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RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 45 P.

This instrument was prepared by and after recording, return to:

Ray T. Khirallah
Holland & Knight LLP
One Arts Plaza
1722 Routh Street
Suite 1500
Dallas, Texas 75201

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

THE STATE OF UTAH)
) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SALT LAKE)

THAT this Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (“**Deed of Trust**”) is made by CH Realty IX-GBB I Salt Lake City 300 Street North, L.P., a Delaware limited partnership (“**Grantor**”), to First American Title Insurance Company, Trustee, of Salt Lake City, Utah (“**Trustee**”), in order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to the Trustee, in trust, with power of sale and right of entry, for the use and benefit of Comerica Bank, a Texas banking association, in its capacity as Agent, for the ratable benefit of itself and the other Lenders, as defined in the Loan Agreement (called the “**Agent**”), the real estate situated in the County of Salt Lake, State of Utah described in Exhibit A attached hereto and made a part hereof, together with (i) all the buildings and other improvements now on or hereafter located thereon; (ii) all materials, equipment, fixtures or other property whatsoever now or hereafter attached or affixed to or installed in said buildings and other improvements, including, but not limited to, all heating, plumbing, lighting, water heating, cooking, laundry, refrigerating, incinerating, ventilating and air conditioning equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and apparatus, utility lines and equipment (whether owned individually or jointly with others), sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, engines, machines, elevators, motors, cabinets, shades, blinds, partitions, window screens, screen doors, storm windows, awnings, drapes, and rugs and other floor coverings, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which materials, equipment, fixtures and other property are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the indebtedness herein mentioned; (iii) all easements and rights of way now and at any time hereafter used in connection with any of the foregoing property or as a means of ingress to or egress from said property or for utilities to said property; (iv) all interests of Grantor in and to any streets,

ways, alleys and/or strips of land adjoining said land or any part thereof; (v) all water and water rights appurtenant to, used on, or associated with the real estate, whether surface or underground, including, without limitation, rights to the use of water based upon court decrees, certificates of appropriation, diligence claims, underground water claims, statement of water user's claims, applications to appropriate water, temporary applications to appropriate water, applications for permanent change of water, applications for temporary change of water, applications for exchange of water, shares of stock in a corporation, and contracts or leases for the use of water, together with all easements, rights-of-way, infrastructure and any other interests necessary to divert and deliver the water from its point(s) of diversion to its place(s) of use, including, without limitation, all wells, well rights, irrigation ditches, ditch rights, water delivery pipelines, ponds, reservoirs and reservoir rights, in each case whether now owned or hereafter acquired; and (vi) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the foregoing property (the "**Mortgaged Property**") unto the Trustee and its successors or substitutes in this trust and to it or their successors and assigns, IN TRUST, however, upon the terms, provisions and conditions herein set forth.

In order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, Grantor hereby grants to Agent, for the benefit of the Lenders, a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Grantor now or hereafter located or used in and about the building or buildings or other improvements now erected or hereafter to be erected on the lands described in Exhibit A attached hereto and made a part hereof, or otherwise located on said lands, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, all security deposits and advance rentals under lease agreements now or at any time hereafter covering or affecting any of the Property (as hereinafter defined) and held by or for the benefit of Grantor, all monetary deposits which Grantor has been required to give to any public or private utility with respect to utility services furnished to the Property, all rents (including, without limitation "Rents" as defined in the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the "Act") and other amounts from and under leases of all or any part of the Property, all of Grantor's interest in and to the proceeds of the Notes (hereinafter defined), whether disbursed or not, and any Borrower's Deposit (as such term is defined in the Loan Agreement [hereinafter defined]) made by Grantor in an account with Agent, all issues, profits and proceeds from all or any part of the Property, all proceeds (including premium refunds) of each policy of insurance relating to the Property, all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all amounts deposited in escrow for the payment of ad valorem taxes, assessments and charges and/or premiums for policies of insurance with respect to the Property, all contracts related to the Property, all money, funds, accounts, deposit accounts, instruments, investment property, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), letter of credit rights, commercial tort claims, supporting obligations, all notes or chattel paper arising from or related to the Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property, all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under

which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof (all of the property described in this Paragraph hereinafter collectively called the "**Collateral**") and all proceeds of the Collateral. (The Mortgaged Property and the Collateral are herein sometimes collectively called the "**Property**".)

Notwithstanding the foregoing, all terms used herein which are defined in the Uniform Commercial Code as adopted in Utah – *Utah Code Annotated*, Section 70A-1-101, et seq (the "**UCC**") shall, unless otherwise provided, have the meanings ascribed to them in the UCC as in effect on the date hereof. The parties intend that the terms used herein which are defined in the UCC have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date hereof, then such term as used herein shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this Deed of Trust, such amendment or holding shall be disregarded in defining terms used in this Deed of Trust.

ARTICLE I.
Secured Indebtedness

1.1 **Secured Indebtedness.** This Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "**Deed of Trust**") is made to secure and enforce the payment of the following note, obligations, indebtedness and liabilities: (a) one or more Construction Loan Notes in the aggregate principal amount of \$46,475,000.00, made by Grantor, and each being payable to the order of a Lender, with principal and interest being payable as therein provided and all amounts remaining unpaid thereon being finally due and payable on **September 2, 2024**, as such date may be extended pursuant to the terms of the hereinafter defined Loan Agreement, and containing a provision for the payment of a reasonable additional amount as attorney's fees, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part (such promissory notes and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, being hereinafter called the "**Notes**"); and (b) all loans and future advances made by Agent and/or the Lenders to Grantor pursuant to the Loan Agreement and all other debts, obligations and liabilities of every kind and character of Grantor now or hereafter existing in favor of Agent and/or the Lenders pursuant to the provisions of this Deed of Trust, the Loan Agreement or any of the other Loan Documents; it being contemplated that Grantor may hereafter become indebted to Agent and/or the Lenders in further sum or sums. The indebtedness referred to in this Paragraph is hereinafter sometimes called the "**secured indebtedness**" or the "**indebtedness secured hereby.**"

1.2 **Certain Terms.** The Notes, this Deed of Trust and certain other documents were executed and delivered pursuant to the Construction Loan Agreement of even date herewith (the "**Loan Agreement**") by and among Grantor, Agent and the Lenders. Terms used, but not defined, herein are defined in the Loan Agreement and shall have the meaning given such terms in the Loan Agreement. Unless otherwise expressly set forth herein, Agent shall be deemed in all respects to be acting in the

capacity of Agent for itself and all of the Lenders, as set forth in, and in accordance with, the Loan Agreement.

ARTICLE II.
Representations, Warranties and Covenants

2.1 Representations, Warranties and Covenants. Grantor represents, warrants and covenants to and with Agent and the Lenders as follows:

(a) Financial Matters. Grantor is solvent, is not bankrupt and has no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Grantor insolvent or bankrupt. There has not been filed by or against Grantor a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to Grantor or any substantial portion of Grantor's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the Federal Bankruptcy Code or any state law. To Grantor's current, actual knowledge, all reports, statements and other data furnished by Grantor to Agent in connection with the Loan evidenced by the Notes are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or of any tenant under leases described in such reports, statements and other data. For the purposes of this Paragraph, Grantor shall also include any surety(ies) and any joint venturer or general partner of Grantor.

(b) Title and Authority. Grantor is the lawful owner of good and indefeasible title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, assign and mortgage the Mortgaged Property and to grant a security interest in the Collateral. Grantor's exact name is the name set forth for Grantor in this Deed of Trust. Grantor does not do business with respect to the Property under any trade name.

(c) Permitted Encumbrances. The Property is free and clear from all liens, security interests and encumbrances except the lien and security interest evidenced hereby and the encumbrances set forth in Schedule B of the Mortgagee Title Policy provided to Agent pursuant to the Loan Agreement (the "Permitted Encumbrances"). There are no mechanic's or materialmen's liens, lienable bills or other claims constituting or that may constitute a lien on the Property, or any part thereof.

(d) No Financing Statement. There is no financing statement covering all or any part of the Property or its proceeds on file in any public office.

(e) Location of Collateral. All tangible Collateral is located on the property described in Exhibit A attached hereto and made a part hereof.

(f) No Homestead. No portion of the Property is being used as Grantor's business or residential homestead.

(g) No Default or Violation. The execution, delivery and performance of this Deed of Trust, the Notes and all other Loan Documents do not contravene, result in a breach of or constitute a default under any mortgage, deed of trust, lease, promissory note, loan

agreement or other contract or agreement to which Grantor is a party or by which Grantor or any of its properties may be bound or affected and do not violate or contravene any law, order, decree, rule or regulation to which Grantor is subject.

(h) Compliance with Covenants and Laws. To Grantor's current, actual knowledge, the Property and the intended use thereof by Grantor comply with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, applicable health, safety and environmental laws and regulations, laws relating to the disabled (including but not limited to the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq. and regulations thereunder [the "ADA"] and/or the Fair Housing Amendments Act of 1988, 42 U.S.C. §§3601 et seq., and regulations thereunder [the "FHAA"]) and all other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions (all of the foregoing hereinafter sometimes collectively called "Applicable Laws") without reliance upon grandfather provisions or adjacent or other properties. Grantor or Grantor's tenants have obtained all requisite zoning, utility, building, health and operating permits from the governmental authority or municipality having jurisdiction over the Property.

(i) Environmental. Without limitation of the foregoing, to the current, actual knowledge of Grantor, except as specifically disclosed to Agent in that certain Phase I Environmental Site Assessment, prepared June 5, 2020 by GSH Geotechnical, Inc., Job No. 1842-049-20 (the "Phase I"), covering the Property, no asbestos which is or may become friable or material containing asbestos which has been deemed hazardous by Applicable Laws has been installed in the Property and the Property and Grantor are not in violation with or, to the current, actual knowledge of Grantor, subject to any existing, pending or threatened investigation or inquiry by any governmental authority nor subject to any remedial obligations under any Applicable Laws pertaining to health, safety or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") (such Applicable Laws as they now exist or are hereafter enacted and/or amended hereinafter sometimes collectively called "Applicable Environmental Laws"). Grantor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Property by reason of any Applicable Environmental Laws. Based upon the Phase I, Grantor undertook, at the time of acquisition of the Property, all reasonable inquiry into the previous ownership and uses of the Property consistent with good commercial or customary practice. Based upon the Phase I, Grantor has taken all reasonable steps necessary to determine and has determined that no hazardous substances have been disposed of or otherwise released on or to the Property. The use which Grantor makes and intends to make of the Property will not result in the disposal or other release of any hazardous substance on or to the Property. As used in this Deed of Trust, the term "release" shall have the meaning specified in CERCLA, the terms "disposal" (or "disposed") shall have the meanings specified in RCRA, and the term "hazardous substance" shall mean (i) any "hazardous substance" as defined in CERCLA and regulations promulgated thereunder, (ii) any "hazardous waste" or "solid waste" as defined in RCRA and regulations promulgated thereunder, (iii) any petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under the definition of hazardous substance in CERCLA as well as natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and other petroleum products and by-products (iv) formaldehyde, urea, polychlorinated biphenyls, radon, and "source", "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.,

(v) any material defined as hazardous or toxic under any environmental statute or regulation of the State of Utah or any agency thereof and (vi) any other material or substance which is toxic, ignitable, reactive or corrosive and which is regulated by any Applicable Environmental Law; provided, (i) all such terms shall be deemed to include all similar terms used in any Applicable Environmental Laws or regulations thereunder (including by way of example, but not limitation, pollutant, contaminant, toxic substance, discharge and migration), and (ii) to the extent that any Applicable Environmental Laws or regulations thereunder are amended so as to broaden the meaning, or otherwise establish a meaning, for "hazardous substance," "release," or "disposal" (or "disposed"), or any similar terms, which is broader than that specified above, such broader meaning shall apply.

