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TRD- TRUST DEED

Rashelle Hobbs, Recorder, Salt Lake County, Utah

Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.

1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

When recorded, return to:

Niles W. Holmes, Esq.
Niles Holmes PC
2609 Thomas Avenue
Dallas, Texas 75204

Tax Parcel No. 21-25-176-012

#154406 - BHP

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

**THIS LIEN INSTRUMENT SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH
MAY VARY FROM TIME TO TIME ACCORDING TO CHANGES IN THE ONE (1) MONTH TERM
SECURED OVERNIGHT FINANCING RATE OR ANY SUCCESSOR INTEREST RATE, IN
ACCORDANCE WITH THE PROMISSORY NOTE BETWEEN BORROWER AND LENDER.**

**THIS LIEN INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE
FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL
PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE
UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL
REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS
THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, LENDER
IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR." BORROWER IS THE OWNER OF
THE PROPERTY DESCRIBED HEREIN.**

This DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND
FIXTURE FINANCING STATEMENT (herein referred to as the "**Lien Instrument**"), entered into effective as of
February 28, 2022 by RIII TIG CHELSEA OWNER, LLC, a Delaware limited liability company ("**Borrower**"),
whose address, location and mailing address for notice hereunder is COTTONWOOD TITLE INSURANCE
AGENCY, INC., Trustee, ("**Trustee**"), whose address is 7020 S. Union Park Avenue, Midvale, UT 84047, for the
benefit of EAST WEST BANK, its successors and assigns, and the subsequent holder or holders, from time to time,

of the Note ("**Lender**"), as beneficiary, whose mailing address is 5001 Spring Valley Rd., Ste. 825W, Dallas, Texas 75244 Attn: James J. Johnson.

ARTICLE I

DEFINITIONS

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

Affiliate: As defined in the Loan Agreement.

Approved Lease: As defined in the Loan Agreement.

Borrower: The entity described as Borrower in the initial paragraph of this Lien Instrument and any and all subsequent owners of the Property or any part thereof (without hereby implying Lender's consent to any Disposition of the Property).

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which commercial institutions in Dallas, Texas or Los Angeles, California, are authorized or required to close.

Casualty: Any material damage to or destruction of the Property or any part thereof.

Charges: All fees and charges, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to the Note and the indebtedness evidenced thereby or by the Loan Documents which are treated as interest under applicable law.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the States of Texas, Delaware and the state in which the Property is located, as applicable.

Condemnation: Any instituted or threatened condemnation proceeding affecting the Property or any part thereof.

Condemnation Proceeds: As defined in the Loan Agreement.

Constituent Party: As defined in the Loan Agreement.

Construction Contracts: Any and all contracts, subcontracts, and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower, in any way relating to the construction of any Improvements on the Land or the supplying of material (specially fabricated or otherwise), labor, supplies or other services therefor.

Contested Item: As defined in the Loan Agreement.

Contracts: All of the right, title, and interest of Borrower in, to, and under any and all (i) agreements relating in any way to the construction of the Improvements or provision of materials therefore (including, without limitation, the Construction Contracts); (ii) contracts for the sale of all or any portion of the Property, whether such Contracts are now or at any time hereafter existing, together with all payments, earnings, income, and profits arising from sale of all or any portion of the Property or from the Contracts and all other sums due or to become due under and pursuant thereto; (iii) contracts, licenses, permits, and rights relating to utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the Property; and (iv) all other contracts which in any way relate to the design, use, enjoyment, occupancy, operation, maintenance, or ownership of the Property (save and except any and all leases, subleases or other agreements pursuant to which Borrower is granted a possessory interest in the Land), including but not limited to engineer contracts, architect's contracts, maintenance agreements, construction contracts and service contracts.

Debtor Relief Laws: As defined in the Loan Agreement.

Default Rate: As defined in the Note.

Disposition: As defined in the Loan Agreement.

Environmental Indemnification Agreement: That certain Environmental Indemnification Agreement of even date herewith executed by Borrower for the benefit of Lender.

Event of Default: As defined herein and in the Loan Agreement.

Financing Statement: Collectively, the financing statement or financing statements (on Standard Form UCC-1 or otherwise) delivered by Borrower in connection with the Loan Documents.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: As defined in the Loan Agreement.

Guarantor: As defined in the Loan Agreement.

Guaranty: As defined in the Loan Agreement.

Hazardous Substance: As defined in the Environmental Indemnification Agreement.

Impositions: Collectively, (i) all Taxes; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Property and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Property.

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

Indebtedness: Collectively: (i) the principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional sums, with interest thereon, as may hereafter be borrowed from Lender, its successors or assigns, by Borrower, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Borrower and Lender that such future indebtedness may be incurred); (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums; (v) any and all sums due and owing to Lender or an affiliate of Lender under and pursuant to any Interest Rate Protection Agreement (Lender) and (vi) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions of any of the foregoing, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Lien Instrument shall not secure (i) any such other loan, advance, debt, obligation or liability with respect to which

Lender is by applicable law prohibited from obtaining a lien on real estate, or (ii) any obligations of Borrower or any other party arising under the Environmental Indemnification Agreement; nor shall this definition operate or be effective to constitute or require any assumption or payment by any Person, in any way, of any debt or obligation of any other Person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Insurance Policy(ies): As defined in the Loan Agreement.

Insurance Premiums: As defined in the Loan Agreement.

Insurance Proceeds: As defined in the Loan Agreement.

Insurance Requirements: As defined in the Loan Agreement.

Interest Rate Protection Agreement: As defined in the Loan Agreement.

Interest Rate Protection Agreement (Lender): As defined in the Loan Agreement.

Land: The real property or interest therein described in **Exhibit A** attached hereto and incorporated herein by this reference, which is addressed at 7351 S. Catalpa, Midvale, Salt Lake County, Utah 84047 (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described herein), together with all right, title, interest, and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber, and crops pertaining to such real property; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: As defined in the Loan Agreement.

Lender: EAST WEST BANK, whose mailing address for notice hereunder is 5001 Spring Valley Rd., Ste. 825W, Dallas, Texas 75244 Attn: James J. Johnson, its successors and assigns, and the subsequent holder or holders, from time to time, of the Note.

Lien: Any valid and enforceable interest in any property securing an indebtedness, obligation, or liability owed to or claimed by any Person other than the owner of that property, whether that indebtedness is based on the common law, statute, or contract, including, without limitation, liens created by or pursuant to a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment, or bailment for security purposes.

