

PREPARED BY AND UPON
RECORDATION RETURN TO:

Paul Hastings LLP
200 Park Avenue
New York, New York 10166
Attention: Eric R. Landau, Esq.

158590-DMM

GARDNER – VBP SF PROPERTY OWNER, LP,
(Borrower)
as trustor and grantor
(Trustor)

to

COTTONWOOD TITLE INSURANCE AGENCY, INC.,
(Trustee)

for the benefit of

SCHRODER TAFT-HARTLEY INCOME REIT, LLC,
as beneficiary
(Beneficiary)

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

Dated: October 17, 2022

Location: 5768 South, 650 West, Spanish Fork, Utah

County: Utah County

Tax Parcel Numbers: 24-043-0029, 24-043-0011, 24-042-0001, 24-043-0012, 24-053-0005, 24-053-0030, 24-048-0009, 24-053-0007, 24-042-0006, 24-048-0036, 24-048-0007, 24-053-0057, 24-053-0059, 24-053-0058, 24-048-0055 and 24-048-0054

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Security Instrument**”) is made as of this 17th day of October, 2022, by **GARDNER – VBP SF PROPERTY OWNER, LP**, a Delaware limited partnership, having an address at 201 South Main Street, Suite 2000, Salt Lake City, Utah 84111, (together with its permitted successors and permitted assigns, “**Borrower**”), as trustor and grantor, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation, having an address at 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121 (“**Trustee**”), as trustee, for the benefit of **SCHRODER TAFT-HARTLEY INCOME REIT, LLC**, a Delaware limited liability company, having an address at 7 Bryant Park, 1045 Avenue of Americas, New York, New York 10018, as beneficiary (together with its successors and assigns, “**Lender**”).

W I T N E S S E T H:

WHEREAS, this Security Instrument is given to secure a loan (the “**Loan**”) in the maximum aggregate principal amount of THIRTY-TWO MILLION AND NO/100 DOLLARS (\$32,000,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by that certain Note (as defined in the Loan Agreement). All initially capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement;

WHEREAS, Borrower desires to secure the payment of the Indebtedness (as defined in the Loan Agreement), all Additional Interest and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as hereinafter defined). “**Additional Interest**” shall mean all interest, fees (including, without limitation, the Origination Fee, the Extension Fee, and the Minimum Interest Premium), costs and expenses (including reasonable attorneys’ fees and expenses), all Transfer Taxes (as hereinafter defined), and other charges and fees for which Borrower is obligated to Lender pursuant to this Security Instrument, the Loan Agreement, the other Loan Documents (as hereinafter defined); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, and all other documents evidencing or securing the Indebtedness or delivered in connection with the making of the Loan are hereinafter referred to collectively as the “**Loan Documents**”).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY CONVEYED. Borrower does hereby irrevocably grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee in trust, with power of sale, for the benefit of Lender, as beneficiary, all of Borrower's right, title, interest and privileges in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**");

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

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower 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 deed to secure debt or otherwise be expressly made subject to the lien of this Security Instrument (the "**Additional Land**");

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

(d) Appurtenances. All of Borrower's right and interest in and to (i) all air, light lateral support and development rights now or hereafter pertaining to or used in connection with the Land; (ii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land; and (iii) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land (collectively, the "**Appurtenances**");

(e) 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, excess or unused zoning floor area development rights, abatements, zoning floor area bonuses, zoning incentives or awards and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, appurtenant to, relating or pertaining to the Land, the Additional Land and the Improvements or otherwise owned by or available to Borrower and the reversion and reversions, remainder 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, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land, the Additional Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(f) Equipment. All "goods" and "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by

Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases except to the extent that Borrower shall have any right or interest therein;

(g) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land or the Additional Land and Improvements forming part of the Real Property (as hereinafter defined) that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or the Additional Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “Fixtures” shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Borrower shall have any right or interest (reversionary or otherwise) therein;