(j) No Suits. There are no judicial or administrative actions, suits or proceedings pending or, to Grantor's current, actual knowledge, threatened against or affecting Grantor, any other person liable, directly or indirectly, for the secured indebtedness, or the Property or involving the validity, enforceability or priority of any of the Loan Documents.

(k) Condition of Property. The Property is currently in the condition described in the survey provided to Agent. None of the Property is within a flood plain except as indicated on a survey of the Property delivered to Agent. None of the improvements to be constructed on the Property shall create an encroachment over, across or upon any of the Property boundary lines, rights of way or easements, and no buildings or other improvements on adjoining land create such an encroachment.

(l) Organization. Grantor is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified to do business in the State of Utah. Grantor has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to own, lease and operate its properties and to carry on its business as now conducted and as contemplated to be conducted. The foregoing representations in this subparagraph shall also apply to any corporation, partnership, joint venture or limited partnership which is a general partner, joint venturer or managing member of Grantor. Grantor's correct state of incorporation, organization or formation is set forth in this Deed of Trust.

(m) Enforceability. The Notes, this Deed of Trust and all other Loan Documents constitute the legal, valid and binding obligations of Grantor enforceable in accordance with their terms except for and subject to the application of bankruptcy, insolvency, liquidation, conservatorship, receivership or other debtor relief laws affecting the enforcement of creditor rights or the collection of debtors' obligations generally and further subject to the effect of general principles of equity; and will not be subject to any defenses to such enforceability. The execution and delivery of, and performance under, the Notes, this Deed of Trust and all other Loan Documents are within Grantor's powers and have been duly authorized by all requisite action and are not in contravention of the powers of Grantor's organizational documents.

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

(o) Warranty. Grantor will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

2.2 Covenants and Agreements. So long as the secured indebtedness or any part thereof remains unpaid, Grantor covenants and agrees with Agent and the Lenders as follows:

(a) Payment. Grantor will make prompt payment, as the same becomes due, of the Notes and of all installments of principal and interest thereon and of all other secured indebtedness.

(b) Existence. Grantor will continuously maintain its existence and its right to do business in the State of Utah together with its franchises and trade names.

(c) Utah Construction Registry.

(i) Grantor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices, including, without limitation, any requirement to file a Notice of Intent to Complete and Notice of Completion. Grantor shall cause Agent to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-201. Grantor shall also provide to Agent copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Grantor.

(ii) Grantor represents and warrants to Agent that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Agent by Grantor in writing. Grantor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

(iii) If Agent or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Grantor shall provide to Agent written evidence acceptable to Agent and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Annotated* § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

(iv) Grantor shall cause, as a condition precedent to the closing of the loan secured hereby, Agent's title insurer to insure in a manner acceptable to Agent in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Agent, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to

increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

(v) Grantor shall pay and promptly discharge, at Grantor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected, if any, or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Grantor shall have the right to contest any such claim or lien so long as Grantor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Grantor may (A) with the prior written consent of Agent, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Agent) for any such lien or claim, as determined in Agent's reasonable discretion.

(vi) Grantor will require of all parties filing a preliminary notice in the Registry, a conditional signed lien waiver in the form prescribed by *Utah Code Annotated* § 38-1-39(2) with respect to all payments to any such party.

(d) (vii) If Grantor shall fail to remove and discharge any such lien, encumbrance or charge, or if Grantor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Agent, Agent may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Grantor of and recording a notice of release of lien and substitution of alternate security in the name of Grantor, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Grantor shall, immediately upon demand therefor by Agent, pay to Agent an amount equal to all costs and expenses incurred by Agent in connection with the exercise by Agent of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Notes. Operation of Property. Grantor will operate the Property in a good and workmanlike manner and in accordance with all Applicable Laws and will pay all fees or charges of any kind in connection therewith. Grantor will keep the Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or materially increases the premium of, any insurance then in force with respect thereto. Grantor will comply with and use reasonable efforts to cause all occupants of the Property to comply with the ADA and/or the FHAA and shall provide Agent with copies of all plans for compliance with the ADA and/or the FHAA and all surveys relating to such compliance now in Grantor's possession or obtained by Grantor during the term of the Loan. Grantor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in

such use becoming a nonconforming use under applicable zoning ordinances or other Applicable Laws. Grantor will not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Agent, which shall not be unreasonably withheld, conditioned, or delayed. Grantor shall not operate the Property, or permit the Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Property or any part thereof, as tenant stockholders or otherwise. Grantor shall not cause or permit any drilling or exploration for, or extraction, removal or production of, minerals from the surface or subsurface of the Property. Grantor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened in any material respect. Agent or its authorized representatives, including but not limited to third party appraisers, environmental engineers, employees of Agent, architects and engineers, shall have the right to inspect and conduct testing on the Property at any time during normal business hours and Grantor will assist Agent and/or said representatives in whatever way reasonably necessary to make such inspections and/or testing; provided, however, no such environmental testing shall be undertaken, except upon the occurrence and during the continuance of a default hereunder, absent Agent's reasonable belief that there exists hazardous substances on the Property at concentrations exceeding those allowed by Applicable Environmental Laws. . If Grantor receives a written notice or claim from any federal, state or other governmental entity pertaining to the Property, including specifically but without limitation a notice that the Property is not in compliance with any Applicable Law, Grantor will promptly furnish a copy of such notice or claim to Agent.

(e) Debts for Construction. Grantor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, incurred in the construction, maintenance, operation and development of the Property to be promptly paid prior to delinquency.

(f) Ad Valorem Taxes. Grantor will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Property, or any part thereof, or against the Trustee or Agent for or on account of the Notes or the other indebtedness secured hereby or the interest created by this Deed of Trust and will furnish Agent with receipts showing payment of such taxes and assessments at least ten (10) days prior to the applicable default date therefor; except that Grantor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Grantor shall not be deemed in default hereunder if (i) prior to delinquency of the asserted tax or assessment Grantor establishes an escrow reasonably acceptable to Agent adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Grantor upon payment of all such taxes, assessments, interest, costs and penalties); (ii) Grantor pays to Agent promptly after demand therefor all reasonable out-of-pocket third party costs and expenses incurred by Agent in connection with such contest; and (iii) Grantor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Property may be sold.

(g) Repair and Maintenance. Grantor will keep the Property in good order, repair, condition and appearance, causing all necessary structural and non-structural repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted. Grantor will promptly replace in the ordinary course of business all worn-out or obsolete fixtures or personal property covered by this Deed of Trust with fixtures or personal property comparable to the replaced fixtures or personal property when new, and will repaint the Property when needed. Notwithstanding the foregoing, Grantor will not, without the prior written consent of Agent (i) erect any new buildings, structures or other improvements on the Property; (ii) remove from the Property any fixtures or personal property covered by this Deed of Trust except such as is replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest (except that created by this Deed of Trust), (iii) make any alteration to the Property involving an estimated expenditure exceeding \$100,000 except pursuant to plans and specifications approved in writing by Agent.

(h) Insurance and Casualty. Grantor will keep the Property insured against loss or damage by fire, explosion, windstorm, hail, earthquake, flood (if the Property shall at any time be located in an identified "flood prone area" in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973), tornado and such other hazards as may be required by Agent (including war damage if available under sponsorship of the United States Government when war is threatened or declared) by policies of fire, extended coverage and other insurance in such company or companies, in such amounts, upon such terms and provisions, and with such endorsements, all as may be acceptable to Agent. Grantor will also provide such other insurance as Agent may from time to time require, in such companies, upon such terms and provisions, in such amounts, and with such endorsements, all as are approved by Agent. Grantor further agrees that Grantor will deliver to Agent certified copies of the original policies evidencing such insurance and any additional insurance which shall be taken out upon any part of the Property and receipts evidencing the payment of all premiums, and will deliver certificates evidencing renewals of all such policies of insurance to Agent at least thirty (30) days before any such insurance shall expire. Without limiting the discretion of Agent with respect to required endorsements to insurance policies, Grantor further agrees that all such policies shall provide that proceeds thereunder will be payable to Agent as its interest may appear pursuant and subject to a mortgagee clause (without contribution) of standard form attached to or otherwise made a part of the applicable policy. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of the Grantor in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent (on behalf of the Lenders) or other transferee in the event of such other transfer of title. In the event any of the Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail, earthquake or by any other casualty against which insurance shall have been required hereunder, (i) Agent may, but shall not be obligated to, make proof of loss if not made promptly by Grantor, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Agent instead of to Grantor, and (iii) Agent shall apply the insurance proceeds as follows:

(i) first, to reimburse Agent or the Trustee for all reasonable, out-of-pocket, third party costs and expenses, including reasonable attorney's fees, incurred in connection with the collection of such proceeds; and

(ii) second, if either (a) the Property is so demolished, destroyed or damaged that, in the reasonable judgment of Agent, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time, or (b) a default shall have occurred hereunder, then in either such event, the remainder of said proceeds shall be applied to the payment (without premium or penalty) of the secured indebtedness, either in whole or in part, in the order determined by Agent in its sole discretion; and

(iii) third, if neither of the facts described in (a) or (b) of subparagraph (ii) above exists (or if Agent waives the matters described in (b) of subparagraph (ii)), the remainder of such proceeds shall be applied to the repair, restoration or replacement of the Property so destroyed or damaged and any amounts not so applied shall be applied to the payment (without premium or penalty) of the secured indebtedness in the order determined by Agent in its sole discretion, provided that, any insurance proceeds held by Agent to be applied to the repair, restoration or replacement of the Property as provided above shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Grantor with such terms, conditions and requirements as may be reasonably imposed by Agent.