Loan: The loan made by Lender to Borrower pursuant to the Loan Agreement as evidenced by the Note.

Loan Agreement: That certain Loan Agreement of even date herewith by and between Borrower and Lender governing the Loan evidenced by and secured by, inter alia, this Lien Instrument.

Loan Amount: FIFTEEN MILLION FOUR HUNDRED ONE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$15,401,100.00).

Loan Documents: The Note, the Loan Agreement, this Lien Instrument, the Security Agreement, the Financing Statements, the Environmental Indemnification Agreement, the Interest Rate Protection Agreement (Lender), if any, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor, or any other Person or party in connection with the payment of the Indebtedness or the performance and discharge of the

Obligations. The Environmental Indemnification Agreement is one of the Loan Documents, however, the obligations arising under the Environmental Indemnification Agreement are not secured by this Lien Instrument.

Local Issues: As defined in **Section 12.10** hereof.

Material Adverse Effect: As defined in the Loan Agreement.

Maximum Lawful Rate: The rate utilized by Lender pursuant to either (i) the weekly rate ceiling from time to time in effect as provided in Chapter 303, as amended, of the Texas Finance Code, or (ii) United States federal law which permits Lender to contract for, charge, or receive a greater amount of interest than that provided by such Chapter 303, as amended, for the purpose of determining the maximum lawful rate allowed by applicable laws, taking into account all Charges in connection with the Loan. Additionally, to the extent permitted by applicable law now or hereinafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under such Chapter 303, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

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

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Borrower and payable to the order of Lender in the principal sum of the Loan Amount, and any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other Person or party to the Loan Documents, other than those arising under the Environmental Indemnification Agreement, to Lender or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land. Notwithstanding the foregoing, this Lien Instrument shall not secure the obligations of Borrower or any other party arising under the Environmental Indemnification Agreement.

Operating Account: As defined in the Loan Agreement.

Outstanding Principal Balance: The amount of principal then advanced and outstanding and payable from Borrower to Lender in accordance with the Loan Documents.

Permitted Disposition: As defined in the Loan Agreement.

Permitted Exceptions: Collectively, (i) the liens, easements, restrictions, security interests and other matters (if any) as reflected on **Exhibit B** attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents, (ii) statutory liens related to the Taxes that are not yet due and payable, and (iii) any easements, covenants and restrictions entered into in accordance with Section 5.30 of the Loan Agreement.

Person: Any individual, corporation, partnership (general or limited), joint venture, limited liability company, association, trust, estate, unincorporated association, joint stock company, government or any instrumentality thereof, municipality, political subdivision, political agency or other legal entity, as applicable.

Personalty: All of the right, title, and interest of Borrower in and to (i) the Plans; (ii) all building and construction materials and equipment; (iii) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (iv) general intangibles (including payment intangibles), money, Insurance Proceeds, Condemnation Proceeds, accounts, contract and

subcontract rights, trademarks, trade names, inventory, monetary obligations, chattel paper (including electronic chattel paper), investment property, instruments, documents, letter of credit rights, and commercial tort claims; (v) all refundable, returnable, or reimbursable fees, deposit accounts, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Construction Contracts, Contracts, Plans or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof; **provided that**, in the event that the Land be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Personalty is limited to only those items specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended).

Plans: Any and all plans, specifications, shop drawings, or other technical descriptions prepared for the development and construction of any Improvements, and all supplements, amendments and modifications thereof.

Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Leases, Rents and Reserves and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Leases, Rents and Reserves, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Lien Instrument, the term "**Property**" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits (after Borrower acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Borrower for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Property, including, without limitation, "Rents" as defined in the Utah Uniform Assignment of Rents Act, UCA Section 57-26-101 et seq. (the "UUARA").

Reserves: All sums on deposit or due under any of the Loan Documents, and as the term "Reserves" is more particularly defined in the Loan Agreement.

Security Agreement: Collectively, all security agreements, whether contained in this Lien Instrument, the Loan Agreement, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter located in or upon the Land or Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

Specified Courts: The district courts of Dallas County, Texas or the United States District Court for the Northern District of Texas, Dallas Division.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of this Lien Instrument.

Taxes: All real estate and personal property taxes and assessments, now or hereafter levied or assessed or imposed against all or part of the Property.

Taxes Reserve: As defined in the Loan Agreement.

Tenant: A tenant under the terms of any Lease.

Trustee: The Person described as Trustee in the initial paragraph of this Lien Instrument.

Any capitalized term used in this Agreement and not otherwise defined herein shall have the meaning ascribed to each such term in the Loan Agreement. All terms used herein, whether or not defined in this **Section 1.1**, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II

GRANT

2.1 **Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, with the right of entry and power of sale the Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Property unto Trustee, forever, and Borrower does hereby bind itself, its successors, and assigns, with power of sale to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of this Lien Instrument, as follows:

3.1 **Incorporation of Warranties and Representations.** All the warranties and representations, contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Lien Instrument to the same extent and with the same force as if fully set forth herein.

3.2 **Title and Lien.** Borrower has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and Improvements, and Borrower has good and indefeasible title to the Fixtures and Personalty, Construction Contracts, Contracts, if any, and Plans free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Exceptions. Subject to the Permitted Exceptions, this Lien Instrument constitutes a valid, subsisting first lien on the Land, the Improvements and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Construction Contracts, Contracts, if any, and Plans and, to the extent that the terms Leases and Rents include items covered by the Code, in and to the Leases and Rents; and a valid, subsisting first priority assignment of the Leases and Rents not covered by the Code, all in accordance with the terms hereof.

3.3 **Taxes.** Borrower, each Constituent Party, and Guarantor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and, subject to any Contested Item, have paid all taxes and related liabilities which have become due prior to delinquency pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Constituent Party, nor Guarantor knows of any basis for any additional assessment in respect of any such taxes and related liabilities except that which may result from increased valuation or tax rate resulting from the construction of the Improvements.

3.4 Mailing Address. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.5 Separate Tax Parcel; Legal Lot. To Borrower's actual knowledge, the Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable Legal Requirements and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

ARTICLE IV

AFFIRMATIVE COVENANTS

Borrower hereby unconditionally covenants and agrees with Lender, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged (except contingent obligations, such as indemnification obligations, that are not the subject of a then-current claim or amount owing and that may survive repayment of the Loan), as follows:

4.1 Incorporation of Affirmative Covenants, Conditions and Agreements. All the affirmative covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents are hereby made a part of this Lien Instrument to the same extent and with the same force as if fully set forth herein.

