

**EXECUTION VERSION**

**14242661 B: 11492 P: 4985 Total Pages: 37**  
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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: FNT UTAH DOWNTOWN SLC - 170 MAIN ST STE 1075 UT 8  
170 MAIN ST STE 1075 SALT LAKE CITY, UT 84101

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Michael Vines, Esq.

Tax ID Numbers:

26-10-276-006 (Parcel 1)  
26-10-276-007 (Parcel 2)  
26-10-276-008 (Parcel 3)  
26-10-276-005 (Parcel 4)

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

EACH OF THE ENTITIES SET FORTH ON SCHEDULE I ATTACHED HERETO,  
each a Delaware limited liability company,  
as trustor (Trustor)

to

FIDELITY NATIONAL TITLE INSURANCE COMPANY,  
as trustee (Trustee)

for the benefit of

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association chartered  
under the laws of the United States of America, in its capacity as Administrative Agent for the Lenders  
from time to time party to the Loan Agreement defined herein,  
as beneficiary (Administrative Agent)

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

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Dated: As of May 8, 2024

Location: 6377, 6381, 6477 and 6593 West Wells Park  
Road and 6524 West Old Bingham Highway  
West Jordan, Utah 84081

County: Salt Lake

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument") is made as of this 8th day of May, 2024, by EACH OF THE ENTITIES SET FORTH ON SCHEDULE I ATTACHED HERETO, each a Delaware limited liability company, each having an address at 6477 West Wells Park Road, West Jordan, Utah 84081 (individually and/or collectively, as the context may require, jointly and severally, "Trustor"), as trustor, to FIDELITY NATIONAL TITLE INSURANCE COMPANY, having an address at c/o Fidelity National Title Agency of Utah, LLC, 8899 South 700 East, Suite 100, Sandy, Utah 84070 ("Trustee"), as trustee for the benefit of JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 ("JPM"), as administrative agent (together with its successors and assigns in such capacity, "Administrative Agent") for the benefit of JPM and the Lenders (as defined in the Loan Agreement (as defined below)), as beneficiary. Administrative Agent and Lenders, together with their respective successors and assigns are hereinafter collectively referred to as "Secured Party".

W I T N E S S E T H:

WHEREAS, Trustor and certain other borrowers party thereto (together with Trustor, individually and/or collectively, as the context may require, jointly and severally, "Borrower") and Secured Party have entered into that certain Loan and Security Agreement dated as of the date hereof among Borrower and Secured Party (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which Lenders are making a loan to Borrower in the maximum principal amount of up to \$200,000,000.00 (the "Loan");

WHEREAS, Trustor desires to secure the payment of the Debt as set forth in the Loan Agreement and the performance of all of its obligations under the Note, the Loan Agreement and all other documents executed by Borrower and/or Guarantor including any such documents which may be executed by one or more other Persons as well for the benefit of Lenders in connection with the Loan (collectively, the "Loan Documents"); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, as security for the payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents, which are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

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

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 TRUST PROPERTY. Each Trustor does hereby irrevocably grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION for the benefit and security of Administrative Agent and for the benefit of the Lenders and their respective successors and assigns, in the following property, rights, interests and estates now owned, or hereafter acquired by such Trustor (collectively, the "Property");

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

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land or for any other use and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental deed of trust or otherwise be expressly made subject to the lien of this Security Instrument regardless of ownership thereof (the "Additional Land");

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

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

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Trustor, which is used at or in connection with the Improvements or the Land or the Additional Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Trustor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and the other property of every kind and nature whatsoever owned by Trustor, or in which Trustor has or shall have any interest (but only to the extent of such interest), now or hereafter located upon, or in, and used in connection with the Property or the Improvements, or appurtenant thereto (collectively, the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Trustor shall have any right or interest therein;

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

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, chattel paper, inventory accounts (including, without limitation, the Collateral Accounts and any funds in such Collateral Accounts from time to time), accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Trustor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "Personal Property"), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion and other agreements providing for the use, enjoyment or occupancy of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements entered into in connection with such leases, subleases, subsubleases, or other agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, and all extensions, amendments and modifications thereto, whether before or after the filing by or against Trustor of any petition for

relief under the Bankruptcy Code (collectively, the “Leases”) and all right, title and interest of Trustor, its successors and assigns therein and thereunder, including, without limitation, lease guaranties, cash, letters of credit, or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, early termination fees and payments and other termination fees and payments, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Trustor or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use, enjoyment and occupancy of property or rendering of services by Trustor or Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code, and all of Trustor’s claims and rights to the payment of damages arising from the rejection by a lessee of any Lease under the Bankruptcy Code (collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