Notwithstanding the foregoing, Agent shall have the option to apply any such insurance proceeds, in whole or in part, to the repair, restoration or replacement of the Property rather than applying such proceeds to the payment of the secured indebtedness, without regard to the extent of the damage to the Property or the existence of a default hereunder. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and Grantor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature (including any casualty on which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Grantor shall give immediate notice thereof by mail to Agent and, unless otherwise so instructed by Agent, shall promptly, at Grantor's sole cost and expense and regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction in accordance with plans and specifications submitted to and approved by Agent.

(i) Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Grantor will notify Agent of the pendency of such proceedings. Agent may participate in any such proceedings, and Grantor shall from time to time deliver to Agent all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Agent, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to Agent and shall be applied as follows:

(i) first, to reimburse Agent or the Trustee for all reasonable, out-of-pocket, third party costs and expenses, including reasonable attorney's fees, incurred in connection with collection of such proceeds; and

(ii) second, if (a) all of the Property is taken, or (b) so much of the Property is taken, or the Property is so diminished in value that the remainder thereof cannot, in

the judgment of Agent, continue to be operated profitably for the purpose for which it was being used immediately prior to such taking or diminution, or (c) a default shall have occurred hereunder, or (d) the Property is partially taken or diminished in value and, in the judgment of Agent, need not be rebuilt, restored or repaired in any manner, then in any such event, the remainder of said proceeds shall be applied to the payment of secured indebtedness (without premium or penalty) in the order determined by Agent in its sole discretion; and

(iii) third, if none of the facts described in (a) through (d) of subparagraph (ii) above exist (or if Agent waives the matters described in (c) of subparagraph (ii)), the remainder of such proceeds shall be applied to the repair, restoration or replacement of the Property so affected by such condemnation, injury or damage and any amounts not thus paid over shall be applied to the secured indebtedness (without premium or penalty) in the order determined by Agent in its sole discretion; provided that, any such proceeds held by Agent to be applied to the repair, restoration or replacement of the Property as provided above shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Grantor with such terms, conditions and requirements as may be imposed by Agent.

Notwithstanding the foregoing, Agent shall have the option to apply any proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property or any judgments, decrees and awards for injury or damage to the Property, in whole or in part, to the repair, restoration or replacement of the Property rather than applying such proceeds to the payment of the secured indebtedness, without regard to the extent of the taking or the damage to the Property or the existence of a default hereunder. In any event the unpaid portion of the secured indebtedness shall remain in full force and effect and Grantor shall not be excused in the payment thereof. In the event any of the foregoing proceeds are applied to the repair, restoration or replacement of the Property, Grantor shall promptly commence and complete such repair, restoration or replacement of the Property as nearly as possible to its value, condition and character immediately prior to such damage or taking in accordance with plans and specifications submitted to and approved by Agent. Grantor hereby assigns and transfers all such proceeds, judgments, decrees and awards to Agent and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Agent may request. Agent is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Agent shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees and/or awards.

(j) Protection and Defense of Lien. If the validity or priority of this Deed of Trust or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Grantor with respect thereto, Grantor will give prompt written notice thereof to Agent and at Grantor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and the Trustee and Agent, or either of them (whether or not named as parties to legal proceedings with respect thereto) are hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Deed of Trust and

the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be a demand obligation owing by Grantor and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment. Grantor shall timely comply with all requirements of Utah Code Ann. § 38-1a-101 et seq. with regard to filings and notices or mechanics' and materialmen's liens.

(k) No Other Liens. Grantor will not, without the prior written consent of Agent, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Agent, Grantor will cause the same to be promptly discharged and released. Grantor will own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, without the prior written consent of Agent.

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

(m) Financial Statements and Reports; Rent Roll. Grantor shall provide Agent the financial statements required in the Loan Agreement. Agent further reserves the right, upon the occurrence and during the continuance of a default, to require such other financial information of Grantor, in such form and at such other times (including monthly or more frequently) as Agent may reasonably require, and Grantor agrees promptly to provide or to cause to be provided, such information to Agent. All financial statements must be in the form and detail as Agent may from time to time reasonably request.

(n) Escrow. In order to secure the performance and discharge of Grantor's obligations under subparagraphs (f) and (h) of this Paragraph 2.2, but not in lieu of such obligations, upon written demand by Agent upon the occurrence and during the continuance of a default hereunder, Grantor will deposit with Agent a sum equal to ad valorem taxes, assessments and charges (which charges for the purpose of this Paragraph shall include without limitation ground rents and water and sewer rents and any other recurring charge which could create or result in a lien against the Property) against the Property for the then current year and the premiums for policies of insurance covering the period for the then current year, all as estimated by Agent and prorated to the end of the calendar month following the month during which such

demand is made, and thereafter will deposit with Agent, on each date when an installment of principal and/or interest is due on the Notes, sufficient funds (as estimated from time to time by Agent) to permit Agent to pay, at least fifteen (15) days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. Agent shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Agent for future use, applied to any secured indebtedness or refunded to Grantor, at Agent's option, and any deficiency in such funds so deposited shall be made up by Grantor upon demand of Agent. All such funds so deposited shall bear no interest whatsoever, may be mingled with the general funds of Agent and shall be applied by Agent toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Agent by Grantor (which statements shall be presented by Grantor to Agent a reasonable time before the applicable amount is due); provided, however, that, if a default shall have occurred hereunder, such funds may at Agent's option be applied to the payment of the secured indebtedness in the order determined by Agent in its sole discretion, and that Agent may at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Grantor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds held by Agent under this subparagraph (n) but subject to the rights of Agent hereunder.

(o) Further Assurances. Grantor will, on request of Agent, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Agent to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Agent to enable Agent to comply with the requirements or requests of any agency having jurisdiction over Agent or any examiners of such agencies with respect to the indebtedness secured hereby, Grantor or the Property; and Grantor will pay all reasonable costs connected with any of the foregoing; provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Grantor or result in any new or additional obligation, covenant, representation or warranty of Grantor under this Deed of Trust beyond those expressly set forth in the Loan Documents.

(p) Fees and Expenses; Indemnification. Grantor will pay all reasonable and customary appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search fees, escrow fees, attorney's fees and all other reasonable, out-of-pocket, third party costs and expenses

of every character incurred by Grantor or Agent in connection with the Loan evidenced by the Notes, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Grantor as owner of the Property, and will reimburse Agent for all such reasonable, out-of-pocket, third party costs and expenses incurred by it. Grantor shall pay all expenses and reimburse Agent and/or the Lenders for any expenditures, including reasonable attorney's fees and legal expenses, incurred or expended in connection with (i) the breach by Grantor of any covenant herein or in any other instrument securing the payment of the Notes, (ii) Agent's and/or Lenders' exercise of any of their rights and remedies hereunder or under the Notes or any other instrument securing the payment of the Notes or Agent's protection of the Property and its lien and security interest therein, or (iii) any amendments to this Deed of Trust, the Notes or any other Loan Document or any matter requested by Grantor or any approval required hereunder. Grantor will indemnify and hold harmless the Trustee, Agent and the Lenders (for purposes of this paragraph, the terms "the Trustee", "Agent" and "the Lenders" shall include the directors, officers, partners, employees and agents of the Trustee, Agent and the Lenders, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with the Trustee, Agent and the Lenders, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, reasonable, out-of-pocket, third party costs and expenses (including, without limitation, reasonable attorney's fees) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Deed of Trust, the Notes or any other instrument securing the payment of the Notes. **WITHOUT LIMITATION, IT IS THE INTENTION OF GRANTOR AND GRANTOR AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, REASONABLE, OUT-OF-POCKET, THIRD PARTY COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.** The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Deed of Trust but will survive foreclosure of this Deed of Trust or conveyance in lieu of foreclosure and the repayment of the secured indebtedness and the discharge and release of this Deed of Trust and the other documents evidencing and/or securing the secured indebtedness. Any amount to be paid under this subparagraph by Grantor to Agent and/or the Trustee shall be a demand obligation owing by Grantor to Agent (for itself and on behalf of each of the Lenders) and/or the Trustee and shall be subject to and governed by the provisions of Paragraph 2.3 hereof.

(q) Liability Insurance. Grantor shall maintain Commercial General Liability insurance against claims for bodily injury or death and property damage occurring in or upon or resulting from the Property, with such company or companies, in such amounts, upon such terms and provisions, and with such endorsements, all as may be acceptable to Agent. Such Commercial General Liability insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnifications of Agent and the Trustee by

Grantor set forth in this Deed of Trust (but such coverage or the amount thereof shall in no way limit such indemnifications). Grantor shall maintain with respect to each policy or agreement evidencing such Commercial General Liability insurance such endorsements as may be required by Agent and shall at all times deliver and maintain with Agent a certificate with respect to such insurance in form satisfactory to Agent. Not less than fifteen (15) days prior to the expiration date of each policy of insurance required of Grantor pursuant to this Paragraph 2.2(q), Grantor shall deliver to Agent a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Agent. In the event of a foreclosure of this Deed of Trust, the purchaser of the Property shall succeed to all the rights of Grantor, including any right to unearned premiums, in and to all policies of insurance assigned pursuant to the provisions of this subparagraph, and Grantor hereby authorizes Agent to notify any or all insurance carriers of this assignment.

(r) Tax on Lien. In the event of the enactment after this date of any law of the State of Texas or of any other governmental entity deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Agent and/or the Lenders the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust or the indebtedness secured hereby or Agent or the Lenders, then, and in any such event, Grantor, upon demand by Agent, shall pay such taxes, assessments, charges or liens, or reimburse Agent and/or the Lenders therefor; provided, however, that if in the opinion of counsel for Agent (i) it might be unlawful to require Grantor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Agent may elect, by notice in writing given to Grantor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

(s) Change of Name, Identity or Structure. Grantor will not change Grantor's name, address, location, identity (including its trade name or names) or, if not an individual, Grantor's name, address, location, jurisdiction of incorporation, organization or formation, corporate, partnership or other structure without notifying Agent of such change in writing at least thirty (30) days prior to the effective date of such change. Grantor will execute and deliver to Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Agent to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Agent, Grantor shall execute a certificate in form satisfactory to Agent listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

(t) Location and Use of Collateral. All tangible Collateral will be used in the business of Grantor and shall remain in Grantor's possession or control at all times at Grantor's risk of loss and shall be located on the real property described in Exhibit A hereto.