(h) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, inventory and articles of personal property and accessions thereof and renewals and replacements thereof and substitutions therefor, if any, general intangibles, contract rights and the approvals from applicable Governmental Authorities (to the extent permitted by applicable law), accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Borrower 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, states, commonwealth or commonwealths where any of the Property is located (the “**Uniform**

Commercial Code”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(i) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) 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 (collectively, the “**Leases**”), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash, letters of credit 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, early termination fees and payments and other termination fees and payments, 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 Borrower or its agents or employees from any and all sources arising from or attributable to the Land and the Improvements (including, without limitation, all 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 Borrower), 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 Borrower or Manager 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 Borrower of any petition for relief under the Bankruptcy Code, and all of Borrower’s claims and rights to the payment of damages arising from the rejection by a Tenant of any Lease (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness;

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, 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 such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

(l) 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;

(m) Rights. The right, in the name and on behalf of Borrower, 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 Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all extensions, amendments and modifications thereto, 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 respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(o) Trademarks. 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;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to and the Loan Agreement; together with all deposits or wire transfers made to such accounts 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;

(q) Interest Rate Cap Agreement. The Interest Rate Cap 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;

(r) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(s) Minerals; Vegetation. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(t) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(u) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (t) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Additional Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property deed to secure debt and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights or the power to transfer rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the fullest extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Indebtedness in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Borrower (Debtor)

is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth in the introductory paragraph hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, 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 naming Borrower as Debtor and Lender as Secured Party 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. As to all of the above described Property which is or which hereafter becomes a “fixture” under applicable law, this Security Instrument constitutes a fixture filing under the Uniform Commercial Code. This Security Instrument creates a security interest in the Collateral, and, to the extent the Collateral is not real property, this Security Instrument constitutes a security agreement from Borrower to Lender under the Uniform Commercial Code.

<u>Name of Debtor:</u>	Gardner – VBP SF Property Owner, LP, a Delaware limited partnership
<u>Debtor’s Address:</u>	2733 East Parleys Way, Suite 300 Salt Lake City, Utah 84109
<u>Debtor’s Jurisdiction of Organization:</u>	Delaware
<u>Debtor’s Taxpayer I.D. No.:</u>	92 - 0467938
<u>Name of Secured Party:</u>	Schroder Taft-Hartley Income REIT, LLC, a Delaware limited liability company
<u>Secured Party’s Address:</u>	7 Bryant Park 1045 Avenue of Americas New York, New York 10018
<u>Collateral Covered by Financing Statement:</u>	As described in <u>Section 1.3</u>
<u>Place of Filing:</u>	To be filed in the Real Property Records of Utah County, Utah
<u>Description of Real Property to which Collateral is Related:</u>	See attached <u>Exhibit A</u>
<u>Owner of Record of The Real Property:</u>	Debtor

Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements to the extent permitted by applicable law, as applicable with respect to all or part of the Personal Property as Lender deems necessary to perfect the security interests granted herein. Such financing statements may indicate or describe the collateral in any manner Lender chooses, including, without limitation, describing

such collateral as “all assets of debtor, whether now owned or hereafter acquired,” “all personal property of debtor, whether now owned or hereafter acquired,” or using words of similar import.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Collateral Accounts (as defined in the Loan Agreement) and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument, the Cash Management Agreement or the Loan Agreement.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

WITH POWER OF SALE, to secure the payment to Lender of the Indebtedness and the performance of the Obligations at the time and in the manner provided for its payment in the Note, the Loan Agreement and this Security Instrument;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Indebtedness at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower’s obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

Article 2 - INDEBTEDNESS AND OBLIGATIONS SECURED

Section 2.1 INDEBTEDNESS. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Indebtedness which by its definition (as set forth in the Loan Agreement) includes, but is not limited to, the obligations of Borrower to pay to Lender the principal and interest owing pursuant to the terms and conditions of the Note.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the “**Other Obligations**”):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Indebtedness and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations.**"

Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF INDEBTEDNESS. Borrower will pay the Indebtedness at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All of the representations, warranties, covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the written consent of Lender. Subject to the terms of the Loan Agreement. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 WASTE. Borrower shall not commit or suffer any 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 might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS.