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

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

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

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

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Cash Management Agreement and the Loan Agreement; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Interest Rate Cap Agreement. The Interest Rate Cap Agreement, including, but not limited to, all “accounts”, “chattel paper”, “general intangibles” and “investment property” (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

(q) Intentionally Omitted;

(r) Intentionally Omitted;

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

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

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

Section 1.2 ASSIGNMENT OF LEASES AND RENTS. Trustor hereby absolutely and unconditionally assigns to Trustee in trust for Administrative Agent, for itself and for the benefit of the Lenders, all of Trustor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Administrative Agent grants to Trustor a revocable license to exercise all rights and remedies with respect to the Leases, including the right to operate the Property, and collect, receive, use and enjoy the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property deed of trust and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Security Instrument, Trustor hereby grants to Trustee, in trust for Administrative Agent, for itself and for the benefit of the Lenders, as security for the Obligations (hereinafter defined), a security interest in all of its right, title and interest, in and to, whether now or hereafter acquired, all accounts, all chattel paper, all general intangibles, all goods (including without limitation: all equipment, inventory and fixtures) and all proceeds of each of the foregoing (each of the foregoing terms as defined in the Uniform Commercial Code in effect from time to time in the State of New York) and in any event the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “Collateral”). If an Event of Default shall occur and be continuing, Secured Party or Trustee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Secured Party may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Secured Party or Trustee after the occurrence and during the continuance of an Event of Default, Trustor shall, at its expense, assemble the Collateral and make it available to Secured Party or Trustee at a convenient place (at the Land if tangible property) reasonably acceptable to Administrative Agent. Trustor shall pay to Secured Party on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Secured Party or Trustee in protecting Secured Party’s interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Secured Party or Trustee with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Secured Party to the payment of the Debt in such priority and proportions as Secured Party in its discretion shall deem proper. It is not necessary that the Collateral be present at any disposition thereof. Secured Party shall have no obligation to clean-up or otherwise prepare the Collateral for disposition. The principal place of business of Trustor (debtor) is as set forth on page one hereof and the address of Administrative Agent (secured party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Trustor hereby pledges to Administrative Agent, for itself and for the benefit of the Lenders, any and all monies now or hereafter held by

Administrative Agent or on behalf of Secured Party in connection with the Loan, including, without limitation, any Net Insurance Proceeds and any sums deposited in the Clearing Account or Cash Management Account, as additional security for the Obligations until expended or applied as provided in this Security Instrument and the Loan Agreement.

Section 1.6 ALL ASSETS FILING. Trustor authorizes Administrative Agent and its counsel to file UCC financing statements in form and substance satisfactory to Administrative Agent, describing the collateral as all assets of Trustor, all Property of Trustor or using words with similar effect.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of and to the use and benefit of Administrative Agent (for the benefit of itself and the Lenders) and its successors and assigns, forever;

IN TRUST, WITH POWER OF SALE, to secure payment to Secured Party of the Obligations at the time and in the manner provided for its payment in the Note and in this Security Instrument.

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

## ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

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

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

(a) the performance of all covenants, conditions, liabilities and obligations of Borrower contained in this Security Instrument, the Note, the Loan Agreement and the other Loan Documents; and

(b) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for,



all or any part of this Security Instrument, the Note, the Loan Agreement or any other Loan Documents.

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

Section 2.4 VARIABLE INTEREST RATE. The Loan secured by this Security Instrument is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

### ARTICLE 3 - TRUSTOR COVENANTS

Trustor covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Trustor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

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

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

Section 3.4 MAINTENANCE OF PROPERTY; WASTE. The provisions of Section 10.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.5 INTENTIONALLY OMITTED.