(u) Estoppel Certificate. Grantor shall at any time and from time to time furnish promptly upon reasonable request by Agent (but not more than once in any twelve month period) a written statement in such form as may be reasonably required by Agent stating that the Notes, this Deed of Trust and the other instruments securing the payment of the Notes are valid

and binding obligations of Grantor, enforceable against Grantor in accordance with their terms; the unpaid principal balance of the Notes; the date to which interest on the Notes is paid; that the Notes, this Deed of Trust and the other Loan Documents have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Notes, this Deed of Trust or any other instrument securing the payment of the Notes, or if any of the foregoing statements are untrue, specifying the reasons therefor.

(v) Proceeds of Collateral. Grantor shall account fully and faithfully for and, if Agent so elects, shall promptly pay or turn over to Agent the proceeds in whatever form received from disposition in any manner of any of the Collateral, except as otherwise specifically authorized herein. Grantor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Grantor and shall keep accurate and complete records of the Collateral and its proceeds.

(w) Loan Agreement. Grantor will punctually perform and discharge each and every obligation and undertaking of Grantor under the Loan Agreement, and will not permit a default by Grantor to occur thereunder.

(x) Permitted Encumbrances. Grantor will comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Grantor will not modify or permit any modification of any Permitted Encumbrance, without the prior written consent of Agent, which shall not be unreasonably withheld, conditioned, or delayed.

(y) Environmental. Grantor will not cause or knowingly permit the Property or Grantor to be in material violation of, or do anything or knowingly permit anything to be done which will subject the Property to any remedial obligations under, any Applicable Environmental Laws, and Grantor and Grantor will promptly notify Agent in writing upon obtaining actual knowledge of any existing or, to the actual knowledge of Grantor, pending or threatened investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws relating to the Property or Grantor. Grantor shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Property required by any Applicable Environmental Laws. Grantor shall take all steps reasonably necessary to determine that no hazardous substances are being disposed of or otherwise released on or to the Property in violation of any Applicable Environmental Laws. Grantor will not cause or permit the disposal or other release of any hazardous substance on or to the Property in violation of any Applicable Environmental Laws and covenants and agrees to keep or cause the Property to be kept free of any hazardous substance in violation of Applicable Environmental Laws and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense. Without limitation of Agent's rights to declare a default hereunder and to exercise all remedies available by reason thereof, in the event Grantor fails to comply in material respects with or perform any of the foregoing covenants and obligations, Agent may (without any obligation, express or implied) remove any hazardous substance present on the Property in violation of Applicable Environmental Laws (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be a demand obligation owing by Grantor to Agent pursuant to this Deed of Trust and shall be subject to and covered by the provisions of Paragraph 2.3 hereof, provided, Agent shall provide Grantor with a written notice of such default and provide thirty (30) days to cure such default. Subject to the paragraphs above, Grantor grants to Agent and its agents, employees, contractors and

consultants access to the Property and the license (which is coupled with an interest and irrevocable while this Deed of Trust is in effect) to remove the hazardous substance present on the Property in violation of Applicable Environmental Laws (or if removal is prohibited by law, to take whatever action is required by law). Upon Agent's reasonable request, from time to time during the existence of this Deed of Trust but not more than once in any 12 month period, Grantor will provide at Grantor's sole expense an inspection or audit of the Property from an environmental consulting firm approved by Agent, which approval shall not be unreasonably withheld, indicating the presence or absence of hazardous substances on the Property in violation of Applicable Environmental Laws. If Grantor fails to provide same after thirty (30) days' notice, Agent may order same, and Grantor grants to Agent and its agents, employees, contractors and consultants access to the Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust is in effect) to perform inspections. The cost of such inspections shall be a demand obligation owing by Grantor to Agent pursuant to this Deed of Trust and shall be subject to and covered by the provisions of Paragraph 2.3 hereof.

(z) Asbestos. Grantor covenants and agrees that it will not install in the Property, nor knowingly permit to be installed in the Property, asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by Applicable Environmental Law, and that, if any such asbestos or material containing asbestos exists in or on the Property, whether installed by Grantor or others, Grantor will remove the same (or if removal is prohibited by law, will take whatever action is required by law, including without limitation implementing any required operation and maintenance program) promptly upon discovery at its sole expense. Without limitation of Agent's rights to declare a default hereunder and to exercise all remedies available by reason thereof, in the event Grantor fails to comply with or perform any of the foregoing covenants and obligations, Agent may (without any obligation, express or implied) remove such asbestos or material containing asbestos (or if removal is prohibited by law, take whatever action is required by law including without limitation implementing any required operation and maintenance program) and the cost of removal or such other action shall be a demand obligation owing by Grantor to Agent pursuant to this Deed of Trust and shall be subject to and covered by the provisions of Paragraph 2.3 hereof. Grantor grants to Agent and its agents, employees, contractors and consultants access to the Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust is in effect) to remove such asbestos or materials containing asbestos (or if removal is prohibited by law, take whatever action is required by law including without limitation implementing any required operation and maintenance program). Upon Agent's reasonable request, at any time and from time to time during the existence of this Deed of Trust but not more than once in any twelve (12) month period, Grantor shall provide at Grantor's sole expense an inspection or audit of the Property from an environmental consulting firm approved by Agent, indicating the presence or absence of asbestos or material containing asbestos on the Property. If Grantor fails to provide same after ten (10) days' notice, Agent may order same, and Grantor grants to Agent and its agents, employees, contractors and consultants access to the Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust is in effect) to perform inspections and tests. The cost of such inspections and tests shall be a demand obligation owing by Grantor to Agent pursuant to this Deed of Trust and shall be subject to and covered by the provisions of Paragraph 2.3 hereof.

2.3 Right of Agent to Perform. Grantor agrees that, if Grantor fails to perform any act or to take any action which hereunder Grantor is required to perform or take (after any applicable notice or cure period has elapsed), or to pay any money which hereunder Grantor is required to pay (after any applicable notice or cure period has elapsed), or takes any action prohibited hereby, Agent, on behalf of

the Lenders, in Grantor's name or in its own name, on behalf of the Lenders, may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money or remedy any action so taken, and any reasonable expenses so incurred by Agent and/or the Lenders, and any money paid by Agent and/or the Lenders in connection therewith, shall be a demand obligation owing by Grantor to Agent and the Lenders, and Agent and the Lenders, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Grantor to Agent and/or the Lenders pursuant to this Deed of Trust shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Notes and shall be a part of the secured indebtedness and shall be secured by this Deed of Trust and by any other instrument securing the secured indebtedness.

2.4 Indemnification Regarding Environmental Matters. Grantor agrees to indemnify and hold Agent, the Lenders and the Trustee (for purposes of this paragraph, the terms "Agent", "the Lenders" and "the Trustee" shall include the directors, officers, partners, employees and agents of Agent, the Lenders and the Trustee, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Agent, the Lenders and the Trustee respectively) harmless from and against, and to reimburse Agent, the Lenders and the Trustee with respect to, any and all claims, demands, losses, damages (including consequential damages), liabilities, causes of action, judgments, penalties, reasonable, out-of-pocket, third party costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Agent, the Lenders and/or the Trustee at any time and from time to time by reason of, in connection with or arising out of (a) the breach of any representation or warranty of Grantor as set forth herein regarding asbestos, material containing asbestos or Applicable Environmental Laws, (b) the failure of Grantor to perform any obligation herein required to be performed by Grantor regarding asbestos, material containing asbestos or Applicable Environmental Laws, (c) any violation on or before the Release Date (as hereinafter defined) of any Applicable Environmental Law in effect on or before the Release Date, (d) the removal of hazardous substances from the Property the presence of which violates Applicable Environmental Laws (or if removal is prohibited by law, the taking of whatever action is required by law), (e) the removal of asbestos or material containing asbestos from the Property (or if removal is prohibited by law, the taking of whatever action is required by law including without limitation the implementation of any required operation and maintenance program), (f) any act, omission, event or circumstance existing or occurring on or prior to the Release Date (including without limitation the presence on the Property or release from the Property of hazardous substances disposed of or otherwise released on or prior to the Release Date), resulting from or in connection with the ownership, construction, occupancy, operation, use and/or maintenance of the Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence, and (g) any and all claims or proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment or any other injury or damage resulting from or relating to any hazardous substance located upon or migrating into, from or through the Property (whether or not any or all of the foregoing was caused by Grantor or its tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party and whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of such substance or waste or the mere presence of such substance or waste on the Property). **WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LOSSES, DAMAGES (INCLUDING CONSEQUENTIAL DAMAGES), LIABILITIES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, REASONABLE, OUT-OF-POCKET, THIRD PARTY COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY**

STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY. The term "**Release Date**" as used herein shall mean the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Deed of Trust has been released, or (ii) the date on which the lien of this Deed of Trust is foreclosed or a conveyance by deed in lieu of such foreclosure is fully effective; provided, if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The foregoing indemnities shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust but will survive the Release Date, foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, and the repayment of the secured indebtedness and the discharge and release of this Deed of Trust and the other documents evidencing and/or securing the secured indebtedness. Any amount to be paid under this Paragraph by Grantor to Agent, the Lenders and/or the Trustee shall be a demand obligation owing by Grantor to Agent (for itself and on behalf of the Lenders) and/or the Trustee and shall be subject to and covered by the provisions of Paragraph 2.3 hereof. Nothing in this paragraph, elsewhere in this Deed of Trust or in any other document evidencing, securing or relating to the indebtedness secured hereby shall limit or impair any rights or remedies of Agent, the Lenders and/or the Trustee against Grantor or any third party under Applicable Environmental Laws, including without limitation any rights of contribution or indemnification available thereunder. Notwithstanding anything in this Deed of Trust to the contrary, this Deed of Trust shall not secure any indemnity obligations of Grantor arising under this Paragraph 2.4.

ARTICLE III.
Assignment of Rents

3.1 Assignment. Grantor to provide an additional source of payment of the indebtedness secured hereby, does hereby unconditionally and irrevocably grant a security interest to Agent and the Lenders in and to the following Collateral:

(a) all rights, title, interests, estates, powers, privileges, options and other benefits of Grantor in, to and under the lease agreements which now or hereafter cover or affect all or any portion of the Property, together with all renewals, extensions, modifications, amendments, subleases and assignments of such lease agreements (such lease agreements, renewals, extensions, modifications, amendments, subleases and assignments are herein collectively called the "**Leases**"); and

(b) all of the rents (including "Rents" as defined in the Act) , income, receipts, revenues, issues, profits and other sums of money (collectively, the "**Rent**") that are now and/or at any time hereafter become due and payable to Grantor under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, payments in consideration for cancellation of a Lease, security deposits, advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property and all of Grantor's rights to recover monetary amounts from any lessee in bankruptcy, conservatorship, receivership or similar proceeding including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, disaffirmances, repudiations, and similar actions, under the Federal Bankruptcy Code, the Federal Deposit

Insurance Act and other statutes governing the rights of creditors, including specifically the immediate and continuing right to collect and receive each and all of the foregoing; and

(c) any and all guaranties of payment of the rent under the Leases.

