortgagee or such agent, as the case may be, has an obligation to act reasonably or promptly, Owner agrees that Mortgagee, Secured Parties and their agents shall not be liable for any monetary damages, and Owner's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Mortgagee or any Secured Party has acted reasonably shall be determined by an action seeking declaratory judgment. Mortgagee and Secured Parties agree that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

**Section 16.9. WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by applicable Legal Requirements, Owner hereby expressly waives and releases to the fullest extent permitted by Applicable Law, the pleading of any statute of limitations as a defense to payment and performance of the Obligations and performance of its obligations hereunder.

**Section 16.10. WAIVER OF COUNTERCLAIM.** Owner hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Mortgagee or Trustee, any Lender or any of their agents in connection with the performance of Owner's obligations hereunder.

#### **Article 17 – NOTICES**

**Section 17.1. NOTICES.** All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Credit Agreement.

#### **Article 18 – APPLICABLE LAW**

**Section 18.1. GOVERNING LAW.** (A) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND MADE BY OWNER AND ACCEPTED BY MORTGAGEE, FOR THE BENEFIT OF SECURED PARTIES, IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION

EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED AND EXCEPT INsofar AS MANDATORY APPLICABLE LAW PROVISIONS OF THE UCC WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION WITH RESPECT TO THE EFFECT OF THE PERFECTION OR NON-PERFECTION OR PRIORITY WITH RESPECT TO ANY SECURITY INTEREST CREATED PURSUANT HERETO, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

**(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE, SECURED PARTIES OR OWNER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND OWNER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND OWNER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.**

**Section 18.2. PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## Article 19 – MISCELLANEOUS PROVISIONS

**Section 19.1.** NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Owner, Mortgagee or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 19.2.** SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Owner, Mortgagee and their respective successors and assigns forever.

**Section 19.3.** INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Credit Agreement, the Note, this Security Instrument or any other Loan Document is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed without such provision.

**Section 19.4.** HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 19.5.** NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 19.6.** ENTIRE AGREEMENT. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Security Instrument and the other Loan Documents.

**Section 19.7.** LIMITATION ON MORTGAGEE'S RESPONSIBILITY. No provision of this Security Instrument shall operate to, prior to Mortgagee taking title to the Property, place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

**Section 19.8.** SURVIVAL. This Security Instrument and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lenders of the Loans and the execution and delivery to Lenders of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless the Property shall be released from the lien of this Security Instrument in accordance with the Credit Agreement. Upon the indefeasible repayment



in full of the obligations and the release of the Property from the lien of this Security Instrument in accordance with the Credit Agreement, this Security Agreement shall automatically terminate and be of no further force and effect, and upon request by Owner, Mortgagee shall execute and deliver to Owner such documents and instruments as are necessary to release and terminate this Security Instrument.

**Section 19.9. COST OF ENFORCEMENT.** In the event (a) that this Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Owner or any of its constituent Persons or an assignment by Owner or any of its constituent Persons for the benefit of its creditors, or (c) any Secured Party and/or Mortgagee exercises any of their other remedies under the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, Owner shall be chargeable with and agrees to pay all actual, documented, reasonable, out-of-pocket costs of collection and defense, including attorneys' fees and costs, incurred by Mortgagee, any Secured Party and Owner in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes; provided, however, Mortgagee and the other Secured Parties shall use good faith efforts to use a single outside counsel for all Secured Parties (including Mortgagee) taken as a whole, with exceptions in the case of conflicts of interest, and in all cases the total legal fees of all counsel representing the Secured Parties, including the Mortgagee, must be reasonable taken as a whole, taking into account the nature of the matter or proceeding involved, and in the case of multiple counsel, the necessity of the same. Any amounts payable to Mortgagee and any Secured Party pursuant to this Section 19.9 shall become due and payable within ten (10) days following written demand therefor and shall bear interest at the Base Rate from the date of such demand until the date such amounts have been paid.

**Section 19.10. OFFSETS, COUNTERCLAIMS AND DEFENSES.** Any assignee of Lenders' interest in and to the Credit Agreement, this Security Instrument, the Guaranty, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Owner may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Owner in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Owner.

**Section 19.11. LIABILITY.** If Owner consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Owner, Mortgagees and Secured Parties and their respective successors and assigns forever.