Section 3.6 TITLE. Trustor represents and warrants that, subject only to the Permitted Encumbrances, Trustor owns good, insurable and marketable fee title to the Real Property and to all easements and rights benefiting the Property and has the right, power and authority to mortgage, encumber, give, grant, bargain, sell, alien, setoff, convey, confirm, pledge, assign, and hypothecate the Property. Trustor has good title to the Personal Property, free and clear of all Liens whatsoever other than Permitted Encumbrances. Trustor will preserve its interest in and title to the Property and will forever warrant and defend the same to Administrative Agent against any and all claims made by, through or under Trustor (subject to Permitted Encumbrances) and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all Persons whomsoever claiming by, through or under Trustor (subject to Permitted Encumbrances). The foregoing warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by Administrative Agent in the event Secured Party acquires title to the Property pursuant to any foreclosure. In addition, there are no outstanding options or rights of first refusal to purchase the Property or Trustor's ownership thereof. This Security Instrument, upon its due execution and proper recordation, is and will remain a valid and enforceable (and, with respect to all personalty as to which security interests may be granted

under and are governed by the Uniform Commercial Code, upon proper recordation and the filing of a financing statement) perfected Lien on and security interest on Trustor's right, title and interest in and to the Real Property, free and clear of all encumbrances other than Permitted Encumbrances, and there are no liens on the Real Property having priority over the lien of this Security Instrument, subject to Permitted Encumbrances.

Section 3.7 PAYMENT FOR LABOR AND MATERIALS. The provisions of Section 5.8.21 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

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

Section 3.9 CHANGE OF NAME, IDENTITY OR STRUCTURE. Trustor shall not change Trustor's name or identity (including its trade name or names) without first (a) notifying Administrative Agent of such change in writing at least thirty (30) days prior to the effective date of such change and (b) taking all action reasonably required by Administrative Agent for the purpose of perfecting or protecting the lien and security interest of Secured Party. Trustor shall promptly notify Administrative Agent in writing of any change in its organizational identification number. If Trustor does not now have an organizational identification number and later obtains one, Trustor shall promptly notify Administrative Agent in writing of such organizational identification number. Trustor shall execute and deliver to Administrative Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Administrative Agent to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Secured Party, Trustor shall execute a certificate in form reasonably satisfactory to Secured Party listing the trade names under which Trustor intends to operate the Property, and representing and warranting that Trustor does business under no other trade name with respect to the Property.

#### ARTICLE 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND SECURED PARTY. The relationship between Borrower and Secured Party is solely that of debtor and creditor, and Secured Party has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Secured Party to be other than that of debtor and creditor. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Secured Party nor to grant Secured Party any interest in the Property other than that of mortgagee, beneficiary or lender.

Section 4.2 NO RELIANCE ON SECURED PARTY. The general partners, officers, shareholders, members, principals and/or other beneficial owners of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Secured Party are relying solely upon such expertise and business plan in connection with the

ownership and operation of the Property. Borrower is not relying on Secured Party's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO SECURED PARTY OBLIGATIONS.

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

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

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

ARTICLE 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Secured Party in, the Property. Trustor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do and Trustor shall hold harmless and indemnify Secured Party against any liability incurred by reason of the

imposition of any tax on the issuance, making, filing, registration or recording of this Security Instrument.

Section 5.2 FURTHER ACTS, ETC. Trustor will, at the cost of Trustor, and without expense to Secured Party, within not more than ten (10) Business Days after demand by Secured Party, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Secured Party shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Secured Party the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Secured Party, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Trustor, promptly after demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Secured Party and Trustee to execute in the name of Trustor or without the signature of Trustor to the extent Secured Party may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Trustor as authorized by applicable law, to evidence more effectively the security interest of Secured Party in the Property. Trustor also ratifies its authorization for Secured Party to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Trustor grants to Secured Party and Trustee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting, upon the occurrence and during the continuance of an Event of Default, any and all rights and remedies available to Secured Party at law and in equity, including without limitation such rights and remedies available to Secured Party pursuant to this Section 5.2. To the extent not prohibited by applicable law, Trustor hereby ratifies all acts Secured Party has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 MAINTENANCE OF VALIDITY. Trustor shall, upon ten (10) Business Days' demand therefor, execute, acknowledge, deliver and cause to be recorded or filed, any instrument necessary to publish notice or protect, perfect, preserve, continue, extend or maintain the validity, perfection, priority and effectiveness of this Security Instrument and, to the extent applicable, the other Loan Documents. Unless otherwise permitted in this Security Instrument and the other Loan Documents, Trustor will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Trustor give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Encumbrances, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Trustor from, or materially reduce any of Trustor's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents, or could reasonably be expected to have a Material Adverse Effect, without Secured Party's consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

Section 5.4 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) The provisions of Section 5.1.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

(b) Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, and such claim, credit or deduction results in a tax, either directly or indirectly on any Lender's interest in the Loan, Administrative Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

Section 5.5 SPLITTING OF SECURITY INSTRUMENT. The provisions of Sections 2.16 and 14.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 5.6 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Administrative Agent as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, an identical Note or an identical replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6 - DUE ON SALE/ENCUMBRANCE

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

Section 6.2 NO TRANSFER. Trustor shall not permit or suffer any Transfer to occur, unless specifically permitted by Article VIII of the Loan Agreement or unless Administrative Agent shall consent thereto in writing in accordance with the Loan Documents.