(a) Subject to Section 3.6(b), Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby and by the other Loan Documents, and in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the other Loan Documents except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, in accordance with the terms and provisions of the Loan Agreement.

Section 3.7 INTENTIONALLY OMITTED.

Section 3.8 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.9 CHANGE OF NAME, IDENTITY OR STRUCTURE. Borrower shall not change Borrower’s name, identity (including its trade name or names), jurisdiction or organization or incorporation or, if not an individual, Borrower’s corporate, partnership, limited liability company or other structure without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender and (c) in the case of a change in Borrower’s organizational structure, type of entity or jurisdiction of organization or incorporation, without first obtaining the prior written consent of Lender. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON LENDER. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 1.1(i), (n) and (o) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower 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 Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, 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 law so to do, and Borrower shall hold harmless and indemnify Lender against any liability incurred by reason of the imposition of any tax on the issuance, making, filing, registration or recording of this Agreement.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender 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 Borrower may be or may hereafter become bound to convey or assign to Lender, 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 Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 INTENTIONALLY DELETED.

Section 5.4 SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and

cancellation of such Note or other Loan Document, Borrower will (i) issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor, and (ii) with respect to the Note, if requested by Lender, also provide (a) a lost note affidavit and/or (b) a reaffirmation of the Indebtedness as evidenced by such Note acknowledging that Lender has informed Borrower that the Note was lost, stolen, destroyed or mutilated and that such Indebtedness continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation.

Section 5.6 NO OFFSETS OR COUNTERCLAIMS. Borrower represents and warrants as of the date hereof that there are no offsets, counterclaims or defenses against the Indebtedness, this Security Instrument or the Note, that Borrower has full power, authority and legal right to execute this Security Instrument and to keep and observe all of the terms and provisions of this Security Instrument on Borrower's part to be observed or performed and that the Note and this Security Instrument constitute valid and binding obligations of Borrower.

Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Indebtedness and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Indebtedness or the performance of the Other Obligations, Lender can recover the Indebtedness by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower shall not permit to occur or suffer any Prohibited Transfer (as defined in the Loan Agreement), unless specifically permitted by Article 7 of the Loan Agreement or unless Lender shall consent thereto in writing in accordance with Section 7.3 of the Loan Agreement.

Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower 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 Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Indebtedness 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 Indebtedness then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Indebtedness 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 Borrower 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; and, without limiting the foregoing:

- i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of the Real Property, the Personal Property, the Equipment or the Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, the Personal Property, the Equipment and the Fixtures in such order and manner as is now or hereafter permitted by applicable law;
- ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
- iii) Should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that Lender has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Lender shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower, Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale

hereunder by public announcement thereof at the time and place noticed for any such sale; and

- iv) If the Property consists of several lots, parcels or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender designates in Lender's sole discretion. Any Person, including Borrower or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the Lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note 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 Indebtedness and without regard for the solvency of Borrower, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Indebtedness;
- (h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender 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 Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower 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 Borrower to pay monthly in advance to Lender, 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 Borrower; (vi) require Borrower to

vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Indebtedness, in such order, priority and proportions as Lender 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 Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled 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 Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation any Additional Interest and advances made by Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Lender may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Indebtedness in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

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.

Section 7.2 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 Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Indebtedness in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with Legal Requirements.

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of an Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized 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 Indebtedness, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Indebtedness and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 ACTIONS AND PROCEEDINGS. Lender 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 Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note 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 Indebtedness or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender 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 Lender's possession.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Upon the occurrence and during the continuance of an Event of Default, Lender may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender 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 Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not 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 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Upon the occurrence and during the continuance of an Event of Default, Lender may release any portion of the Property for such consideration as Lender 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 Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender 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 7.9 VIOLATION OF LAWS. If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Section 9.19 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any guarantor and indemnitor with respect to the Loan contained in Section 9.19 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Section 9.19 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Section 9.19 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Section 9.19 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 9.19 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.11 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 7.12 BANKRUPTCY.