3.2 Grantor hereby represents and warrants unto Agent and the Lenders that Grantor is the sole owner of the entire lessor's interest in the Leases and has good title and good right to assign and create a security interest in and to the Leases and Rent hereby assigned and subject to such security interest and no other person or entity has any right, title or interest therein; that Grantor has duly and punctually performed all of the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by it to date; that Grantor has not at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind; that Grantor has not executed any prior assignments of the Leases or the Rent thereunder; that no Rent reserved in any Lease has been anticipated and no Rent for any period subsequent to the date of this assignment has been collected in advance of the time when the same became due under the terms of the applicable Lease; that Grantor has not performed any act or executed any other instrument which might prevent Agent and/or the Lenders from enjoying and exercising any of its rights and privileges evidenced hereby; that each of the Leases is valid and subsisting and in full force and effect and unmodified; that there exists no defense, counterclaim or set-off to the payment of the Rent under the Leases; and that there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

3.3 Grantor agrees that, so long as the indebtedness evidenced by the Notes or any part thereof or any other indebtedness secured by this Deed of Trust shall remain unpaid, Grantor will make no assignment, pledge or disposition of the Leases or the Rent thereunder; nor will Grantor subordinate any of the Leases to any deed of trust or mortgage or any other encumbrance of any kind or permit, consent or agree to such subordination; nor will Grantor reduce the Rent payable under any of the Leases, modify, alter or amend the Leases or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee under any Lease of and from any obligations, covenants, conditions and agreements to be kept, observed and performed by the lessee, including the obligation to pay the Rent thereunder in the manner and at the place and time specified therein; nor will Grantor incur any indebtedness to a lessee under or guarantor of any Lease which may under any circumstance be used as an offset against the Rent or other payments due under said Lease; nor will Grantor receive or collect any Rent from any present or future lessee of the Property or any part thereof for a period of more than one month in advance of the date on which such payment is due; nor will Grantor cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any lessee thereunder; nor will Grantor enter into additional leases covering any portion of the Property, or renew or extend the term of any Lease, except on the standard lease form approved by Agent, without first having obtained the written consent of Agent; and any such acts, if done or permitted to be done without the prior written consent of Agent, shall be null and void.

3.4 Grantor covenants with Agent and the Lenders, for so long as the indebtedness evidenced by this Notes or any part thereof or any other indebtedness secured by this Deed of Trust shall remain unpaid, to observe and perform duly and punctually all the obligations imposed upon any lessor under the Leases and not to do or permit to be done anything to impair the value thereof; to enforce the performance of each and every term, provision, covenant, agreement and condition in the Leases to be performed by any lessee thereunder; to appear in and defend any action or proceeding arising under, occurring out of or

in any manner connected with any of the Leases, or the obligations, liabilities or duties of Grantor or any lessee under the Leases and, upon request by Agent, to make appearance in the name and on behalf of Agent, but at the expense of Grantor; to exercise any option or election contained in or relating to any of the Leases which Agent shall require; at Agent's request to assign and transfer to Agent, on behalf of the Lenders, by specific Assignment of Leases and Rents, any and all subsequent Leases upon all or any part of the Property (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Deed of Trust as provided herein); to deliver to Agent executed copies of any and all Leases, renewals and extensions of existing Leases and any and all subsequent Leases upon all or any part of the Property; and to execute and deliver at the request of Agent all such further assurances and assignments in the premises covered by the Leases as Agent shall from time to time require and to deliver other records and instruments, including but not limited to rent rolls and books of account, that Agent shall from time to time require.

3.5 Until receipt from Agent of notice of the occurrence of a default specified herein (a "**Notice of Default**"), each lessee under the Leases may pay Rent directly to Grantor and Grantor shall have the right to receive such Rent provided that Grantor shall hold such Rent as a trust fund to be applied as required by Agent and Grantor hereby covenants so to apply the Rent, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal becoming due on the Notes and this Deed of Trust. Upon receipt from Agent of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Agent, on behalf of the Lenders, all Rent thereafter accruing and the receipt of Rent by Agent shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Agent, on behalf of the Lenders, and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Grantor for any Rent paid to Agent after receipt of such Notice of Default. Rent so received by Agent for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Agent, on behalf of the Lenders, to the payment (in such order as Agent shall determine) of: (a) all expenses of managing the Property, including but not limited to the salaries, fees and wages of a managing agent and such other employees as Agent may deem necessary or desirable; all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Property and/or collecting the Rent due and payable under the Leases; and (b) the Notes and other indebtedness secured by this Deed of Trust, principal, interest, attorneys' and collection fees and other amounts, in such order as Agent in its sole discretion may determine. In no event will the assignment pursuant to this Paragraph reduce the indebtedness evidenced by the Notes or otherwise secured by this Deed of Trust, except to the extent, if any, that Rent is actually received by Agent and applied upon or after said receipt to such indebtedness in accordance with the preceding sentence. Without impairing the rights of Agent and the Lenders hereunder, Agent may, at its option, at any time and from time to time, release to Grantor Rent so received by Agent or any part thereof. As between Grantor, Agent and the Lenders, and any person claiming through or under Grantor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph, the assignment contained in this Paragraph is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default specified in this Deed of Trust are intended solely for the benefit of each such lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a lessee who has not received such notice. It shall never be necessary for Agent and/or the Lenders to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph.

3.6 At any time during which Grantor is receiving Rent directly from lessees under the Leases, Grantor shall, upon receipt of written direction from Agent, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Agent, as it becomes due and payable, including Rent which is past due and unpaid. In the event Grantor fails to take such action, or at any time during which Grantor is not receiving Rent directly from lessees under the Leases, Agent shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Grantor, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid.

3.7 **NEITHER AGENT NOR THE LENDERS SHALL BE LIABLE FOR ANY LOSS SUSTAINED BY GRANTOR RESULTING FROM AGENT'S OR LENDERS' FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF AGENT AND/OR THE LENDERS UNDER OR RELATING TO THE LEASES (REGARDLESS OF WHETHER SUCH LOSS IS THE RESULT OF AGENT'S AND/OR ANY LENDERS NEGLIGENCE) UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT OR THE LENDERS, NOR SHALL AGENT OR ANY LENDER BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER THE LEASES BY REASON OF THIS INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER.** Neither Agent nor the Lenders shall be liable for failure to collect, or failure to exercise diligence in the collection of, Rent under the Leases, but shall be accountable only for Rent that Agent actually receives. Grantor will indemnify and hold harmless Agent and the Lenders (for purposes of this paragraph, the term "Agent" and "Lenders" shall include the directors, officers, partners, employees and agents of Agent and the Lenders, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Agent and the Lenders, respectively) from and against, and reimburse Agent and the Lenders for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, reasonable, out-of-pocket, third party costs and expenses (including, without limitation, reasonable attorneys' fees) incurred under the Leases by reason of this instrument or the exercise of rights or remedies hereunder, or which may be asserted against Agent and the Lenders by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, including specifically any obligation or responsibility for any security deposits or other deposits delivered to Grantor by any lessee under any Lease and not assigned and delivered to Agent. **THE RELEASES AND INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, REASONABLE, OUT-OF-POCKET, THIRD PARTY COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) RESULTING FROM THE NEGLIGENCE OF AGENT OR THE LENDERS OR ANY STRICT LIABILITY, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT AND/OR THE LENDERS.** The foregoing releases and indemnities shall not terminate upon release or other termination of the assignment pursuant to this paragraph. Any amount to be paid under this Paragraph by Grantor to Agent shall be a demand obligation owing by Grantor to Agent, shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Notes and shall be secured by this Deed of Trust and by any other instrument securing the Notes. The assignment pursuant to this paragraph shall not operate to place responsibility upon Agent or the Lenders for the control, care, management or repair of the Property, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Agent or the Lenders responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

3.8 The assignment pursuant to this Paragraph is primary in nature to the obligation evidenced and secured by the Notes, this Deed of Trust and any other document given to secure and collateralize the indebtedness secured by this Deed of Trust. Grantor agrees that Agent may enforce this assignment without first resorting to or exhausting any other security or collateral; provided however, that nothing herein contained shall prevent Agent and/or the Lenders from suing on the Notes, foreclosing this Deed of Trust and/or exercising any other right under any document securing the payment of the Notes or at law or equity.

3.9 In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, Grantor covenants and agrees that if any Lease is so rejected, no settlement for damages shall be made without the prior written consent of Agent, and any check in payment of damages for rejection of any such Lease will be made payable to both Grantor and Agent. Grantor hereby assigns any such payment to Agent, on behalf of the Lenders, and further covenants and agrees that upon the request of Agent, it will duly endorse to the order of Agent, on behalf of the Lenders, any such check, the proceeds of which will be applied to the Notes and other indebtedness secured by this Deed of Trust in such order as Agent in its sole discretion may determine.

3.10 In the event that any Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, Grantor hereby assigns any such payment to Agent and further covenants and agrees that, upon the request of Agent, it will pay the amount so received to Agent, on behalf of the Lenders, which amount will be applied to the Notes and other indebtedness secured by the Deed of Trust in such order as Agent in its sole discretion may determine.

3.11 Nothing contained herein and no act done or omitted by Agent pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Agent or any Lender of their rights and remedies under the Notes or a waiver or curing of any default hereunder or under the Notes, and the assignment pursuant to this paragraph is made and accepted without prejudice to any of the rights and remedies possessed by Agent and/or the Lenders under the terms of the Notes and the other Loan Documents. The right of Agent to collect said principal sum, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

3.12 Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Property, (b) the operation of law or (c) any other event, lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this assignment.