4.2 Payment and Performance. Borrower will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed, but in all events, subject to all applicable notice and cure periods.

4.3 Existence. Borrower will and will cause each Constituent Party to preserve and keep in full force and effect its existence (separate and apart from its affiliates), rights, franchises, and trade names.

4.4 First Lien Status. Borrower will protect the first lien and security interest status of this Lien Instrument and the other Loan Documents and will not permit to be created or to exist in respect of the Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions, Contested Items or other encumbrances expressly approved by Lender in writing.

4.5 Insurance. Borrower will obtain and maintain insurance upon and relating to the Property with such insurers, in such amounts and covering such risks as set forth in the Loan Agreement.

To the extent applicable, **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE:**

(A) BORROWER IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT LENDER SPECIFIES; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME LENDER AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) BORROWER MUST, IF REQUIRED BY LENDER, DELIVER TO LENDER A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), LENDER MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.

Notwithstanding the forgoing, Lender acknowledges that Borrower will purchase insurance from insurers licensed to do business in the State of Utah (even if not licensed in Texas).

4.6 Books and Records. Borrower will maintain full and in all material respects accurate books of account and other records reflecting the results of the operations of the Property in accordance with the requirements

of the Loan Agreement, and will furnish, or cause to be furnished, to Lender such reports and financial statements as are required herein or in the Loan Agreement.

4.7 Further Assurances and Corrections. From time to time, at the reasonable request of Lender, Borrower will (a) promptly correct any defect, error, or omission which may be discovered in the contents of any of the Loan Documents or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver, record and/or file such further instruments and perform such further acts and provide such further assurances as may be necessary to carry out more effectively the purposes of the Loan Documents; (c) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Lender to protect the liens and the security interests herein granted against the rights or interests of third persons; and (d) pay all costs reasonably incurred by Lender in connection with any of the foregoing; provided such actions do not adversely affect the rights of or increase the obligations of Borrower or Guarantor under any Loan Document (other than to a *de minimis* extent).

4.8 Tax on Lien Instrument. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Lien Instrument, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Borrower will promptly upon written notice from Lender pay or cause the Tenants to pay all such taxes, provided that if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. In addition, Borrower shall not be responsible for net income taxes and franchise taxes imposed on Lender as a result of a present or former connection between Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay or cause the Tenants to prepay the Indebtedness in full within one hundred eighty (180) days after demand therefor by Lender.

4.9 Expenses. Subject to the provisions of **Section 12.11** hereof, Borrower will pay Lender on demand all reasonable and bona fide out-of-pocket costs, fees, expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender or Trustee to third parties incident to this Lien Instrument or any other Loan Document (including, without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution of any of the Loan Documents and any amendment thereto, any release hereof, any consent, approval or waiver hereunder or under any of the Loan Documents, the making of any advance under the Note, and any suit to which Lender or Trustee is a party involving this Lien Instrument or the Property) or incident to the enforcement of the Indebtedness or the exercise of any right or remedy of Lender under any Loan Document.

4.10 Address. Borrower shall give written notice to Lender and Trustee of any change of address of Borrower at least thirty (30) days prior to the effective date of such change of address. Absent such official written notice of a change in address for Borrower, then Lender and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Borrower's address as set forth in the initial paragraph of this Lien Instrument, as same may have been theretofore changed in accordance with the provisions hereof.

ARTICLE V

NEGATIVE COVENANTS

Borrower hereby unconditionally covenants and agrees with Lender, that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged (except contingent obligations, such as indemnification obligations, that are not the subject of a then-current claim or amount owing and that may survive repayment of the Loan), as follows:

5.1 Incorporation of Negative Covenants, Conditions and Agreements. All the negative covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents are hereby made a part of this Lien Instrument to the same extent and with the same force as if fully set forth herein.

5.2 Use Violations. Borrower will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Property in any manner which: (a) violates any Legal Requirement in violation of Section 5.4 of the Loan Agreement, (b) constitutes a public or private nuisance or (c) makes void, voidable or cancellable, or increases the premium of, any insurance then in force with respect thereto.

5.3 Waste; Alterations. Borrower will not commit or permit any physical waste or material impairment of the Property and will not, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, make or permit to be made any alterations or additions to the Property of a material nature, except in accordance with the Plans or as otherwise permitted under the Loan Agreement.

5.4 Replacement of Fixtures and Personalty. Except in accordance with the Plans, Borrower will not, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest except as may be reasonably approved in writing by Lender.

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

5.6 No Drilling. To the extent that Borrower has any rights related to the following, Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

5.7 No Disposition. Borrower will not make a Disposition (other than a Permitted Disposition, as defined in the Loan Agreement) without obtaining Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to the Disposition.

5.8 No Subordinate Mortgages. Borrower will not 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 Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Property.

ARTICLE VI

EVENTS OF DEFAULT

The term "Event of Default" as used herein shall have the same meaning ascribed for such term in the Loan Agreement.

ARTICLE VII

REMEDIES

7.1 Lender's Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, subject to any applicable notice and opportunity to cure, Lender may, at Lender's option, by or through Trustee, by itself or otherwise, do any one or more of the following:

(a) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in any of the Loan Documents, Lender may, but shall not be obligated to any

Person to perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness.

(b) Right of Entry. Lender may (subject to Borrower's rights under Leases), prior or subsequent to the institution of any foreclosure proceedings, to the extent permitted by applicable law and subject to the rights of Tenants under the Leases, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Property, including without limitation, the right to rent the same for the account of Borrower and to apply in the manner as Lender may elect. The rights and powers of the Lender under this Section 7.1(b) shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale. All such actual costs, expenses, and liabilities incurred by Lender 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 Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution or appointment of a receiver. In connection with any action taken by Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property, **WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF LENDER**, unless such loss is caused by the gross negligence or willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **EXCEPT FOR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LENDER, BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER FOR, AND TO HOLD LENDER, WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF LENDER, HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY LENDER BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON LENDER'S PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. SHOULD LENDER INCUR ANY SUCH LIABILITY, THE AMOUNT THEREOF, INCLUDING WITHOUT LIMITATION, COSTS, EXPENSES, AND ACTUAL REASONABLE ATTORNEYS' FEES, SHALL BE PAYABLE BY BORROWER TO LENDER PROMPTLY FOLLOWING DEMAND THEREFOR, AND IF NOT PAID WITHIN THIRTY (30) DAYS FOLLOWING DEMAND THEREFOR, SHALL BE DEEMED A PART OF THE INDEBTEDNESS AND SHALL ACCRUE INTEREST AT THE DEFAULT RATE, AND SHALL BE SECURED UNDER ARTICLE II HEREOF.** Nothing in this subsection shall impose any duty, obligation, or responsibility upon Lender for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or by any other parties, or for any Hazardous Substances on or under the Property, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of Lender with respect to the Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to Lender and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Lender. The remedies in this Article VII are available under and governed by the real property laws of Utah and, except as described in Section 7.1(g) hereof, are not governed by the personal property laws of Utah or Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the Code. No action by Lender, taken pursuant to this subsection, shall be deemed to be an election to dispose of personal property under the Code. Any receipt of consideration received by Lender pursuant to this subsection shall be

immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under the Loan Documents, at law or in equity.