Section 6.3 TRANSFER DEFINED. As used in this Article 6, "Transfer" shall have the meaning ascribed thereto in the Loan Agreement.

ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Trustor agrees that Secured Party or Trustee, or both, may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Secured Party may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Secured Party:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute, or cause Trustee to institute, proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, as Secured Party shall elect in its sole and absolute discretion;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, cause the Trustee to institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell, or cause Trustee to sell, for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, at the discretion of Secured Party, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on the remaining portion of the Property;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Trustor, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt, to which appointment Trustor does hereby consent and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Secured Party to receive the Rent with respect to any of the Property pursuant to this Security Instrument;

(h) the license granted to Trustor under Section 1.2 hereof shall automatically be revoked and Secured Party may, and subject to and in accordance with applicable law, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Property and of such books, records and accounts to Secured Party upon demand, and thereupon Secured Party may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Secured Party deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Trustor to pay monthly in advance to Secured Party, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor; (vi) require Trustor to vacate and surrender possession of the Property to Secured Party or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Secured Party shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just compensation for the services of Secured Party, its counsel, agents and employees; provided, however, that nothing herein contained shall be construed as constituting Secured Party a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Secured Party and in the exercise of the powers herein granted Secured Party, no liability shall be asserted or enforced against Secured Party, all such liability being expressly waived and released by Trustor;

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

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Secured Party in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole and absolute discretion:

- (i) Taxes and Other Charges;
  - (ii) Insurance Premiums;
  - (iii) Interest on the unpaid principal balance of the Note;
  - (iv) Amortization of the unpaid principal balance of the Note; and
  - (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by the Lenders pursuant to the terms of this Security Instrument; or
- (k) pursue such other remedies as Secured Party may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. Upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Secured Party pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Secured Party to the payment of the Debt in such priority and proportions as Secured Party in its discretion shall deem proper.

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default, Secured Party may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make any payment or take any action in such manner and to such extent as Secured Party may deem necessary to protect the security hereof. Secured Party is authorized to enter upon the Property for such purposes, (subject to the rights of each tenant under its respective Lease) or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and Secured Party's out-of-pocket cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Secured Party upon demand. All such out-of-pocket costs and expenses actually incurred by Secured Party in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Administrative Agent that such cost or expense was incurred to the date of payment to Secured Party.

Section 7.4 ACTIONS AND PROCEEDINGS. Secured Party has the right to appear in and defend any action or proceeding brought with respect to the Property, and to bring any action or proceeding, in the name and on behalf of Trustor, which Secured Party, in its discretion, decides should be brought to protect its interest in the Property.



Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Secured Party shall have the right from time to time to take action permitted by applicable law to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due (after the expiration of any grace period and/or the giving of any notice herein provided, if any), and without prejudice to the right of Secured Party thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Borrower existing at the time such earlier action was commenced.

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

Section 7.7 OTHER RIGHTS, ETC.

(a) The failure of Secured Party to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Secured Party to comply with any request of Trustor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Secured Party extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

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

(c) Secured Party may resort for the payment of the Debt to any other security held by Secured Party in such order and manner as Secured Party, in its discretion, may elect. Secured Party may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Secured Party thereafter to foreclose this Security Instrument. The rights of Secured Party under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Secured Party shall be construed as an election to proceed under any one provision herein to the exclusion of any

other provision. Secured Party shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Administrative Agent, or Trustee upon written instructions from Secured Party, may release any portion of the Property for such consideration as Secured Party may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Secured Party for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Secured Party may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 RECOURSE AND CHOICE OF REMEDIES. To the full extent permitted by applicable law, notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Sections 18.1(f) and 18.2 of the Loan Agreement, Secured Party and other Indemnified Parties are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Sections 18.1(f) and 18.2 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Secured Party commences a foreclosure action against the Property, Secured Party is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Sections 18.1(f) and 18.2 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 18.1(f) and 18.2 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Sections 18.1(f) and 18.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Secured Party from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 18.1(f) and 18.2 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Secured Party shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.10 RIGHT OF ENTRY. The provisions of Section 5.1.17 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 7.11 BANKRUPTCY. Upon the occurrence and during the continuance of an Event of Default, Secured Party shall have the right, and Borrower hereby assigns to Secured Party its right and irrevocably constitutes and appoints Administrative Agent its attorney-in-fact, coupled

with an interest, to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

Section 7.12 VIOLATION OF LAWS.