**Section 19.12. DUPLICATE ORIGINALS; COUNTERPARTS.** This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.



**Section 19.13. ATTORNEYS'S FEES.** Whenever under this Security Instrument or any other Loan Document, any Indemnified Party has the right to (i) retain legal counsel and (ii) require that Owner pay (or reimburse such Indemnified Party for) the costs, fees and expenses of such legal counsel, (A) such Indemnified Party shall use good faith efforts to use a single outside counsel with all Indemnified Parties taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction), with exceptions in the case of conflicts of interest, and (B) the total legal fees for all counsel representing the Indemnified Parties must be reasonable taken as a whole, taking into account the nature of the investigative, administrative or judicial proceeding or hearing involved and, in the case of multiple counsel, the necessity of the same.

## **Article 20 –DEED OF TRUST PROVISIONS**

**Section 20.1. CONCERNING THE TRUSTEE.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Owner and to Mortgagee. Mortgagee may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Mortgagee may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Mortgagee. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

**Section 20.2. TRUSTEE'S FEES.** Owner shall pay all actual, reasonable, out-of-pocket costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

**Section 20.3. CERTAIN RIGHTS.** With the approval of Mortgagee, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Mortgagee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not

regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Mortgagee may instruct Trustee to take to protect or enforce Mortgagee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

**Section 20.4.** RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 20.5.** PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Owner by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Owner.

**Section 20.6.** SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Mortgagee or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

## Article 21 – STATE-SPECIFIC PROVISIONS

**Section 21.1.** INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 21 of this Security Instrument and any other terms of this Security Instrument, the terms and conditions of this Article 21 shall control and be binding.

**Section 21.2.** POWER OF SALE. (a) Time is of the essence hereof. Upon the occurrence and during the continuance of an Event of Default the Obligations shall immediately become due and payable and Mortgagee may execute or cause Trustee to execute a

written notice of default and of election to cause the Property to be sold to satisfy the Obligations (the “**Notice of Default**”), and Trustee shall file the Notice of Default for record in each court wherein the Property or some part or parcel thereof is situated. Mortgagee shall also deposit with Trustee the Guaranty and all other documents evidencing the Obligations.

(b) After the lapse of such time as may then be required by Applicable Law following the recordation of the Notice of Default, any Notice of Default and notice of sale (the “**Notice of Sale**”) having been given, as then required by Applicable Law, Trustee, without demand on Owner, shall sell the Property on the date and at the time and place designated in Notice of Sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Owner to direct the order in which such property, or 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 they deem expedient, postpone the sale from time to time until it shall be completed and, in every 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 the time permitted by Applicable Law beyond the time designated in the Notice of Sale, notice thereof shall be given in the same manner as the original Notice of Sale. Trustee shall execute and deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof (absent manifest error) of the truthfulness thereof. Any person, including Mortgagee, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) reasonable, out of pocket, documented costs and expense of exercising the power of sale and of the sale, including the payment of the reasonable, out of pocket, documented Trustee’s and attorney’s fees; (2) reasonable, out of pocket, documented cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee’s Deed, if required; (3) all Obligations; and (4) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

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

(d) Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the option to the extent permitted by Applicable Law to declare the Obligations immediately due and payable and foreclose this Security Instrument in the manner provided by Applicable Law for the foreclosure of mortgages on real property and Mortgagee shall be entitled to recover in such proceedings all reasonable, documented, out of pocket costs and expenses incident thereto, including a reasonable attorney’s fee in such amount as shall be fixed by the court.

**Section 21.3. INSURANCE.** All references in this Security Instrument to “all risk” coverage shall provide insurance coverage to the same extent as specified in “special perils” coverage.

**Section 21.4.** QUALIFICATION OF TITLE INSURANCE COMPANY AS TRUSTEE. Should the "Trustee" as used throughout this Security Instrument, including without exception Article 20, 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 the Security Instrument 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.