(d) Foreclosure - Power of Sale. Lender may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Lender may invoke the power of sale by recording and otherwise giving all written notices required by law to Trustee of an event of default and Lender's election to cause the Property to be sold. Trustee shall record a Notice of Default and Election to Sell with the Office of the County Recorder of Salt Lake County, Utah. Lender shall deposit with Trustee this Lien Instrument and such additional instruments and documents as Trustee may require under applicable law. Trustee shall publish and post a notice for sale for the time and in the manner provided by applicable law and shall mail copies of the notice of sale in the manner prescribed by applicable law to Borrower and to other persons prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone the sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27.

(ii) Any person, including Borrower or Lender, or its designee, may purchase the Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

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

(iv) For purposes of Utah Code Ann. § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Lender's Lien Instrument lien upon the Property, and (ii) Borrower may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion,

and in either case Lender may include all such amounts in any credit which Lender may make against its bid at a foreclosure sale of the Property pursuant to this Lien Instrument.

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

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

(vii) Borrower knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Borrower under Utah Code Ann. § 78B-6-901 (formerly Utah Code Ann. § 78-37-1) and Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

(e) Lender's Judicial Remedies. Pursuant to Utah Code Ann. § 57-1-23, or other applicable law, Lender or Trustee, upon written request of Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Lien Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

(f) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Borrower and without any showing of insolvency, fraud, or mismanagement on the part of Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property or any part thereof, and of the Rents, as described herein or in the Utah Uniform Commercial Real Estate Receivership Act, and Borrower hereby irrevocably consents to such appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Lender's Uniform Commercial Code Remedies. Lender may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code:

(i) Lender may without demand or notice to Borrower, enter upon the Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;

(ii) Lender may require Borrower to assemble the Personalty and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Personalty;

(iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice;

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Property under the power of sale as provided herein, upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the Code;

(v) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Property may, at the option of Lender, be sold as a whole;

(vi) it shall not be necessary that Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale;

(vii) prior to application of proceeds of disposition of the Personalty to the 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 actual reasonable attorneys' fees and legal expenses incurred by Lender;

(viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Lender, Borrower shall assemble the Personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to Borrower and Lender. Borrower agrees that Lender shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Borrower shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all actual reasonable attorneys' fees, legal expenses, and all other costs and expenses incurred by Lender in connection with the collection of the Indebtedness and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Lien Instrument. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Borrower waives all rights of marshalling in respect of the Personalty;

(ix) 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, the nonpayment of the Indebtedness, the occurrence of any Event of Default, Lender having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited;

(x) Lender 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 Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender; and

(xi) In addition, it is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Lender, upon an Event of Default, may (i) proceed under the Utah Uniform Commercial Code or (ii) may proceed as to both real and personal property interests in accordance with the provisions of this Lien Instrument 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 Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

(h) Rights Relating to Leases and Rents. Borrower has, pursuant to **Article IX** of this Lien Instrument, assigned, as collateral, to Lender, and granted a security interest to Lender in, all Rents under each of the Leases covering all or any portion of the Property. Lender, or Trustee on Lender's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Borrower hereby agrees that Lender may, upon notice from Trustee or Lender to Borrower of the occurrence and continuation of an Event of Default, thereafter direct the lessees under the Leases to pay direct to Lender the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder direct to Lender, or Trustee on Lender's behalf, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Lender, or Trustee acting on Lender's behalf, shall be applied as provided for in **Section 7.4** of this Lien Instrument; **provided, however,** that if the costs, expenses, and reasonable attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. Notwithstanding the provisions of this **Section 7.1(h)**, no credit shall be given by Lender for any Rents until the money collected is actually received by Lender, and no such credit shall be given for any Rents after foreclosure or other transfer of the Property (or part thereof from which Rents are derived pursuant to this Lien Instrument) to Lender or any other third party. The entering upon and taking possession of the Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured.

(i) Other Rights. Lender (i) may surrender the Insurance Policies maintained pursuant to any of the Loan Documents or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of **Section 7.4** hereof, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; and (ii) apply the Taxes Reserve, if any, required by the provisions of the Loan Documents, toward payment of the Indebtedness and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(j) Lender as Purchaser. Lender may be the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Lender's purchase shall be applied in accordance with **Section 7.4** hereof.

7.2 Other Rights of Lender. Should any part of the Property come into the possession of Lender, whether before or after default, Lender may (for itself or by or through other Persons, firms, or entities) hold, lease, manage, use, or operate the Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Lender may from time to time deem necessary) for the purpose of preserving the Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Property. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all reasonable out-of-pocket expenses (including without limitation the cost of any insurance, Impositions, or other charges) reasonably incurred by Lender in connection with Lender's custody, preservation, use,

or operation of the Property, together with interest thereon from the date incurred by Lender at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

7.3 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied and sold to such purchaser), and anyone occupying such portion of the Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any Insurance Policies pursuant hereto, or any Rents collected by Lender from the Property during an Event of Default, or the Tax and Insurance Reserve, if any, required by the Loan Documents or sums of Condemnation Proceeds received pursuant to Section 8.1 hereof, or Insurance Proceeds which Lender elects to apply to the Indebtedness pursuant to Section 8.2 hereof, shall be applied by Trustee, or by Lender, as the case may be, to the Indebtedness in the following order and priority: (a) to the payment of all expenses of advertising, selling, and conveying the Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including actual reasonable attorneys' fees and a reasonable fee or commission to Trustee based on actual time expended based on a reasonable hourly rate; (b) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (c) the balance, if any, and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or beneficiary of any inferior liens covering the Property, if any, in order of the priority of such inferior liens (Trustee and Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (d) the cash balance, if any, to Borrower or Trustee, in Trustee's discretion, may deposit any excess with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 7.1(d) hereof, at any time before the sale, Trustee may abandon the sale, and Lender may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Lender should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property or any part thereof in accordance with the provisions of this Lien Instrument.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Lender to mature same, or if Lender becomes a party to any suit where this Lien Instrument or the Property or any part thereof is involved, Borrower agrees to pay Lender's actual reasonable attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

7.7 Miscellaneous.

(a) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right to do so and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(b) In addition to the remedies set forth in this Article VII, upon the occurrence and during the continuance of an Event of Default, Lender and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) All rights, remedies, and recourses of Lender granted in any of the Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Property, or any one or more of them, at the reasonable discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to Property, all liens and security interests, including the lien of this Lien Instrument, shall remain in full force and effect and may be exercised at Lender's option.