3.13 This Article III is subject to the Act – the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. – and in the event of any conflict or inconsistency between the provisions of this Section 2 and the provisions of the Act, the provisions of the Act shall control and Agent shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

ARTICLE IV.
Remedies in Event of Default

4.1 Defaults. The term “**default**” as used in this Deed of Trust shall mean the occurrence of any of the following events:

(a) the failure of Grantor to make due and punctual payment of the Notes or of any other secured indebtedness or of any installment of principal thereof or interest thereon, or of any other amount required to be paid under the Notes, this Deed of Trust or any other instrument securing the payment of the Notes, as the same shall become due and payable, whether at maturity or when accelerated pursuant to any power to accelerate contained in the Notes or contained herein; or

(b) the failure of Grantor timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein or in any other Loan Document required to be observed, kept or performed, other than those referred to in Paragraph 4.1(a) or in any other subparagraph of this Paragraph 4.1 except this subparagraph (b), if Grantor fails to commence to cure for such failure within (10) business days after receipt by Grantor of written notice and demand for the performance of such covenant, agreement, warranty or condition, or thereafter fails to diligently pursue such cure to completion; or

(c) any representation contained herein or in any other Loan Document or otherwise made by Grantor or any other person or entity to Agent in connection with the Loan evidenced by the Notes is false or misleading in any material respect; or

(d) a default or event of default occurs under any other instrument securing the payment of the secured indebtedness or any part thereof or under the Loan Agreement (after expiration of any applicable grace or cure period); or

(e) Grantor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due; or

(f) Grantor is generally not paying its debts as such debts become due; or

(g) a receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Grantor or any of the Property, either in a proceeding brought by Grantor or in a proceeding brought against Grantor and such appointment is not discharged or such possession is not terminated within sixty (60) days after the effective date thereof or Grantor consents to or acquiesces in such appointment or possession; or

(h) Grantor files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing are hereinafter collectively called “**applicable Bankruptcy Law**”) or an involuntary petition for relief is filed against Grantor under any applicable Bankruptcy Law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Grantor is entered under any applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Grantor; or

(i) the Property or any part thereof is taken on execution or other process of law in any action against Grantor; or

(j) Grantor fails to have discharged within a period of thirty (30) days any attachment, sequestration or similar writ levied upon any property of Grantor; or

(k) Grantor fails to pay within thirty (30) days any final money judgment against Grantor; or

(l) any of the events referred to in subheadings (e), (f), (g), (h), (j) or (k) shall occur with respect to any joint venturer or general partner or member of Grantor or any guarantor of the payment of the secured indebtedness or any part thereof and shall not be remedied within the time set forth in said subheadings; or

(m) Grantor abandons all or a portion of the Property; or

(n) the holder of any lien or security interest on the Property (without hereby implying the consent of Agent to the existence or creation of any such lien or security interest) declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

(o) without the prior written consent of Agent (which consent may be withheld for any reason or for no reason), Grantor sells, leases (except as expressly provided in Article III of this Deed of Trust), exchanges, assigns, transfers, conveys or otherwise disposes of all or any part of the Property or any interest therein (except for the disposition of worn-out or obsolete personal property or fixtures under the circumstances described in Paragraph 2.2(g) hereof), or legal or equitable title to the Property, or any part thereof or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise, whether any of the foregoing is voluntary or involuntary, it being understood that the consent of Agent required hereunder may be refused by Agent in its sole and absolute discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of Agent, including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Notes, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the obligations under the Loan Documents; or

(p) without the prior written consent of Agent (which consent may be withheld for any reason or for no reason), Grantor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than encumbrances permitted by Agent, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created herein or in any other Loan Document, or acquires any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, it being understood that the consent of Agent required hereunder may be refused by Agent in its sole and absolute discretion or for any reason or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of Agent including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Notes, to require payment of any amount as a fee or other consideration and to require a payment on the principal of the Notes; or

(q) the Property is so demolished, destroyed or damaged that, in the judgment of Agent, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time; or

(r) so much of the Property is taken in condemnation, or sold in lieu of condemnation, or the Property is so diminished in value due to any injury or damages to the Property, that the remainder thereof cannot, in the judgment of Agent, continue to be operated profitably for the purpose for which it was being used immediately prior to such taking, sale or diminution; or

(s) Grantor dissolves, liquidates, merges or consolidates or any interest in Grantor is sold, assigned, transferred, mortgaged, pledged, encumbered, or otherwise disposed of, voluntarily or involuntarily, without the prior written consent of Agent (other than transfers which are expressly permitted and do not require Agent's consent pursuant to Section 4.36 of the Loan Agreement) or, if an individual, Grantor dies or becomes legally incapacitated; or

(t) any failure of any representation or warranty made under any Certification of Non-Foreign Status furnished Agent in connection with the Notes to be true and correct in all respects or any failure to perform or other breach of any covenant therein; or

(u) any failure of any representation or warranty made in any guaranty of the payment of the secured indebtedness or any part thereof to be true and correct in all respects or any failure to perform or other breach of any covenant in said guaranty.

4.2 Notice of Default. Upon the occurrence of a default, Agent may elect to have the Property sold in the manner provided herein and under Utah law. Agent may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations secured hereby. Trustee shall file such notice for record in the office of the county recorder of the county where the Property is located. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with Utah law.

4.3 Acceleration. Upon the occurrence of a default, Agent may at its option, and at the direction of the Majority Lenders (as defined in the Loan Agreement) shall, declare all secured indebtedness in its entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by Utah law as Agent may elect.

4.4 Possession. Upon the occurrence of a default, Agent is authorized, on behalf of the Lenders, prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Grantor and to deduct from such rents all costs, expenses and liabilities of every character incurred by Agent and/or the Lenders in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such rents on the indebtedness secured hereby in such manner as Agent may elect. All such costs, expenses and liabilities incurred by Agent and/or the Lenders in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the rate of interest payable on matured but unpaid principal of or interest on the

Notes, all of which shall constitute a portion of the secured indebtedness. If necessary to obtain the possession provided for above, Agent may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. **IN CONNECTION WITH ANY ACTION TAKEN BY AGENT PURSUANT TO THIS PARAGRAPH 4.4, NEITHER AGENT NOR THE LENDERS SHALL BE LIABLE FOR ANY LOSS SUSTAINED BY GRANTOR RESULTING FROM ANY FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF AGENT AND/OR THE LENDERS IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF AGENT OR ANY LENDER) UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OF AGENT OR THE LENDERS, NOR SHALL AGENT OR THE LENDERS BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE AGREEMENT COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY AGENT AND THE LENDERS FOR, AND TO HOLD AGENT AND THE LENDERS HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY AGENT AND/OR THE LENDERS UNDER ANY SUCH LEASE AGREEMENT OR UNDER OR BY REASON OF THIS DEED OF TRUST OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST AGENT AND/OR THE LENDERS BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE, CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OF AGENT AND/OR THE LENDERS OR ANY STRICT LIABILITY (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT OR THE LENDERS).** Should Agent and/or the Lenders incur any such liability, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and Grantor shall reimburse Agent and the Lenders therefor immediately upon demand. Nothing in this Paragraph 4.3 shall impose any duty, obligation or responsibility upon Agent or the Lenders for the control, care, management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease agreement; nor shall it operate to make Agent or the Lenders responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, **OR FOR ANY NEGLIGENCE IN THE MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE OR STRANGER OR ANY STRICT LIABILITY (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT).** Grantor hereby assents to, ratifies and confirms any and all actions of Agent with respect to the Property taken under this Paragraph 4.4. For purposes of this paragraph, the term "Agent" and "Lenders" shall include the directors, officers, employees, attorneys and agents of Agent and the Lenders, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Agent and the Lenders, respectively.

4.5 Sale by Trustee Pursuant to Power of Sale. After the lapse of such time as may then be required by Utah Code Ann. § 57-1-24 or other Utah law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Ann. §§ 57-1-24 and 57-1-25 or other Utah law, Trustee, without demand on Grantor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels in such order as Agent may determine (but subject to any statutory right under Utah Code Ann. § 57-1-27 to

direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. The postponement and notice of postponement shall be given as then required by Utah law.

Agent may bid at the sale and shall receive a credit on Agent's bid up to the amount owing to Agent secured by this Deed of Trust and as provided by Utah law. Grantor agrees that (i) all default rate interest, late charges, prepayment premiums, breakage fees and other amounts owing under the Loan Documents, if any, in addition to amounts constituting principal and non-default interest, owing from time to time under the Loan Documents shall constitute a part of and be entitled to the benefits of Agent's lien upon the Property, and (ii) Agent may add all such amounts to the principal balance of the Notes, and in either case Agent may include all such amounts in any credit bid Agent may make at a foreclosure sale of the Property pursuant to this Deed of Trust.

Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall constitute prima facie evidence of the truthfulness thereof and are conclusive evidence in favor of bona fide purchasers and encumbrances for value and without notice. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and costs and reasonable attorneys' fees and legal expenses actually incurred; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest [at the Default Rate, as set forth in the Note]; (d) all obligations secured by this Deed of Trust; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court in the county in which the sale took place as provided by Utah law. If the proceeds are deposited with the Clerk of the District Court, Trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. Upon depositing the balance and filing the affidavit, Trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with Utah law.

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

4.6 Judicial Foreclosure. This instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of a default may be foreclosed as to any of the Property in any manner permitted by the laws of the State of Utah or of any other state in which any part of the Property is situated, and any foreclosure suit may be brought by the Trustee or by Agent. In the event a foreclosure hereunder shall be commenced by the Trustee, or his substitute or successor, Agent 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 the Notes and the other secured indebtedness, and for the foreclosure of this Deed of Trust. It is agreed that if Agent should institute a suit for the collection of the Notes or any other secured indebtedness and for the foreclosure of this Deed of Trust, Agent may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, his substitute or successor to sell the property in accordance with the provisions of this Deed of Trust.

4.7 Receiver. In addition to all other remedies herein provided for, Agent shall have all rights under the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101. Specifically, Grantor agrees that upon the occurrence of a default, Agent shall as a matter of right, on behalf of the Lenders, be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Agent, but nothing herein is to be construed to deprive Agent of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Agent, on behalf of the Lenders, to receive payment of the rents and income pursuant to Paragraph 3.1 hereof. Any money advanced by Agent and/or the Lenders in connection with any such receivership shall be a demand obligation owing by Grantor to Agent and shall bear interest from the date of making such advancement by Agent and/or the Lenders until paid at the rate of interest payable on matured but unpaid principal of or interest on the Notes and shall be a part of the secured indebtedness and shall be secured by this Deed of Trust and by any other instrument securing the secured indebtedness.

4.8 Personal Property Election. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the UCC, Agent, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

4.9 [Reserved.]