(a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, and Borrower hereby assigns to Lender its right and irrevocably constitutes and appoints Lender its attorney-in-fact, coupled with an interest, to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower 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 Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 7.13 LENDER'S REMEDIES AGAINST MULTIPLE PARCELS. The Indebtedness and the Obligations hereby secured may also be secured by other properties, lots and parcels (each an "Other Property" and collectively, the "Other Properties") covered by other mortgages and deeds of trust (collectively, the "Other Mortgages") within and/or outside the state where the Property is located. If this Security Instrument or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations secured hereby, or if Lender exercises its power of sale (if applicable under the laws of the State in which the Property is located), execution may be made upon or Lender may exercise its remedies (including any power of sale (if applicable under the laws of the State in which the applicable Other Property is located)) against any one or more of the Other Properties and not upon the other Other Properties, or upon all of such Other Properties, either together or separately, and at different times or at the same time, and the exercise of such remedies, execution sales or sales under the power of sale herein granted (if applicable under the laws of the state in which the Property is located) may likewise be conducted separately or concurrently, in each case at Lender's election. No event of enforcement taking place against any Other Property, and no failure to prosecute any such other enforcement, shall in any way stay, preclude or bar enforcement of this Security Instrument, and Lender may pursue any or all of Lender's rights and remedies under this Security Instrument until the Indebtedness and the Obligations are paid and discharged in full.

Article 8 - ENVIRONMENTAL HAZARDS

Section 8.1 ENVIRONMENTAL COVENANTS. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Environmental Indemnity and Borrower shall comply with the aforesaid covenants regarding environmental matters.

Article 9 - INDEMNIFICATION

The provisions of Section 9.17 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 10 - WAIVERS

Section 10.1 WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the

event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower 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 Borrower, 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 law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of its Other Obligations.

Section 10.5 WAIVER OF TRIAL BY JURY. EACH OF BORROWER AND LENDER, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE LOAN AGREEMENT, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER 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 BORROWER AND LENDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH PARTY.

Article 11 - EXCULPATION

The provisions of Section 9.19 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 12 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 9.4 of the Loan Agreement.

Article 13 - APPLICABLE LAW

Section 13.1 **GOVERNING LAW.** (A) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM 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 OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES (I) THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY (OTHER THAN THAT DESCRIBED IN SUBPARAGRAPH II BELOW) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY AND FIXTURES ARE LOCATED AND (II) WITH RESPECT TO THE PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (INCLUDING, WITHOUT LIMITATION, THE COLLATERAL ACCOUNTS), THE LAW OF THE JURISDICTION APPLICABLE IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK SHALL GOVERN. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER, HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND/OR THE OTHER LOAN DOCUMENTS, AND THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS 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 EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT LENDER'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 EACH OF BORROWER AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT,

LENDER, 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 BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

**CT CORPORATION SYSTEMS
111 EIGHTH AVENUE, 13TH FLOOR
NEW YORK, NEW YORK 10011**

AS ITS AUTHORIZED AGENT TO RECEIVE AND FORWARD ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED IN THE LOAN AGREEMENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 13.2 USURY LAWS. Notwithstanding anything to the contrary contained herein or in any other Loan Documents, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest on the Loan exceeds the Maximum Legal Rate, all such interest shall be deemed to be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest on the Loan in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 13.3 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 14 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. 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 "**Borrower**" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by 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 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 Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. In the event of any conflict or inconsistency between the provisions of the Loan Agreement and the provisions of this Security Instrument, the provisions of the Loan Agreement shall control and be binding.

Article 15 - MISCELLANEOUS PROVISIONS

Section 15.1 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 Borrower or Lender, 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 15.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, as set forth in the Loan Agreement. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

Section 15.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4 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 15.5 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 15.6 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, Lender 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 Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.8 LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender 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 Lender a "mortgagee in possession."