(d) Lender may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Lien Instrument or the other Loan Documents or affecting the obligations of Borrower, or any other party, to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) To the extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default (except to the extent that an Event of Default by its definition requires such a notice to be given to Borrower or as otherwise set forth in the Loan Documents) or of Lender's or Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) Borrower and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in the Loan Documents. All agreed contractual duties are set forth in the Loan Documents.

(g) Subject to the provisions of Section 7.1(g) hereof, the remedies in this Article VII are available under and governed by the real property laws of Utah and are not governed by the personal property laws of Utah or Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the Code.

7.8 Texas Statutory Waiver Provision. To the maximum extent permitted by applicable law, Borrower hereby waives all rights, remedies, claims and defenses based upon or related to Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as may be amended from time to time, to the extent the same pertains or may pertain to any enforcement of this Lien Instrument.

ARTICLE VIII

SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Lender shall be entitled to receive any and all Condemnation Proceeds which may be awarded and become payable to Borrower for Condemnation, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Borrower for damages caused by public works or construction on or near the Property. Subject to the exclusion described in the foregoing sentence, all such sums are hereby assigned to Lender, and Borrower shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Notwithstanding the foregoing, any Condemnation Proceeds received by Lender shall be applied in accordance with the terms and conditions of the Loan Agreement.

8.2 Insurance Proceeds. Any Insurance Proceeds pursuant to Borrower's Insurance Requirements under the Loan Agreement (other than proceeds of general public liability insurance) shall be collected by Lender, and Lender shall apply any proceeds so collected in accordance with the terms and conditions of the Loan Agreement.

8.3 Taxes Reserve. If required by and in accordance with the terms and conditions of the Loan Agreement, Borrower shall create the Taxes Reserve for the payment of all Taxes against or affecting the Property.

8.4 **INDEMNITY.** EXCEPT FOR A LOSS, COST, DAMAGE, OR EXPENSE THAT IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LENDER, BORROWER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ACTUAL REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY ANY PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, *WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE) OF ANY PARTY SO INDEMNIFIED,* IN RESPECT OF THE FOLLOWING:

(a) ANY LITIGATION CONCERNING THIS LIEN INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE PROPERTY, OR ANY INTEREST OF BORROWER OR ANY PARTY SO INDEMNIFIED THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY BORROWER OR LENDER, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

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

(c) EXCEPT FOR THOSE ACTIONS THAT ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LENDER, ANY ACTION TAKEN OR NOT TAKEN BY ANY PARTY SO INDEMNIFIED WHICH IS ALLOWED OR PERMITTED UNDER THIS LIEN INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO BORROWER, THE PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT,

REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS LIEN INSTRUMENT OR THE OTHER LOAN DOCUMENTS; AND

(d) ANY ACTION BROUGHT BY ANY PARTY SO INDEMNIFIED AGAINST BORROWER UNDER THIS LIEN INSTRUMENT OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

LENDER MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS LIEN INSTRUMENT AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND ANY PARTY SO INDEMNIFIED WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. BORROWER SHALL REIMBURSE ANY PARTY SO INDEMNIFIED FOR ANY PARTY SO INDEMNIFIED 'S ACTUAL REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) PROMPTLY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY ANY PARTY SO INDEMNIFIED. ANY PAYMENTS NOT MADE WITHIN THIRTY (30) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS LIEN INSTRUMENT, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE) AND THE EXERCISE BY LENDER OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

8.5 Subrogation. Borrower waives any and all right to claim, recover, or subrogation against Lender or its officers, directors, employees, agents, attorneys, or representatives for loss or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of the Loan Documents.

8.6 Setoff. Lender shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Borrower in and to each and every account and other property of Borrower which are in the possession of Lender to the full extent of the outstanding balance of the Indebtedness.

8.7 Consent to Disposition. Subject to the terms of the Loan Agreement, it is expressly agreed that Lender may predicate Lender's decision to grant or withhold consent to a Disposition requiring Lender's consent pursuant to Section 5.7 hereof on such terms and conditions as Lender may require, in Lender's sole discretion, including without limitation, the following: (a) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Property, (b) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Lender's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any material way by the proposed Disposition, (c) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Loan Documents, (d) reimbursement of Lender for all costs and expenses incurred by Lender in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Lender's security will be impaired by the proposed Disposition, (e) payment to Lender of a transfer fee to cover the cost of documenting the Disposition in its records, (f) payment of Lender's reasonable attorneys' fees in connection with such Disposition, (g) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Borrower from liability for such Indebtedness and Obligations), (h) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, reasonably satisfactory in form and substance to Lender, (i) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Lender's liens and security interests covering the Property, and (j) the provision of additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.8 Consent to Subordinate Mortgage. In the event Lender consents to the granting of a Subordinate Mortgage, or in the event the above-described right of Lender to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Lender is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Borrower will not execute or deliver any Subordinate Mortgage unless (a) it shall contain express covenants to the effect: (1) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Lien Instrument and each term and provision hereof; (2) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no Tenant of any portion of the Property will be named as a party defendant, nor will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior written consent of Lender; (3) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (4) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Lender contemporaneously with the commencement of such action or proceeding; and (b) a copy thereof shall have been delivered to Lender not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

ARTICLE IX

ASSIGNMENT OF LEASES AND RENTS

9.1 Assignment. For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower hereby irrevocably and collaterally assigns, grants a security interest in and to, transfers, sells, and sets over to Lender, as a secured party and assignee in the case of Rents, as security for the payment of the Indebtedness and the performance and discharge of the Obligations, the Leases and the Rents subject only to the Permitted Exceptions applicable thereto; TO HAVE AND TO HOLD the Leases and the Rents unto Lender, forever, and Borrower does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Borrower shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Obligations on or before the date same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles, and interests conveyed pursuant to this assignment shall become vested in Borrower without the necessity of any further act or requirement by Borrower, Trustee, or Lender. This assignment of Leases and Rents is subject to the UUARA and in the event of any conflict or inconsistency between the provisions of this Lien Instrument relating to Borrower's assignment of Leases and Rents, and the enforcement thereof, and the provisions of the UUARA, the provisions of the UUARA shall control and Lender shall have all rights and remedies available under the UUARA which rights and remedies shall be cumulative with all rights and remedies hereunder.