(a) If the Property is not in material compliance with Legal Requirements, Secured Party may impose additional requirements upon Trustor in connection herewith including, without limitation, monetary reserves or financial equivalents.

(b) If there shall be filed by or against Trustor a petition under the Bankruptcy Code, and Trustor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Trustor shall give Administrative Agent not less than ten (10) days' prior notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Lease. Administrative Agent shall have the right, but not the obligation, to serve upon Trustor within such ten-day period a notice stating that (i) Administrative Agent demands that Trustor assume and assign the Lease to Secured Party pursuant to Section 365 of the Bankruptcy Code and (ii) Secured Party covenants to cure or provide adequate assurance of future performance under the Lease. If Administrative Agent serves upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Secured Party of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 8 - INDEMNIFICATION

Section 8.1 GENERAL INDEMNIFICATION. The provisions of Section 19.12 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 8.2 SECURITY INSTRUMENT AND/OR INTANGIBLE TAX. Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 8.3 ERISA INDEMNIFICATION. Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Secured Party's sole discretion) that Secured Party incurs, directly or indirectly, as a result of a default under Section 5.1.29 of the Loan Agreement.

Section 8.4 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. The provisions of Section 19.12(b) of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE 9 - WAIVERS

Section 9.1 WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Secured Party or Trustee arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 9.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Trustor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable law.

Section 9.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Trustor shall not be entitled to any notices of any nature whatsoever from Administrative Agent or Trustee except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provides for the giving of notice by Administrative Agent or Trustee to Trustor and except with respect to matters for which Administrative Agent is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Administrative Agent or Trustee with respect to any matter for which this Security Instrument or the other Loan Documents does not specifically and expressly provide for the giving of notice by Administrative Agent or Trustee to Trustor.

Section 9.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Trustor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of the Obligations.

Section 9.5 SURVIVAL. The indemnifications made pursuant to Section 5.1 and Article 8 herein shall survive the repayment of the Debt, and the representations and warranties, covenants, and other obligations arising under this Security Instrument shall survive the making by Lenders of the Loan and the execution and delivery to Administrative Agent of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Security Instrument any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Security Instrument, by or on behalf of Trustor, shall inure to the benefit of the legal representatives, successors and permitted assigns of Secured Party.

Section 9.6 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRUSTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT, THE NOTE, THE LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. SECURED PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.

ARTICLE 10 - EXCULPATION

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

ARTICLE 11 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 19.6 of the Loan Agreement.

ARTICLE 12 - APPLICABLE LAW

Section 12.1 GOVERNING LAW.

(a) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY ADMINISTRATIVE AGENT AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES IRREVOCABLY AND UNCONDITIONALLY AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, EACH AND ALL OF THIS SECURITY INSTRUMENT, THE NOTE, THE OTHER LOAN DOCUMENTS, AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE ATTACHMENT, CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED HEREUNDER IN FAVOR OF ADMINISTRATIVE AGENT AND LENDERS IN RESPECT OF REAL PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN

WHICH SUCH REAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS SECURITY INSTRUMENT, THE NOTE AND THE LOAN AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW TRUSTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, AND THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) OTHER THAN ANY ACTION IN RESPECT OF THE ATTACHMENT, CREATION, PERFECTION OR ENFORCEMENT OF THE LIENS OR SECURITY INTERESTS CREATED HEREUNDER WHICH SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WEST JORDAN, COUNTY OF SALT LAKE, STATE OF UTAH, ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST SECURED PARTY OR TRUSTOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TRUSTOR AND SECURED PARTY EACH WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TRUSTOR AND SECURED PARTY EACH HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TRUSTOR AGREES THAT SERVICE OF PROCESS UPON TRUSTOR AT THE ADDRESS SET FORTH IN THE LOAN AGREEMENT AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TRUSTOR IN THE MANNER PROVIDED IN THE LOAN AGREEMENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TRUSTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. TRUSTOR ACKNOWLEDGES AND AGREES THAT TRUSTOR SHALL NOT CONTEST THE VALIDITY OR LEGALITY OF SERVICE OF PROCESS UPON TRUSTOR IN ACCORDANCE WITH THE FOREGOING IN ANY LEGAL PROCEEDING. TRUSTOR (I) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT SET FORTH IN THE LOAN AGREEMENT, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH AN AUTHORIZED AGENT IF TRUSTOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 12.2 USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements and communications between Trustor and Secured Party are hereby and shall

automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Secured Party shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Trustor to Secured Party, and (c) if through any contingency or event, Secured Party receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Trustor to Secured Party, or if there is no such indebtedness, shall immediately be returned to Trustor.

Section 12.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

#### ARTICLE 13 - DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Trustor" shall mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorney's, paralegal's and law clerk's fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Secured Party in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. In the event of any conflict or inconsistency between the provisions of the Loan Agreement and the provisions of this Security Instrument, the provisions of the Loan Agreement shall control and be binding.

#### ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Secured Party, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Trustor and Secured Party and their respective successors and permitted assigns forever.

Section 14.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 14.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 14.6 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness of Trustor heretofore existing against the Property, then, to the extent of the funds so used, Secured Party 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 Secured Party and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Trustor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.7 ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Trustor and Secured Party with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Secured Party with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Secured Party to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.8 LIMITATION ON SECURED PARTY'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Secured Party, nor shall it operate to make Secured Party responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Subject to Section 7.1(h) hereof, nothing herein contained shall be construed as constituting Secured Party a "mortgagee in possession."

Section 14.9 JOINT AND SEVERAL. If more than one Person has executed this Security Instrument as "Trustor," the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.



Section 14.10 COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which shall constitute a single agreement. The failure of any party hereto to execute this Security Instrument, or any counterpart thereof, shall not relieve the other signatories from their obligations hereunder.

Section 14.11 CROSS-COLLATERALIZATION. Trustor acknowledges that the Debt is secured by this Security Instrument together with those Other Security Instruments (as defined herein) given by certain affiliates of Trustor to Administrative Agent, together with the Loan Documents securing or evidencing the Debt, and encumbering the applicable Property (as defined in the applicable Other Security Instrument) (each individually an “Other Property”, and, collectively, the “Other Properties”), all as more specifically set forth in the Loan Agreement. To the fullest extent permitted by applicable law, upon the occurrence of an Event of Default beyond any applicable notice and grace period, Administrative Agent shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the Other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Debt or the portion of the Debt allocated to the Property and/or any Other Property in the Loan Agreement, and the lien and the security interest created by the Other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Debt then due and payable but still outstanding. Trustor acknowledges and agrees that the Property and the Other Properties are located in one or more States, cities and/or counties, and therefore Administrative Agent shall be permitted to foreclose this Security Instrument or the Other Security Instruments and exercise any and all rights and remedies under this Security Instrument or the Other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Administrative Agent, in its sole discretion, in any one or more of the States, cities or counties in which the Property or any Other Property is located. Neither the acceptance of this Security Instrument, the Note, the Loan Agreement, the other Loan Documents or the Other Security Instruments nor the enforcement thereof in any one city or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, the Loan Agreement, this Security Instrument, the other Loan Documents, or any Other Security Instruments through one or more additional proceedings in that State, city or county or in any other State, city or county. Any and all sums received by Secured Party under the Note, the Loan Agreement, this Security Instrument, and the other Loan Documents shall be applied to the Debt in such order and priority as Secured Party shall determine, in its sole discretion, without regard to the Loan Amount (as defined in the Loan Agreement) for the Property or any Other Property or the appraised value of the Property or any Other Property. As used herein, the term “Other Security Instruments” shall mean those certain first priority mortgages, deeds of trust and deeds to secure debt, executed and delivered, or to be executed and delivered, in connection with the Loan as security for the Loan, as set forth on Schedule II attached hereto and made a part hereof, together with any amendments and/or modifications to any of the foregoing.

ARTICLE 15 - DEED OF TRUST PROVISIONS

Section 15.1 TRUSTEE'S FEES. Trustor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 15.2 SUBSTITUTE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Administrative Agent may remove Trustee at any time or from time to time and select a successor trustee by filing the appropriate instrument in the office where this Security Instrument is recorded. Trustor hereby irrevocably appoints Administrative Agent as its attorney-in-fact, coupled with an interest, with full power of substitution to file, execute and record any document required to appoint such substitute trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Secured Party may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Secured Party. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise. Trustor agrees to the foregoing for itself, its successors and assigns.