Section 15.9 JOINT AND SEVERAL. If more than one Person has executed this Security Instrument as "Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.

Section 15.10 COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which shall constitute a single agreement. The failure of any party hereto to execute this Security Instrument, or any counterpart thereof, shall not relieve the other signatories from their obligations hereunder.

Article 16 - DEED OF TRUST PROVISIONS

Section 16.1 CONCERNING 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, represents that it is duly qualified to serve as Trustee hereunder, and covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or 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 Borrower and to Lender. Lender 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 but good faith discretion for any reason whatsoever Lender 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 Lender. 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 16.2 TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument. Notwithstanding anything to the contrary contained herein or in any other Loan Document, Trustee hereby acknowledges and agrees that no fees or other compensation shall be payable to Trustee hereunder or otherwise in connection with the Loan or Loan Documents except in connection with (a) a sale of the Property in connection with an exercise of remedies hereunder and/or under the other Loan Documents or (b) a release hereof in accordance with the applicable terms and conditions hereof and of the other Loan Documents.

Section 16.3 CERTAIN RIGHTS. During the continuance of an Event of Default, with the approval of Lender, 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 Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Agreement, 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 agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct, illegal acts, fraud or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights

hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property, except as a result of Trustee's gross negligence or willful misconduct. 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 the reasonable, actual out-of-pocket 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 16.4 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 Legal Requirements) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 16.5 PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be reasonably required from Borrower 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 Borrower, provided that no such deed, conveyance or instrument shall increase Borrower's obligations or decrease Borrower's rights under the Loan Documents, except to a *de minimis* extent.

Section 16.6 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 predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, 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 17 - STATE-SPECIFIC PROVISIONS

Section 17.1 GOVERNING PROVISIONS. In the event of any conflict between the provisions of this Article 17 and any other provisions of this Security Instrument, then the provisions of this Article 17 shall control.

Section 17.2 EXERCISE OF POWER OF SALE. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Borrower, shall sell the Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Borrower to direct the order in which such property, if consisting of several

known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale in accordance with law. Trustee shall execute and deliver to the purchaser its deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters of fact shall be prima facie evidence of the truthfulness thereof. Any person, including Lender, may bid at the sale.

Section 17.3 NOTICE. Any notice that is required or permitted to be given to Borrower may be addressed to the address set forth next to the Borrower's signature herein below. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Lender, be addressed to such other debtor at the address of Borrower as is shown by the records of Lender. Notwithstanding the foregoing provisions of this subparagraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Utah in effect at the time of such sale shall constitute sufficient notice of such sale. Borrower hereby authorizes and empowers Trustee to sell all or any portion of the Property, together or in lots or parcels, as Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title. In no event shall Trustee be required to exhibit, present or display at any such sale, any of the personalty described herein to be sold at such sale. Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows:

(a) first, Trustee shall pay the reasonable expenses and costs incurred by Lender in enforcing its rights under this Security Instrument and any reasonable expenses and costs incurred by Trustee, including, but not limited to, expenses and costs incurred by Trustee and Lender in foreclosing or exercising the power of sale upon the Property and a reasonable Trustee's fee or commission;

(b) second, Trustee shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; and

(c) third, Trustee shall pay the residue, if any, to the person or persons legally entitled thereto.

Section 17.4 SALE PROVISIONS. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make a successive sale or sales under such power until the whole of the Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Security Instrument and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale or sales had been made; provided, however, that Borrower shall never have any right to require the sale or sales of less than

the whole of the Property, but Lender shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. If default is made hereunder, the holder of the indebtedness secured hereby or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and other indebtedness secured by this Security Instrument; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part, but as to such unmatured part of the indebtedness secured by this Security Instrument, this Security Instrument shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Any number of sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

Section 17.5 ALTERNATIVE REMEDIES. It is agreed that in the event a foreclosure hereunder should be commenced by Trustee, or his substitute or successor, Lender may at any time before the sale of the Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said Note, and for the foreclosure of this Security Instrument lien; it is further agreed that if Lender should institute a suit for the collection thereof, and for a foreclosure of this Security Instrument lien, that he may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Security Instrument.