9.2 Limited License. Borrower may exercise and enjoy all incidences of the status of a lessor or landlord of the Leases and the Rents, including, without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents (which right to collect shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Borrower under the Leases), and to give proper receipts, releases, and acquittances therefor. Borrower hereby agrees to receive all Rents to be deposited into the Operating Account and hold the same as a trust fund to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations. Thereafter, Borrower may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents. From and after the occurrence of an Event of Default and so long as such Event of Default shall be continuing (whether or not Lender shall have exercised Lender's option to declare the Note immediately due and payable), the rights of Borrower in this Section shall be revoked. Other than Approved Leases, Borrower shall not enter into any Lease without Lender's prior written consent, which consent shall be in Lender's sole and absolute discretion

9.3 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Property shall not merge but

rather shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any lessee, or any third party purchaser or otherwise.

9.4 **BORROWER'S INDEMNITIES.** EXCEPT FOR A LOSS, COST, DAMAGE, OR EXPENSE THAT IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LENDER, OR CAUSED BY THE ACTS OR OMISSIONS OF LENDER OR ANY OTHER PERSON (OTHER THAN BORROWER, GUARANTOR OR ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, IN EACH CASE ACTING AT THE DIRECTION OF BORROWER, GUARANTOR, OR ANY OF THEIR RESPECTIVE AFFILIATES) FOLLOWING THE COMPLETION OF A FORECLOSURE EVENT, BORROWER SHALL INDEMNIFY AND HOLD HARMLESS LENDER, TRUSTEE AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE WHICH LENDER MAY INCUR UNDER OR BY REASON OF THIS ASSIGNMENT, OR FOR ANY ACTION HEREUNDER TAKEN BY ANY PARTY SO INDEMNIFIED, OR BY REASON OF OR IN DEFENSE OF ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST ANY PARTY SO INDEMNIFIED ARISING OUT OF THE LEASES OR WITH RESPECT TO THE RENTS, **WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED.** IN THE EVENT ANY PARTY SO INDEMNIFIED INCURS ANY SUCH LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE, THE AMOUNT THEREOF TOGETHER WITH ALL REASONABLE ATTORNEYS' FEES SHALL BE PAYABLE BY BORROWER TO LENDER PROMPTLY FOLLOWING DEMAND THEREFOR, AND IF NOT PAID WITHIN THIRTY (30) DAYS FOLLOWING DEMAND THEREFOR, SHALL BE DEEMED A PART OF THE INDEBTEDNESS AND SHALL ACCRUE INTEREST AT THE DEFAULT RATE, AND SHALL BE SECURED UNDER **ARTICLE II** HEREOF.

9.5 **Lender Not Responsible.** Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Land and Improvements, Lender is not and shall not be deemed to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor under any lease; or (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it, except to the extent caused by the gross negligence or willful misconduct of Lender or Trustee.

ARTICLE X

SECURITY AGREEMENT

10.1 **Security Interest.** This Lien Instrument (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Lien Instrument shall terminate as provided in **Section 12.1** hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Property is located with respect to the Personalty, Fixtures, Construction Contracts, Contracts, Plans, Leases, Rents, and Reserves. To this end, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Lender, a first and prior security interest in all of Borrower's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Construction Contracts, Contracts, Plans, Leases, Rents, and Reserves to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Borrower, Trustee, and Lender that this Lien Instrument encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within the Code be covered by the security interest granted in this **Article X**, and that all items contained in the definition of "Leases" and "Rents" which are excluded from the Code be covered by the provisions of **Article II** and **Article IX** hereof.

10.2 **Financing Statements.** Borrower hereby agrees with Lender to deliver to Lender, in form and substance satisfactory to Lender, such "Financing Statements" and such further assurances as Lender may, from time

to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest.

10.3 Construction Mortgage and Fixture Filing. This Lien Instrument secures future advances to be used for construction of Improvements on the Land pursuant to the Loan Agreement, as may be amended from time to time. Accordingly, this Lien Instrument constitutes a "construction mortgage" under the Code. This Lien Instrument shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties at the address of the parties set forth herein. Any information concerning the security interest herein granted may be obtained from the parties at the address of the parties set forth herein. For purposes of the security interest herein granted, the address of Debtor (Borrower) and Secured Party (Lender) are both set forth in the first paragraph of this Lien Instrument and the address of the Secured Party (Lender) is set forth in Article I hereof.

10.4 Representative Warranties and Covenants Regarding UCC Matters. Borrower represents and warrants that , except as otherwise disclosed in writing to Lender (a) Borrower's name, identity, and state of organization are precisely as referred to in the first paragraph of this Lien Instrument; (b) Borrower has been using or operating under said name and identity without change since the date of Borrower's creation (provided, however, that Borrower may from time to time elect to operate using an abbreviated "doing business as" name subsequent to prior written notice thereof to Lender); and (c) the location of all tangible Personalty collateral is located upon the Land. Borrower covenants and agrees that Borrower shall furnish Lender with notice of any change in the matters, addressed by clause (a) or (b) of this Section 10.4 within thirty (30) days prior to the effective date of any such change. Borrower authorizes Lender, at Borrower's cost, to execute and file instruments deemed necessary by Lender.

ARTICLE XI

CONCERNING THE TRUSTEE

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

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

Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

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

11.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be executed in its behalf by any 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. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Lien Instrument or applicable law.