4.10 Uniform Commercial Code. Upon the occurrence of a default, Agent, on behalf of the Lenders, may exercise its rights of enforcement with respect to the Collateral under the UCC, as amended, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Agent may enter upon the Property to take possession of, assemble and collect the Collateral or to render it unusable; and

(b) Agent may require Grantor to assemble the Collateral and make it available at a place Agent designates which is mutually convenient to allow Agent to take possession or dispose of the Collateral; and

(c) written notice mailed to Grantor as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this Paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Mortgaged Property under power of sale; and

(e) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Collateral and the Mortgaged Property may, at the option of Agent, be sold as a whole; and

(f) it shall not be necessary that Agent or the Lenders take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorney's fees and legal expenses incurred by Agent and the Lenders; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness or as to the occurrence of any default, or as to Agent having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Agent, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Agent.

4.11 Status of the Property; Deficiency. Grantor acknowledges that with respect to *Utah Code Annotated* § 57-1-25, the stated purpose for which this Deed of Trust is given is NOT to finance, refinance or construct residential rental property. Grantor agrees to pay any deficiency arising from any cause, to which Agent may be entitled after applications of the proceeds of any trustee's sale, and Agent may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other Utah law. To the extent the Utah Deed of Trust Act, as now existing or hereafter amended, or other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Grantor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

(i) The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

(ii) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

(iii) Grantor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

4.12 Reinstatement. If Grantor, Grantor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan secured hereby within three months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Agent the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31(2), as determined by Agent, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale. Furthermore, in addition to any Grantor payment obligations under this Deed of Trust, Grantor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Deed of Trust.

4.13 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Agent and the Lenders, and the Trustee, Agent and the Lenders shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.14 Resort to Any Security. Agent and the Lenders may resort to any security given by this Deed of Trust or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Agent in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Deed of Trust.

4.15 Waiver. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Agent and the Lenders under the terms of this Deed of Trust to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Agent or the Lenders under the terms of this Deed of Trust to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Paragraph and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Paragraph.

4.16 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Grantor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Subject to the terms of any applicable non-disturbance and/or attornment agreement between Agent and any tenant(s) of the Property, such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in the District Court in the county in which such property, or any part thereof, is situated.

4.17 Tender After Acceleration. If, following the occurrence of a default and the acceleration of the secured indebtedness but prior to the foreclosure of this Deed of Trust against the Property, Grantor shall tender to Agent payment of an amount sufficient to pay the entire secured indebtedness, such tender shall be deemed to be a voluntary prepayment under the Notes and, consequently, Grantor shall also pay to Agent any charge or premium required under the Notes to be paid in order to prepay principal and, if such principal payment is made during any period when prepayment is prohibited by this Deed of Trust or the Notes, the applicable charge or premium shall be the maximum prepayment penalty provided for in the Notes; provided, however, that in no event shall any amount payable under this Paragraph, when added to the interest otherwise payable on the Notes and the other secured indebtedness, exceed the maximum interest permitted under Utah law.

4.18 Collection Expenses. Upon the occurrence of a default, Grantor shall reimburse Agent and the Lenders for all reasonable, out-of-pocket expenses incurred by Agent and the Lenders as a result of such default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and legal fees and expenses.

ARTICLE V.
Miscellaneous

5.1 Actions by Trustee. At any time and from time to time upon written request of Agent, payment of its fees and, in the case of full reconveyance, presentation of this Deed of Trust and the promissory note(s) secured hereby which are paid in full, without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) make a survey, map or plat of the Mortgaged Property; (b) join in granting any easement or creating any restriction on or relating to the Mortgaged Property; (c) join in any subordination or other agreement affecting this Deed of Trust which is authorized in writing by Agent; and (d) reconvey, without warranty, all or any part of the Mortgaged Property upon written request of Agent or as provided by Utah law. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall constitute prima facie evidence and are conclusive evidence in favor of bona fide purchasers and encumbrances for value and without notice. Grantor agrees to pay reasonable Trustee's fees, including reasonable attorneys' fees and legal expenses, for any of such services.

5.2 Defeasance. If all of the secured indebtedness be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed, then and in that event only, all rights under this Deed of Trust shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Agent in due form at Grantor's cost.

5.3 Successor Trustee. The Trustee may resign by an instrument in writing addressed to Agent, or the Trustee may be removed at any time with or without cause by an instrument in writing executed by Agent. In case of the death, resignation, removal or disqualification of the Trustee or if for any reason Agent shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Agent shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, by instrument in writing, executed by Agent and duly acknowledged and recorded in the office of the recorder of the county where the Mortgaged Property is situated, with a copy thereof being provided to the persons required by Utah Code Ann. § 57-1-22 or any successor statute, which shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Grantor, Trustee and Agent hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee and all other information required by Utah Code Ann. § 57-1-22 or any successor statute. In the event the indebtedness secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute trustee provided for in the preceding sentence. Such appointment and designation by Agent or by the holder or holders of not less than a majority of the indebtedness secured hereby shall be full evidence of the right and authority to make the same and of all facts therein recited. If Agent is a corporation and such appointment is executed in its behalf by an officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee; but nevertheless, upon the written request of Agent or of the successor or substitute Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Property of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute Trustee. All references herein to the Trustee shall be deemed to refer to the Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

5.4 Liability and Indemnification of Trustee. **THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by the 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 Utah law), and the Trustee shall be under no liability for interest on any moneys received by him hereunder. **GRANTOR WILL REIMBURSE THE TRUSTEE FOR, AND INDEMNIFY AND SAVE HIM HARMLESS AGAINST, ANY AND ALL LIABILITY AND REASONABLE, OUT-OF-POCKET EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES HEREUNDER (INCLUDING ANY LIABILITY AND EXPENSES RESULTING FROM THE**

TRUSTEE'S OWN NEGLIGENCE) [BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT])). The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust.

5.5 Waiver by Agent. Agent may at any time and from time to time (a) waive or not enforce compliance by Grantor with any covenant herein made by Grantor (b) consent to Grantor doing any act which hereunder Grantor is prohibited from doing, or consent to Grantor failing to do any act which hereunder Grantor is required to do, (c) release any part of the Property, or any interest therein, from the lien and security interest of this Deed of Trust without the joinder of the Trustee, or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Agent hereunder except to the extent specifically agreed to by Agent in writing.

5.6 Actions by Agent. The lien, security interest and other security rights of Agent and the Lenders hereunder shall not be impaired by any indulgence, moratorium or release granted by Agent, including but not limited to (a) any renewal, extension, increase or modification which Agent may grant with respect to any secured indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Agent may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Agent and/or the Lenders shall not release or impair the lien, security interest or other security rights of Agent and the Lenders hereunder or affect the liability of Grantor or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Property.

5.7 Rights of Agent. Agent may waive any default without waiving any other prior or subsequent default. Agent may remedy any default without waiving the default remedied. Neither the failure by Agent or any Lender to exercise, nor the delay by Agent in exercising, any right, power or remedy upon any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Agent or any Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Agent and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Acceptance by Agent or any Lender of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

5.8 Notification of Account Debtors. Agent on behalf of the Lenders may at any time after default by Grantor notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Agent directly.

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

5.10 Fixture Filing. This Deed of Trust shall be effective as a financing statement pursuant to Utah Code Ann. § 70A-9a-502 with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Recorder where the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral, and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Grantor is set forth below opposite the signature of Grantor to this Deed of Trust and the address of Agent from which information concerning the security interest may be obtained is the address of Agent set forth at the end of this Deed of Trust.

5.11 Filing and Recordation. Grantor will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as the Trustee or Agent shall reasonably request, and will pay all such recording, filing, re-recording and refiling fees and other charges. Grantor hereby authorizes Agent or the Trustee to file any financing statement or financing statement amendment covering the Collateral or relating to the security interest created herein.

5.12 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Agent may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness secured hereby in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Property, no forbearance on the part of Agent or any Lender and no extension of the time for the payment of the indebtedness secured hereby given by Agent or the Lenders shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by Agent

5.13 Place of Payment. The Notes and all other secured indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Notes, or if no such designation is made, at the office of Agent at the address indicated in this Deed of Trust, or at such other place as Agent may designate in writing.

5.14 Subrogation. To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Agent and the Lenders at Grantor's request and Agent and the Lenders shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released; provided, however, that the terms and provisions of this Deed of Trust shall govern the rights and remedies of Agent and the Lenders and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which Agent and the Lenders subrogated hereunder.

5.15 Application of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness or if the lien and security interest of the secured indebtedness of this Deed of Trust are invalid or unenforceable as to any part of the secured indebtedness or as to any part of the Property, then all payments made on the secured indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured in whole or in part by this Deed of Trust.

5.16 Usury. It is the intent of Agent, the Lenders and Grantor in the execution of the Notes, this Deed of Trust and all other instruments now or hereafter securing the Notes or executed in connection therewith or under any other written or oral agreement by Grantor in favor of Agent and/or the Lenders to contract in strict compliance with applicable usury law. In furtherance thereof, Agent, the Lenders and Grantor stipulate and agree that none of the terms and provisions contained in the Notes, this Deed of Trust or any other instrument securing the Notes or executed in connection herewith, or in any other written or oral agreement by Grantor in favor of Agent and/or the Lenders, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither Grantor nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of the Notes or the other indebtedness secured hereby shall ever be obligated or required to pay interest on the Notes or on indebtedness arising under any instrument securing the Notes or executed in connection therewith, or in any other written or oral agreement by Grantor in favor of Agent, at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of the Notes, this Deed of Trust and any other instruments now or hereafter securing the Notes or executed in connection herewith or any other oral or written agreements which may be in apparent conflict herewith. Agent and the Lenders expressly disavow any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of the Notes is accelerated. If the maturity of the Notes shall be accelerated for any reason or if the principal of the Notes is paid prior to the end of the term of the Notes, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by the Notes exceeds the applicable maximum lawful rate, Agent and the Lenders shall, at Agent's option, either refund to Grantor the amount of such excess or credit the amount of such excess against the principal balance of the Notes then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Agent and/or the Lenders shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest which would increase the effective interest rate on the Notes or the other indebtedness secured hereby to a rate in excess of that permitted to be charged by applicable law, all such amounts determined to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Agent, be either immediately returned to Grantor or credited against the principal balance of the Notes then outstanding or the other indebtedness secured hereby, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Deed of Trust, Grantor acknowledges that it believes the Loan evidenced by the Notes to be non-usurious and agrees that if, at any time, Grantor should have reason to believe that such loan is in fact usurious, it will give Agent notice of such condition and Grantor agrees that Agent and the Lenders shall have ninety (90) days after receipt of such notice in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this paragraph shall mean the laws of the State of Texas or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

5.17 Notice. Any notice, request, demand or other communication required or permitted hereunder, or under the Notes, or under any other instrument securing the payment of the Notes (unless otherwise expressly provided therein) shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address shown below, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

If to Grantor: CH REALTY IX-GBB I SALT LAKE CITY 300
STREET NORTH, L.P.
3819 Maple Avenue
Dallas, Texas 75219
Attn: Asset Manager
Telecopy No: 214-445-0903

With a copy to: CH REALTY IX-GBB I SALT LAKE CITY 300
STREET NORTH, L.P.
3819 Maple Avenue
Dallas, Texas 75219
Attn: General Counsel
Telecopy No: 214-445-0903

And a copy to: Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Greg A. Zimmerman
Telecopy No: 214-745-5390

If to Agent: Comerica Bank
1717 Main Street, 4th Floor
Mail Code 6504
Dallas, Texas 75201
Attention: Commercial Real Estate
Telecopy No. 214-969-6682

With a copy to: Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Ray T. Khirallah
Telecopy No: 214-999-9070

5.18 Request for Notice. Grantor requests that a copy of any notice of default and of any notice of sale under any deed of trust encumbering the Property at any time be mailed to Grantor at the address for Grantor provided in Paragraph 5.17.