Section 17.6 LENDER PURCHASE OF PROPERTY. Lender shall have the right to purchase all or any part of the Property at any sale, being the highest bidder.

Section 17.7 ASSIGNEE OF LENDER. It is further agreed that any assignee of any portion of the indebtedness hereby secured shall have the same powers as are conferred on the holder of the Note to proceed with a foreclosure on such matured part of the Note which it may hold and also to request Trustee or its successors in trust to sell the Property; but if such a sale is made pursuant to such foreclosure, then the sale shall be subject to the unmatured part of the Note and the liens securing such unmatured portion of the Note. At any sale of all or any part of the Property for any portion of the Note, subject to any unmatured portion of the Note, should the holder of the Note be the purchaser at any such sale or sales, as the case may be, it is specifically agreed that there shall not be a merger of any vendor's lien, deed of trust lien, or any other liens securing the Note, with the legal title of the Property. In such event, the legal title shall remain subject to the outstanding unmatured portion of the Note.

Section 17.8 RELIANCE OF BORROWER STATEMENTS. Borrower hereby agrees, on Borrower's behalf and on behalf of Borrower's heirs, administrators, executors, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by Trustee, with respect to the identity of Lender, or with respect to the occurrence or existence of any default, or with respect to the acceleration of the maturity of any indebtedness secured hereby, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms and manner of sale, and the receipt, distribution, and application of the money realized therefrom, or with respect to the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with

respect to any other act or thing having been duly done by the Lender or by Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals are correct and are without further question to be so accepted, and Borrower hereby ratifies and confirms every act that Trustee or any substitute trustee hereunder may lawfully do in the premises by virtue hereof.

Section 17.9 DISAFFIRM INTERVENING ENCUMBRANCES. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, subdivision, plat, or restrictive covenant created, or rental, lease or other contract made; in violation of any provision of this Security Instrument, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement, subdivision, plat, restrictive covenant, and rental, lease or other contract.

Section 17.10 REINSTATEMENT. If Borrower or any other person having a subordinate lien or encumbrance of record on the Property reinstates this Security Instrument and the Loan with three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31-(2), as delivered by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

Section 17.11 UTAH STATUTE OF FRAUDS; NOTICE TO BORROWER. PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower as of the day and year first above written.

BORROWER:

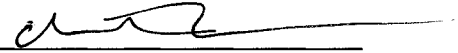
GARDNER – VBP SF PROPERTY OWNER, LP, a Delaware limited partnership

By: Gardner – VBP SF GP, LLC, a Delaware limited liability company, its general partner

By: Gardner – VBP Spanish Fork, LP, a Delaware limited partnership, its manager

By: Gardner Spanish Fork GP, L.C., a Utah limited liability company, its general partner

By: KC Gardner Company, L.C., a Utah limited liability company, its manager

By: 

Name: Christian K. Gardner

Title: Manager

By: Industrial Park SF, LP, a Delaware limited partnership, its general partner

By: VBP Spanish Fork, LLC, a Delaware limited liability company, its general partner

By: 

Name: Jeffrey Grasso

Title: Manager

STATE OF Utah)
)
COUNTY OF Salt Lake) SS:

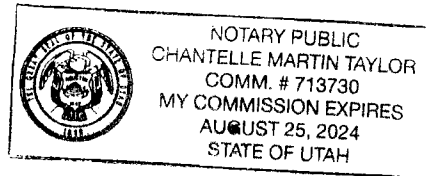
On the 13th day of October, 2022, before me, the undersigned officer, a Notary Public, personally appeared Christina Gardner who acknowledged himself to be an Authorized Person of VK Gardner Company that as such he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as an Authorized Person of such limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Chantelle Martin Taylor
Notary Public