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

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

11.7 No Representation by Trustee or Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or Insurance Policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

ARTICLE XII

MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of the Loan Documents, then this Lien Instrument shall be released at Borrower's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

12.2 Performance at Borrower's Expense. Subject to the provisions of Section 12.11 hereof, Borrower shall (a) pay all reasonable legal fees incurred by Lender in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (b) reimburse Lender, within thirty (30) days from written demand by Lender, for all amounts reasonably expended, advanced, or incurred by Lender to satisfy any obligation of Borrower under the Loan Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters and (c) any and all other reasonable costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the Loan and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 12.3 shall limit the obligations of Borrower as otherwise set forth herein.

12.4 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Trustee or Lender shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Lien Instrument shall be in accordance with the provisions of the Loan Agreement.

12.6 Covenants Running with the Land. All Obligations contained in this Lien Instrument and the other Loan Documents are intended by Borrower, Trustee, and Lender to be, and shall be construed as, covenants running with the Property until the lien of this Lien Instrument has been fully released by Lender.

12.7 Successors and Assigns. Subject to the provisions of the Loan Agreement related to a Permitted Disposition, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives and all other Persons claiming by, through, or under them.

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

12.9 Counterparts. To facilitate execution, this Lien Instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all Persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Lien Instrument to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 APPLICABLE LAW. ALL OF BORROWER'S OBLIGATIONS TO LENDER WERE NEGOTIATED, CREATED, EXECUTED AND DELIVERED IN TEXAS. THIS LIEN INSTRUMENT AND

THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CHOICE OF LAW OR CONFLICT OF LAWS RULES) AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF TEXAS, EXCEPT THAT THE LAWS OF THE STATE WHERE THE LAND IS LOCATED, INCLUDING LAWS GOVERNING FORECLOSURE, SHALL GOVERN THE LOCAL ISSUES. FOR PURPOSES HEREOF, THE TERM "LOCAL ISSUES" REFERS TO ANY PROVISION OF THIS LIEN INSTRUMENT AND THE OTHER LOAN DOCUMENTS WHICH PERTAINS TO: (I) WHETHER A TRANSACTION TRANSFERS OR CREATES AN INTEREST IN REAL OR PERSONAL PROPERTY SITUATED IN THE STATE WHERE THE LAND IS LOCATED FOR SECURITY PURPOSES OR OTHERWISE, (II) THE NATURE OF AN INTEREST IN REAL OR PERSONAL PROPERTY SITUATED IN THE STATE WHERE THE LAND IS LOCATED THAT IS TRANSFERRED OR CREATED BY A TRANSACTION, (III) A METHOD FOR FORECLOSURE OF A LIEN OR SECURITY INTEREST IN REAL OR PERSONAL PROPERTY SITUATED IN THE STATE WHERE THE LAND IS LOCATED, (IV) THE NATURE OF AN INTEREST IN REAL OR PERSONAL PROPERTY SITUATED IN THE STATE WHERE THE LAND IS LOCATED THAT RESULTS FROM A FORECLOSURE, (V) THE MANNER AND EFFECT OF RECORDING OR FAILING TO RECORD EVIDENCE OF A TRANSACTION THAT TRANSFERS OR CREATES AN INTEREST IN REAL OR PERSONAL PROPERTY SITUATED IN THE STATE WHERE THE LAND IS LOCATED OR (VI) ANY OTHER MATTERS CONTAINED IN THIS LIEN INSTRUMENT OR THE OTHER LOAN DOCUMENTS WHICH ARE PURPORTED TO BE GOVERNED BY THE UNIFORM COMMERCIAL CODE ADOPTED BY THE STATE WHERE THE LAND IS LOCATED OR NAMES EXPRESS REFERENCE TO LAWS, STATUTES OR THE LAWS OF THE STATE OF IN THE STATE WHERE THE LAND IS LOCATED. Except with respect to Local Issues, this Lien Instrument is performable in Dallas County, Texas, which shall be a proper place of venue for suit on or in respect of this Lien Instrument. Borrower irrevocably agrees that any legal proceeding in respect of this Lien Instrument, other than a judicial proceeding to foreclose the lien created hereby against the Property, , appoint a receiver or other action which must be brought in the jurisdiction where the Property is located, which such proceeding must be brought in a federal or state court in and for the State of Utah, shall be brought in the Specified Courts. Borrower hereby irrevocably submits to the nonexclusive jurisdiction of the state and federal courts of the State of Texas. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document brought in any Specified Court, and hereby further irrevocably waives any claims that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Borrower further irrevocably consents to the service of process out of any of the Specified Courts in any such suit, action or proceeding by the mailing of copies thereof by certified mail, return receipt requested, postage prepaid, to Borrower at its address as provided in this Lien Instrument or as otherwise provided by Texas law. Nothing herein shall affect the right of Lender to commence legal proceedings or otherwise proceed against Borrower in any jurisdiction or to serve process in any manner permitted by applicable law. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

12.11 Interest Limitation. It is expressly stipulated and agreed to be the intent of Borrower, Trustee and Lender at all times to comply with applicable Texas law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law) and that this section shall control every other covenant and agreement in the Loan Documents. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under any of the Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's, Trustee's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness

does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of such Chapter 303, as amended, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under such Chapter 303, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the loan evidenced by the Loan Documents and/or secured hereby. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or any other indebtedness then owing by Borrower to Lender. Notwithstanding anything to the contrary contained in any of the Loan Documents, it is not the intention of Lender and/or Trustee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

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

12.13 Rights Cumulative. Lender shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Property or any portion thereof), and the same: (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Borrower or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Property, at the reasonable discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Property.

12.14 Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or such other place as Lender, in Lender's reasonable discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.15 Exceptions to Covenants. Borrower shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained in any of the Loan Documents which has not been specifically waived or consented to by Lender, nor shall Lender be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained in any of the Loan Documents which has not been specifically waived or consented to by Lender.

12.16 Reliance. Borrower recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Lien Instrument, Lender is expressly and primarily relying on

the truth and accuracy of the foregoing warranties and representations set forth in **Article III** hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance exists on the part of Lender prior hereto; that such warranties and representations are a material inducement to Lender in making the loan evidenced by the Loan Documents and accepting of this Lien Instrument; and that Lender would not be willing to make the loan evidenced by the Loan Documents and accept this Lien Instrument in the absence of any of such warranties and representations.

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

12.18 Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Lender and Borrower pertaining to the Loan. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.19 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

12.20 **ENTIRE AGREEMENT; AMENDMENT. THIS LIEN INSTRUMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF THIS LIEN INSTRUMENT AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.**

12.21 **WAIVER OF RIGHT TO TRIAL BY JURY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS LIEN INSTRUMENT OR THE OTHER LOAN DOCUMENTS.**

12.22 **NOTICE OF INDEMNIFICATION. BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS LIEN INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO SECTIONS 7.1, 8.4 AND 9.6 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST LENDER'S OWN NEGLIGENCE.**

ARTICLE XIII

STATE-SPECIFIC PROVISIONS.