## **Article 22– CROSS-COLLATERALIZATION**

### **Section 22.1.** CROSS-COLLATERALIZATION.

(a) Owner acknowledges that Mortgagee and Secured Parties have agreed to make the Loans and other financial accommodations contemplated by the Credit Agreement to Borrower upon security of the collective interest of Owner, Borrower and the other Loan Parties in, among other things, the Mortgaged Properties and in reliance upon the aggregate of the Mortgaged Properties taken together being of greater value as collateral security than the sum of each individual Mortgaged Property taken separately. Owner acknowledges that its Obligations are secured by this Security Instrument together with the obligations of the other Loan Parties under the other Loan Documents and the Specified Derivatives Contracts (collectively, the "**Other Loan Party Obligations**") being secured by those Other Security Instruments (as defined below) given by Loan Parties to Mortgagee for the benefit of Secured Parties, together with their respective Loan Documents securing or evidencing such Obligations, and encumbering the other individual Mortgaged Properties, all as more specifically set forth in the Credit Agreement. Owner agrees that each of the Loan Documents (including, without limitation, the Security Instruments) are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under this Security Instrument or any Other Security Instrument is an Event of Default under each of this Security Instrument and the Other Security Instruments; (ii) an Event of Default under any of the Loan Documents shall constitute an Event of Default under each of the other Loan Documents; (iii) each Security Instrument shall constitute security for the obligations of Loan Parties under the Loan Documents to which they are parties as if a single blanket lien were placed on all of the Mortgaged Properties as security for all such obligations; and (iv) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance and Owner waives any claims related thereto. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the Other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Obligations and/or Other Loan Party Obligations or the portion of the Obligations and/or Other Loan Party Obligations allocated to the Property in the Credit Agreement, and the lien and the security interest created by the Other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations and/or Other Loan Party Obligations then due and payable but still outstanding. Owner acknowledges and agrees that the Property and the other individual Mortgaged Properties are located in one or

more cities and/or counties, and therefore Mortgagee shall be permitted to enforce payment of the Obligations and/or Other Loan Party Obligations and the performance of any term, covenant or condition of the Note, the Guaranty, the Credit Agreement, this Security Instrument, the other Loan Documents or the Other Security Instruments and exercise any and all rights and remedies under the Note, the Guaranty the Credit Agreement, this Security Instrument, the other Loan Documents or the Other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Mortgagee, in its sole discretion, in any one or more of the cities or counties in which the Property or any other Individual Property is located. Neither the acceptance of this Security Instrument, the Notes, the Credit Agreement, the other Loan Documents or the Other Security Instruments nor the enforcement thereof in any one city or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Notes, the Credit Agreement, this Security Instrument, the other Loan Documents, or any Other Security Instruments through one or more additional proceedings in that city or county or in any other city or county. Any and all sums received by Mortgagee or Lenders under the Note, the Guaranty, the Credit Agreement, this Security Instrument, and the other Loan Documents shall be applied to the Obligations and/or the Other Loan Party Obligations in such order and priority as Agent shall determine, in its sole discretion, without regard to the Appraised Value of the Property or any individual Mortgaged Property. As used herein, the term “**Other Security Instruments**” shall mean all other Security Instruments (as defined in the Credit Agreement) securing any of the Other Loan Party Obligations.

(b) To the fullest extent permitted by law, Owner, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Owner, Owner’s partners and others with interests in Owner, and of the Mortgaged Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Security Instruments, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Mortgagee, on behalf of Secured Parties, under the Loan Documents to a sale of the Mortgaged Properties for the collection of the Obligations and/or the Other Loan Party Obligations without any prior or different resort for collection or of the right of Mortgagee, on behalf of Secured Parties, to the payment of the Obligations and/or the Other Loan Party Obligations out of the net proceeds of the Mortgaged Properties in preference to every other claimant whatsoever. In addition, Owner, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Security Instruments, any equitable right otherwise available to Owner which would require the separate sale of the Mortgaged Properties or require the Secured Parties to exhaust their remedies against any individual Mortgaged Property or any combination of the Mortgaged Properties before proceeding against any other individual Mortgaged Property or combination of Mortgaged Properties; and further in the event of such foreclosure Owner does hereby expressly consent to and authorize, at the option of Mortgagee, pursuant to the terms hereof, the foreclosure and sale either separately or together of any combination of the Mortgaged Properties.

**Article 23 –INTENTIONALLY OMITTED**

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, this Security Instrument has been executed by the undersigned as of the day and year first above written.

OWNER:

CACHE VALLEY, LLC, a Delaware limited liability company

By: [Signature]  
Name: Heath R. Fear  
Title: Authorized Officer

STATE OF Illinois  
COUNTY OF Cook

On this 12<sup>th</sup> day of January 2012, personally appeared before me Heath R. Fear, who being by me duly sworn (or affirmed), did say that he/she is the Authorized Officer of Cache Valley, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its \_\_\_\_\_ (or of a resolution of its board of directors, as the case may be) and said Authorized Officer, acknowledged to me that said limited liability company executed the same.