My commission expires:

08-25-2024



STATE OF UTAH)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 13th day of October, 2022, by Jeffrey Grasso, the Manager of _____, a Delaware limited liability company.
VBP Spanish Fork LLC

Chantelle Martin Taylor
NOTARY PUBLIC

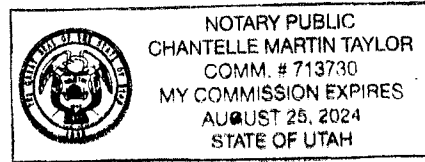


EXHIBIT A**LEGAL DESCRIPTION****PARCEL 1:**

Commencing 9.2 chains North of the Southwest corner of Section 12, Township 8 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah; thence North 10.61 chains; thence North 69° East 11.80 chains; thence North 78° East 5.46 chains; thence South 1/4° West 15.83 chains; thence South 89 1/2° West 16.28 chains to the place of beginning.

TOGETHER WITH that portion acquired in that certain Boundary Line Agreement recorded June 4, 2018 as Entry No. 51913:2018 in the Utah County Recorder's office.

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of 800 West Street.

PARCEL 2:

Commencing 5.37 chains North of the Southwest corner of Section 12, Township 8 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah; thence North 3.92 chains; thence North 89 1/2° East 16.28 chains; thence South 1/4° West 4.38 chains; thence North 88°50' West 16.26 chains to the place of beginning.

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of 800 West Street and 5550 South Street.

PARCEL 3:

Commencing 0.50 of a chain West of the Southeast Corner of the Southeast Quarter of Section 11, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; running thence West 3.80 chains; thence North 0.66 1/2 chains; thence West 7.50 chains; thence North 1 1/4° East 3.705 chains; thence East 11.20 chains; thence South 4.37 chains to the place of beginning.

PARCEL 4:

Commencing at the Southwest Corner of the Southwest Quarter of Section 12, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; running thence North 4.37 chains; thence South 88 7/8° East 15.76 chains; thence South 1/4° West 4.07 chains; thence West 15.74 chains to the place of beginning.

PARCEL 5:

Commencing at the Northeast Corner of the Northeast Quarter of Section 14, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; running thence West 4.45 chains; thence South 1/2° West 5.63 chains; thence North 89 1/2° East 4.51 chains; thence North 5.60 chains to the place of beginning.

PARCEL 6:

Commencing South 369.6 feet from the Northeast Corner of Section 14, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°20' East 7.74 chains; thence South 322.73 feet; thence West 816.5 feet; thence North 01°45' West 16.85 feet; thence North 00°45' East 3.63 chains; thence North 00°30' East 1.07 chains; thence North 89°30' East 4.51 chains to place of beginning.

PARCEL 7:

Beginning at the Northwest Corner of the Northwest Quarter of Section 13, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; thence South 5.60 chains; thence South 89 1/3° East 15.69 chains; thence North 0°35' East 5.79 chains; thence West 15.74 chains to the place of beginning.

PARCEL 8:

Commencing 4.45 chains West from the Northeast corner of Section 14, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; thence West 7.35 chains; thence South 6.53 chains; thence South 88°30' East 7.29 chains; thence North 00°30' East 6.70 chains to the place of beginning.

ALSO:

Commencing 4.45 chains West and 6.70 chains South 00°30' West from the Northeast corner of Section 14, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 00°45' West 3.63 chains; thence West 7.04 chains; thence North 3.78 chains; thence South 88°30' East 7.09 chains to the place of beginning.

PARCEL 9:

Commencing 4.30 chains West from the Southeast Corner of Section 11, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 66 links; thence West 7.50 chains; thence South 66 links; thence East 7.50 chains to the place of beginning.