5.19 Heirs, Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor including all successors in interest of Grantor in and to all or any part of the Property, and shall inure to the benefit of the Trustee and Agent and their respective heirs, successors, substitutes and assigns and shall constitute covenants running with the land. All references in this Deed of Trust to Grantor, Trustee or Agent shall be deemed to include all such heirs, devisees, representatives, successors, substitutes and assigns.

5.20 Severability. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.21 Gender and Number. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.22 Counterparts. This Deed of Trust may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

5.23 Joint and Several. Where two or more persons or entities have executed this Deed of Trust, unless the context clearly indicates otherwise, the term "Grantor" as used in this Deed of Trust means the grantors hereunder or either or any of them and the obligations of Grantor hereunder shall be joint and several.

5.24 Reporting Requirements. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Notes and secured by this Deed of Trust which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Agent to furnish Agent with evidence of such compliance.

5.25 Headings. The paragraph headings contained in this Deed of Trust are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

5.26 Consent of Agent. Except where otherwise provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Agent is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Agent, and Agent shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Agent's judgment.

5.27 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

5.28 Negation of Partnership. Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Grantor and Agent, or in any way make Agent a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

5.29 Modification by Subsequent Owners. Grantor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Agent and any subsequent owner of the Property, with or without notice to Grantor, and no such modification shall impair the obligations of Grantor under this Deed of Trust or under any Loan Document. Nothing in this Paragraph shall be construed as permitting any transfer of the Property which would constitute a default under this Deed of Trust.

5.30 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Grantor, Agent and the Lenders with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Grantor, Agent and the Lenders with respect thereto. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Agent or the Lenders to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

5.31 Applicable Law. **THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE, EXCEPT AS OTHERWISE PROVIDED IN THIS DEED OF TRUST AND EXCEPT FOR THE PROVISIONS OF ARTICLE III OF THIS DEED OF TRUST AND THOSE PROVISIONS IN THIS DEED OF TRUST PERTAINING TO (i) THE CREATION, PERFECTION OR VALIDITY OF, (ii) EXECUTION ON OR (iii) TO THE EXTENT REQUIRED BY APPLICABLE LAW, COLLECTION OF DEFICIENCIES FOLLOWING FORECLOSURE ON LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATE OF UTAH, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH. GRANTOR AND AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF TEXAS, AND ANY APPELLATE COURT THEREOF, (II) AGREES THAT ALL ACTIONS AND PROCEEDINGS BASED UPON, ARISING OUT OF, RELATING TO OR OTHERWISE CONCERNING THIS SECURITY AGREEMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT RELATED TO THIS SECURITY AGREEMENT, INCLUDING ALL CLAIMS FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, SHALL SOLELY AND EXCLUSIVELY BE BROUGHT, HEARD, AND DETERMINED (LITIGATED) IN SUCH COURTS, (III) ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, THE SOLE AND EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, (IV) WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED UPON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO BRINGING OR MAINTAINING ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTION, AND (V) AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS DEED OF TRUST, OR ANY**

SUCH OTHER DOCUMENT, INSTRUMENT OR AGREEMENT. NOTHING HEREIN SHALL LIMIT THE RIGHT OF AGENT TO BRING ANY ACTION OR PROCEEDING AGAINST GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE ENFORCEMENT OF ANY LIENS OR SECURITY INTERESTS IN FAVOR OF AGENT ON ANY OF AGENT'S PROPERTIES OR ASSETS.

5.32 Waiver of Judicial Procedural Matters. GRANTOR, AND AGENT AND LENDERS BY ACCEPTANCE OF THIS DEED OF TRUST, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS DEED OF TRUST, ANY OF THE LOAN DOCUMENTS OR THE SECURED INDEBTEDNESS.

ARTICLE VI.

CONSTRUCTION MORTGAGE

6.1 Construction. THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN *UTAH CODE ANNOTATED*, SECTION 70A-9a-334(8) , AND SUCH PROCEEDS OF THE INDEBTEDNESS SECURED HEREBY HAVE BEEN OR WILL BE GIVEN TO FINANCE THE CONSTRUCTION OF IMPROVEMENTS UPON LAND.

NOTICE RE ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR 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.

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SIGNATURE PAGE FOLLOWS

The address of Grantor is:

CH Realty IX-GBB I Salt Lake City 300 Street North, L.P.
3819 Maple Avenue
Dallas, Texas 75219
Attention: Asset Manager
With a copy to:

CH Realty IX-GBB I Salt Lake City 300 Street North, L.P.,
3819 Maple Avenue
Dallas, Texas 75219
Attention: General Counsel

The address of Agent is:

Comerica Bank
1717 Main Street, 4th Floor
Dallas, Texas 75201
Attention: Commercial Real Estate

EXHIBIT "A"

Legal Description

Real property in the City of Salt Lake City, County of Salt Lake, State of Utah, described as follows:

PARCEL 1:

A PARCEL OF LAND LOCATED IN LOT 3 AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°49'53" EAST 1040.61 FEET ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, NORTH 00°10'07" EAST 86.00 FEET TO THE EAST LINE OF COPPER CROSSING PLAT 2, A SUBDIVISION RECORDED JANUARY 14, 2019 AS ENTRY NO. 12918169 IN BOOK 2019P AT PAGE 15 OF THE RECORDS OF THE SALT LAKE COUNTY RECORDER AND ALONG SAID LINE THE FOLLOWING FIVE COURSES: 1) NORTH 00°01'10" EAST 226.30 FEET, 2) NORTH 00°27'22" WEST 113.52 FEET, 3) NORTH 01°19'50" WEST 111.78 FEET, 4) NORTH 01°30'43" EAST 130.43 FEET AND 5) NORTH 00°26'13" WEST 524.02 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 2, AND THENCE NORTH 00°26'13" WEST 139.50 FEET TO THE NORTHEAST CORNER OF SAID COPPER CROSSING PLAT 2; THENCE SOUTH 89°57'20" EAST 287.82 FEET TO THE SOUTHWEST CORNER OF LOT 3 OF SAID SECTION; THENCE ALONG THE WEST LINE OF SAID LOT 3 NORTH 00°00'19" EAST 1,154.92 FEET TO THE SOUTHWESTERLY LINE OF LOT 1, STADLER PLAT 1, A SUBDIVISION RECORDED JUNE 19, 2018 AS ENTRY NO. 12793978 IN BOOK 2018P AT PAGE 236 OF SAID RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID SUBDIVISION THE FOLLOWING FIVE COURSES: 1) NORTH 89°57'48" EAST 706.21 FEET, 2) SOUTH 82°53'00" EAST 747.21 FEET, 3) SOUTH 00°01'23" EAST 981.50 FEET, 4) NORTH 89°50'27" WEST 22.50 FEET AND 5) SOUTH 00°10'07" WEST 136.53 FEET TO THE NORTH LINE OF GARDNER LOGISTICS CENTER PLAT 1, A SUBDIVISION RECORDED JANUARY 28, 2019 AS ENTRY NO. 12924984 IN BOOK 2019P AT PAGE 37 OF SAID RECORDS; THENCE ALONG SAID LINE AND THE WESTERLY EXTENSION THEREOF THE FOLLOWING FOUR COURSES: 1) NORTH 74°49'17" WEST 28.39 FEET, 2) SOUTH 89°59'58" WEST 61.80 FEET, 3) NORTH 89°41'38" WEST 628.15 FEET AND 4) SOUTH 89°46'34" WEST 671.38 FEET; THENCE ALONG THE SOUTH LINE OF THE BRIGHTON DRAIN EASEMENT, RECORDED MAY 13, 2005 AS ENTRY NO. 9376779 IN BOOK 9130 AT PAGE 8141 OF SAID RECORDS THE FOLLOWING THREE COURSES: 1) SOUTH 74°34'40" WEST 155.82 FEET, 2) SOUTH 84°48'37" WEST 62.30 FEET AND 3) SOUTH 60°27'12" WEST 41.59 FEET TO A POINT OF TANGENCY OF A 201.30 FOOT RADIUS CURVE TO

THE RIGHT; THENCE WESTERLY 79.36 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°35'16" AND A LONG CHORD OF SOUTH 71°44'50" WEST 78.85 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A PARCEL OF LAND LOCATED IN LOT 4 OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF LOT 4 OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING SOUTH 89°57'48" WEST 1,320.11 FEET ALONG THE NORTH LINE OF SAID SECTION 2 TO THE NORTHEAST CORNER OF SAID LOT 4 AND ALONG SAID EAST LINE SOUTH 00°00'19" WEST 169.50 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 2, AND THENCE CONTINUING ALONG SAID LINE SOUTH 00°00'19" WEST 1,154.92 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4; THENCE ALONG THE SOUTH LINE OF SAID LOT 4 NORTH 89°57'20" WEST 287.82 FEET TO THE EAST LINE OF THE PROPOSED MOUNTAIN VIEW CORRIDOR; THENCE ALONG SAID LINE THE FOLLOWING THREE COURSES: 1) NORTH 00°24'46" WEST 118.95 FEET, 2) NORTH 04°16'19" EAST 579.36 FEET TO A POINT ON THE ARC OF A 1,218.20 FOOT NON-TANGENT CURVE TO THE RIGHT AND 3) NORTHERLY 468.82 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°02'59" AND A LONG CHORD OF NORTH 10°39'02" EAST 465.93 FEET; THENCE NORTH 89°57'48" EAST 159.52 FEET TO THE POINT OF BEGINNING.

APN: 14-02-176-003-0000 and 14-02-101-006-0000