SEAL

[Signature: Sherri Bradberry]  
(Signature)  
My commission expires: 12/9/2012



**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of Logan, County of Cache, State of Utah, described as follows:

**PARCEL 1:**

A PART OF BLOCK 1, PLAT "D", LOGAN FARM SURVEY; BEGINNING AT A POINT LOCATED SOUTH ALONG THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 91, FROM THE NORTH LINE OF LOT 5, OF SAID BLOCK 1, SAID POINT BEING DESCRIBED IN A WARRANTY DEED, RECORDED IN BOOK 105 AT PAGE 437, AS BEING LOCATED 67.0 FEET SOUTH OF THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 91 AND THE SOUTH RIGHT-OF-WAY LINE OF 14TH NORTH STREET, AS NOW ESTABLISHED; SAID POINT OF BEGINNING BEING IN THE EAST RIGHT-OF-WAY LINE OF THE U.S. HIGHWAY 91 AND THE SOUTH RIGHT-OF-WAY OF 14TH NORTH STREET, AND RUNNING THENCE SOUTH 88° 24' 27" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE OF 14TH NORTH STREET 131.44 FEET; THENCE SOUTH 0° 55' 43" WEST 165.85 FEET; THENCE SOUTH 87° 04' 00" EAST 73.6 FEET; THENCE NORTH 00° 55' 43" EAST 167.6 FEET TO THE SOUTH LINE OF SAID 14TH NORTH STREET; THENCE SOUTH 88° 24' 27" EAST ALONG SAID SOUTH LINE 1037.43 FEET; THENCE SOUTH 1° 17' 35" WEST 122.10 FEET; THENCE SOUTH 88° 24' 27" EAST 124.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SECOND EAST STREET; THENCE SOUTH 1° 17' 35" WEST ALONG SAID WEST LINE 1000.66 FEET; THENCE NORTH 88° 54' 28" WEST 1359.20 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 91, THENCE NORTH 0° 55' 43" EAST ALONG SAID EAST LINE 1134.69 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM: THAT PORTION DEEDED TO THE CITY OF LOGAN IN QUIT CLAIM DEED RECORDED AUGUST 28, 2001, AS ENTRY NO. 768508, IN BOOK 1033, AT PAGE 1106, OF OFFICIAL RECORDS.

ALSO LESS AND EXCEPTING THEREFROM: THAT PORTION DEEDED TO UTAH DEPARTMENT OF TRANSPORTATION IN WARRANTY DEED RECORDED FEBRUARY 14, 2003, AS ENTRY NO. 813952, IN BOOK 1198, AT PAGE 615, OF OFFICIAL RECORDS.



## PARCEL 2:

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 12 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST RIGHT OF WAY LINE OF U.S. HIGHWAY 89 AND 91, SAID POINT BEING 608.2 FEET NORTH FROM THE SOUTHWEST CORNER OF LOT 3, BLOCK 1, PLAT "D" LOGAN FARM SURVEY; AND RUNNING THENCE NORTH 225.4 FEET ALONG THE EAST LINE OF SAID RIGHT OF WAY; THENCE EAST 354.3 FEET; THENCE SOUTH 225.4 FEET TO A POINT EAST OF BEGINNING THENCE WEST 354.3 FEET TO BEGINNING.

LESS AND EXCEPTING THE FOLLOWING: A PART OF THE NORTHWEST QUARTER OF SECTION 27 AND THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 12

NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO A PART OF BLOCK 1, PLAT "D" OF THE LOGAN FARM SURVEY, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT SOUTH  $1^{\circ} 05' 46''$  WEST 1136.00 FEET (SOUTH  $0^{\circ} 57'$  WEST 1139.38 BY RECORD) FROM THE INTERSECTION OF THE SOUTH LINE OF 1400 NORTH STREET AND THE EAST LINE OF U.S. HIGHWAY 91, SAID POINT ALSO BEING SOUTH  $1^{\circ} 05' 46''$  WEST 1203.00 FEET (SOUTH  $0^{\circ} 57'$  WEST 1206.38 BY RECORD) FROM THE NORTHWEST CORNER OF BLOCK 1, PLAT "D" OF THE LOGAN FARM SURVEY, SAID POINT BEING FURTHER DESCRIBED AS A POINT IN A CHAIN LINK FENCE AT THE NORTHWEST CORNER OF PARCEL 05-015-0001 IN THE EAST LINE OF THE U.S. HIGHWAY 91, 99 FOOT RIGHT OF WAY AND RUNNING THENCE SOUTH  $88^{\circ} 33' 59''$  EAST 348.11 FEET TO THE NORTHEAST CORNER OF PARCEL 05-015-0001; THENCE SOUTH  $0^{\circ} 24' 29''$  WEST 65.02 FEET ALONG THE EAST LINE OF PARCEL 05-015-0001; THENCE NORTH  $88^{\circ} 32' 55''$  WEST 1.02 FEET; THENCE NORTHWESTERLY 39.28 FEET ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT (CHORD OF SAID CURVE BEARS NORTH  $43^{\circ} 33' 27''$  WEST 35.36 FEET); THENCE NORTH  $88^{\circ} 33' 59''$  WEST 35.78 FEET; THENCE NORTHWESTERLY 79.28 FEET ALONG THE ARC OF A 320.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD OF SAID CURVE BEARS NORTH  $81^{\circ} 28' 07''$  WEST 79.08 FEET); THENCE NORTH  $74^{\circ} 22' 16''$  WEST 39.47 FEET; THENCE NORTHWESTERLY 69.37 FEET ALONG THE ARC OF A 280.00 FOOT RADIUS CURVE TO THE LEFT (CHORD OF SAID CURVE BEARS NORTH  $81^{\circ} 28' 07''$  WEST 69.19 FEET); THENCE NORTH  $88^{\circ} 33' 59''$  WEST 71.83 FEET; THENCE SOUTHWESTERLY 47.30 FEET ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE LEFT (CHORD OF SAID CURVE BEARS SOUTH  $46^{\circ} 15' 35''$  WEST 42.55 FEET) TO A POINT IN THE EAST LINE OF U.S. HIGHWAY 91; THENCE NORTH  $1^{\circ} 05' 46''$  EAST 42.18 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 1, MARKETPLACE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF AS RECORDED FEBRUARY 28, 2001, AS ENTRY NO. 755506, IN THE OFFICE OF THE CACHE COUNTY RECORDER, STATE OF UTAH.

LESS AND EXCEPTING THEREFROM: THAT PORTION DEEDED TO THE CITY OF LOGAN IN QUIT CLAIM DEED RECORDED AUGUST 16, 2007, AS ENTRY NO. 952152, IN BOOK 1478, AT PAGE 916, OF OFFICIAL RECORDS.

PARCEL 4:

LOT 2, MARKETPLACE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF AS RECORDED FEBRUARY 28, 2001, AS ENTRY NO. 755506, IN THE OFFICE OF THE CACHE COUNTY RECORDER, STATE OF UTAH.

PARCEL 5:

LOT 4, MARKETPLACE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF AS RECORDED FEBRUARY 28, 2001, AS ENTRY NO. 755506, IN THE

OFFICE OF THE CACHE COUNTY RECORDER, STATE OF UTAH.

PARCEL 6:

BENEFITS, IF ANY, CONTAINED IN RESTRICTION AGREEMENT AND GRANT OF EASEMENTS DATED MARCH 19, 2001, BY AND BETWEEN PRICE DEVELOPMENT COMPANY, A MARYLAND LIMITED PARTNERSHIP AND HOME DEPOT U.S.A., INC., A DELAWARE CORPORATION, RECORDED MARCH 19, 2001, AS ENTRY NO. 756756, IN BOOK 994, AT PAGE 832, OF OFFICIAL RECORDS.

PARCEL 7:

BENEFITS, IF ANY, CONTAINED IN CROSS EASEMENT AGREEMENT DATED AUGUST 31, 2001, BY AND BETWEEN PRICE DEVELOPMENT COMPANY, LIMITED PARTNERSHIP AND CHA ENTERPRISES, INC., RECORDED JANUARY 30, 2002, AS ENTRY NO. 780028, IN BOOK 1076, AT PAGE 390, OF OFFICIAL RECORDS.

PARCEL 8:

BENEFITS, IF ANY, CONTAINED IN CROSS EASEMENT AGREEMENT DATED APRIL 04, 2002, BY AND BETWEEN PRICE DEVELOPMENT COMPANY, LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP AND HOME DEPOT, U.S.A., INC., A DELAWARE CORPORATION AND PAUL DUREE, PAUL R. WILLIE AND MOUNTAIN DELL RANCH LIMITED PARTNERSHIP, PAUL R. WILLIE, GENERAL PARTNER, RECORDED APRIL 11, 2002, AS ENTRY NO. 785537, IN BOOK 1093, AT PAGE 588, OF OFFICIAL RECORDS.

Tax Nos: 05-014-0006 (affects Parcel 1); 05-014-0041 (affects Parcel 1); 05-015-0001 (affects Parcel 2); 05-015-0051 (affects Parcel 3); 05-015-0052 (affects Parcel 4); 05-015-0054 (affects Parcel 5).