PARCEL 10:

Commencing North 1611.91 feet and East 508.18 feet from the West Quarter Corner of Section 13, Township 8 South, Range 2 East of the Salt Lake Base and Meridian; thence South 89°30'00" East 521.4 feet; thence South 00°35'00" West 418.75 feet; thence along a curve to the right (chord bears: South 31°02'40" West 324.56 feet, radius = 431.43 feet) arc length = 332.74 feet; thence South 53°08'22" West 344.95 feet; thence along a curve to the right (chord bears: South 57°35'42" West 82.32 feet, radius = 529.85 feet) arc length = 82.41 feet; thence North 948.68 feet to the place of beginning.

PARCEL 11:

Commencing 5.60 chains South and South 89°20' East 7.74 chains of the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°20' East 5.71 chains; thence South 35' West 4.44 chains; thence South 89°30' East 2.224 chains;

thence South 35' West 5.39 chains; thence South 89 1/2° West 7.90 chains; thence North 35' East 9.89 chains to the place of beginning.

PARCEL 12:

Commencing East 18.82 feet and South 2067.06 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°45'04" East 42.70 feet; thence North 00°05'25" West 315.61 feet; thence West 333.65 feet; thence North 43°19'38" East 33.60 feet; thence North 01°45'00" West 985.69 feet; thence North 89°10'04" East 402.04 feet; thence South 1003.14 feet; thence South 00°29'41" East 371.25 feet; thence North 89°30'00" West 64.57 feet to the point of beginning.

PARCEL 13:

Commencing North 4.71 chains and West 115.5 feet from the Southeast corner of the Northeast Quarter of Section 14, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 0°30' East 330 feet; thence East 131.5 feet; thence North 4.78 chains; thence West 333.65 feet; thence South 1° West 9.78 chains; thence East 210.54 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

Commencing East 108.18 feet and South 2352.13 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 89°32'45" West 223.69 feet; thence North 00°30'00" East 288.00 feet; thence South 89°30'00" East 256.00 feet; thence South 01°07'56" East 45.68 feet; thence South 49°59'42" West 50.27 feet; thence South 00°46'25" East 206.01 feet to the point of beginning.

PARCEL 14:

Commencing North 598.71 feet and East 19.01 feet from the Quarter Section-Corner between Sections 13 and 14, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°30' West 132 feet; thence North 0°30' East 42 feet; thence South 89°30' East 132 feet; thence South 0°30' West 42 feet to the point of beginning.

PARCEL 15:

Commencing South 2067.96 feet and East 80.18 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian and running thence North 1374.71 feet; thence East 431.42 feet; thence South 00°35'00" West 335.51 feet; thence South 987.64 feet; thence along a curve to right (Chord bears: South 72°07'34" West 141.1 feet, Radius = 529.86 feet); thence South 79°46'41" West 39.61 feet; thence South 89°43'14" West 254.73 feet to the point of beginning.

ALSO:

Commencing South 2330.71 feet and East 107.43 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian and running thence North 01°04'06" East 53.48 feet; along a curve to right (Chord bears: North 40°00'35" East 174.19 feet, Radius = 136.15 feet); thence North 79°46'41" East 166 feet; along a curve to left (Chord bears:

North 75°16'20" East 92.01 feet, Radius = 585.63 feet); thence South 53°40'00" West 405.21 feet; thence North 89°30'00" West 38.91 feet to the point of beginning.

PARCEL 16:

Commencing South 2066.71 feet and East 335.01 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 79°46'41" West 125.15 feet; thence along a curve to the left (chord bears: South 60°01'46" West 129.7 feet, radius = 191.93 feet) arc length = 132.31 feet; thence North 85.85 feet; thence North 89°43'14" East 235.52 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

Commencing East 108.18 feet and South 2352.13 feet from the Northwest corner of Section 13, Township 8 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 89°32'45" West 223.69 feet; thence North 00°30'00" East 288.00 feet; thence South 89°30'00" East 256.00 feet; thence South 01°07'56" East 45.68 feet; thence South 49°59'42" West 50.27 feet; thence South 00°46'25" East 206.01 feet to the point of beginning.

ALSO LESS AND EXCEPTING THEREFROM any portion lying within the Utah County Road.