13.1 Conflicts. To the extent of any conflict between the provisions of this Article XIII and the other provisions of this Lien Instrument, the provisions of this Article XIII shall control.

13.2 Mechanic's Liens; Materialmen's Liens; State Construction Registry.

(a) Borrower agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Lien Instrument, for any such bill which may be legally due and payable. Borrower agrees to furnish due proof of such payment to Lender after payment and before delinquency.

(b) Borrower shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Borrower shall cause Lender 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-204. Borrower shall also provide to Lender 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 Borrower.

(c) Borrower represents and warrants to Lender that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a notice of preconstruction service, preliminary notice or notice of retention filed by any lien claimant (whether with respect to a preconstruction lien or a construction lien) except as disclosed to Lender by Borrower in writing. Borrower further represents and warrants that no mechanic's lien claim, notice of preconstruction lien or construction 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.

(d) If Lender 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 Lien Instrument, Borrower shall provide to Lender written evidence acceptable to Lender 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 preconstruction services lien or a construction lien or notice with respect to any such right dates immediately after the recording of this Lien Instrument.

(e) If applicable, Borrower shall cooperate with Lender and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Annotated § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Lender's name, address and telephone number, Borrower's full legal name, the tax parcel identification number for each parcel included in the Premises secured hereby, the address of the Premises, and the county in which the Premises are located. Borrower shall timely file or cause to be filed as required by Utah law or at the request of Lender, a Notice of intent to obtain final completion and a notice of final completion and if Lender elects to file a notice of intent to finance under Utah Code Annotated § 38-1a-603, Borrower shall cause each subcontractor that has filed a preliminary notice pertaining to the Property to file with the Registry a final lien waiver.

(f) Borrower shall cause, as a condition precedent to the closing of the Loan, Lender's title insurer to insure in a manner acceptable to Lender in its sole discretion, that this Lien Instrument 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 Lender, 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 Mortgage's Title Insurance Policy.

(g) Borrower shall pay and promptly discharge, at Borrower'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 Lien Instrument 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 or that hereafter may be erected on the Premises regardless of by whom such services, labor or materials may have been contracted, provided, however, that Borrower shall have the right to contest any such claim or lien so long as Borrower 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, Borrower may (A) with the prior written consent of Lender, 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 Lender) for any such lien or claim, as determined in Lender's reasonable discretion.

(h) If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender 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 Land from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Borrower and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender 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 Note.

13.3 Water Rights.

(a) Borrower shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Utah, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Borrower or all or any portion of the real property subject to this Lien Instrument.

(b) Borrower shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Borrower cannot place any quantity of water under the Water Rights to a beneficial use, Borrower shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(c) Borrower shall promptly provide Lender with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(d) Borrower shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide Lender with evidence of each such payment.

(e) Borrower and its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

(f) As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Lien Instrument, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Borrower; subject to the assignment to Lender set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application

filed by Borrower to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Borrower now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

13.4 Status of the Property. For purposes of Utah Code Ann. § 57-1-25 and Utah Code Ann. § 78B-6-901.5, Borrower agrees that the stated purpose for which this Lien Instrument was given is not to finance residential rental property.

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

List of Exhibits:

Exhibit A - Land Description
Exhibit B - Permitted Exceptions

This instrument drafted by:


NILES HOLMES PC
2609 Thomas Avenue
Dallas, Texas 75204
Attn: Niles W. Holmes, Esq.

[Remainder of page intentionally left blank.]

EXECUTED effective as of the date first written above.

BORROWER:

RIH TIG CHELSEA OWNER, LLC,
a Delaware limited liability company

By: 
Name: Peter Kurzeka
Title: Authorized Representative

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

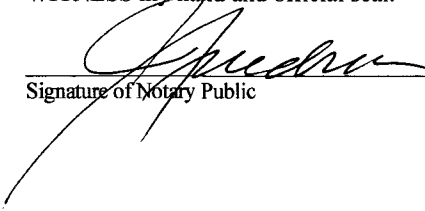
STATE OF CALIFORNIA §
COUNTY OF ORANGE §

On February 24, 2022 before me, J. FRIEDRICH,
(insert name and title of the officer)

personally appeared PETER KURZEKA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature of Notary Public

Notary Seal

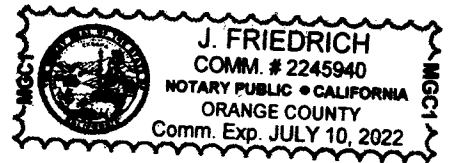


EXHIBIT A

Legal Description

Beginning at a point 391.40 feet West and 25.00 feet North of the center of Section 25, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 526.00 feet; thence North 136.7 feet to the East line of the Frontage Road; thence North 25°52'14" East along said line 420.04 feet; thence East 342.55 feet; thence South 515.00 feet to the point of beginning.

Tax Parcel No. 21-25-176-012

EXHIBIT B

Permitted Exceptions

(Unless otherwise noted, all documents recorded in Salt Lake County, Utah)

1. Right of Way Easement in favor of the Mountain States Telephone and Telegraph Company, to construct, operate, maintain and remove communication equipment and other facilities and incidental purposes, from time to time, upon, over, under and across a portion of the subject Land, recorded January 30, 1973, as Entry No. 2515260, in Book 3248, at Page 330.
2. Right of Way and Easement Grant, in favor of Mountain Fuel Supply Company, to lay, maintain, operate, repair, inspect, protect, remove and replace pipe lines, valves, valve boxes, and other gas transmission and distribution facilities and incidental purposes, through and across a portion of the subject Land. Said Right of Way and Easement Grant recorded April 19, 1973, as Entry No. 2533462, in Book 3306, at Page 20.
3. An unrecorded lease dated April 29, 1999 and October 25, 1984 by and between Mac-Gray Services, Inc., as successor in interest to Web Service Company, Inc. (Lessee), and Chelsea Apartments, L.L.C., a Utah limited liability company (Lessor), as disclosed in that certain Estoppel, Attornment, Subordination and Non-Disturbance Agreement recorded December 4, 2008 as Entry No. 10573187 in Book 9662 at Page 9676.