Section 15.3 POWER OF SALE.

Upon the occurrence and continuance of an Event of Default, Trustee, or the agent or successor of Trustee, at the request of Secured Party, shall sell or offer for sale the Property in such portions, order and parcels as Secured Party may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and provisions of the law of the State in which the Property is located. Such sale shall be made at the area within the courthouse of the county in which the Property (or any portion thereof to be sold) is situated (whether the parts or parcels thereof, if any, in different counties are contiguous or not, and without the necessity of having any personal property hereby secured present at such sale) which is designated by the applicable court of such County as the area in which public sales are to take place, or, if no such area is designated, at the area at the courthouse designated in the notice of sale as the area in which the sale will take place, on such day and at such times as permitted under applicable law of the State where the Property is located, after advertising the time, place and terms of sale and that portion of the Property in accordance with such law, and after having served written or printed notice of the proposed sale by certified mail on each Borrower obligated to pay the Note and other secured indebtedness secured by this Security Instrument according to the records of Secured Party in accordance with applicable law. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

At any such public sale, Trustee may execute and deliver in the name of Trustor to the purchaser a conveyance of the Property or any part of the Property in fee simple. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Property may be sold in its entirety or in separate parcels and in such manner or order as Secured Party in its sole discretion may elect, and if Secured Party so elects, Trustee may sell the personal property covered by this Security Instrument at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State in which the Property is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until all the Property is sold or the Note and other secured indebtedness is paid in full. If the Note and other secured indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts or guaranty, assignments of lease, or other security instruments, Secured Party at its option may exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Secured Party may determine.

Upon any foreclosure sale or sales of all or any portion of the Property under the power herein granted, Secured Party may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

In the event of a foreclosure or a sale of all or any portion of the Property under the power herein granted, the proceeds of said sale shall be applied, in whatever order Secured Party in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith (including, without limitation, attorneys' fees and expenses), to fees and expenses of Trustee (including, without limitation, Trustee's attorneys' fees and expenses), to insurance premiums, liens, assessments, taxes and charges (including, without limitation, utility charges advanced by Secured Party), to payment of the outstanding principal balance of the Debt, and to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

In case Trustee shall have proceeded to enforce any right or remedy under this Security Instrument by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Secured Party, then in every case, Trustor, Secured Party and Trustee shall be restored to their former positions and the rights, powers and remedies of Secured Party and Trustee herein provided or arising, or existing otherwise as herein set forth shall continue as if no such proceeding had been taken.

Section 15.4 ACCEPTANCE BY TRUSTEE. Trustee accepts the Property when this Security Instrument, duly executed and acknowledged, becomes a public record as provided by law. Trustee shall not be obligated to perform any act required hereunder unless the performance of such act is requested in writing and Trustee is reasonably indemnified against loss, cost, liability and expense.

Section 15.5 ACTS OF TRUSTEE. From time to time, upon written request of Secured Party and without affecting the liability of any person for payment of any indebtedness or performance of the obligations secured hereby, Trustee may, without liability therefor and without notice: reconvey all or any part of the Property; consent to the making of any map or plat thereof;

join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustee may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and Trustee may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding unless held or commenced and maintained by Trustee under this Security Instrument.

Section 15.6 NO LIABILITY OF TRUSTEE.

(a) The Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except due to the Trustee’s negligence, breach of agreement or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by them hereunder, believed by the Trustee in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law or under the Loan Documents), and the Trustee shall be under no liability for interest on any moneys received by the Trustee hereunder.

(b) Trustor shall indemnify, protect, defend and hold Secured Party and Trustee harmless, singularly and jointly, from all costs and expenses, including reasonable attorney’s fees, incurred by them or any of them by reason of this Security Instrument, including any legal action to which Secured Party or Trustee shall become a party. Any money so paid or expended by Secured Party or Trustee shall be due and payable upon demand together with interest at the Default Rate from the date incurred and shall be secured by this Security Instrument.

Section 15.7 TRUSTEE POWERS. Trustee may exercise any of its powers through appointment of attorney-in-fact or agents. Trustee may select and employ legal counsel at the expense of Trustor.

Section 15.8 PRIORITY. All amounts advanced by either of Secured Party or Trustee hereunder shall be secured by this Security Instrument with priority dating back to the date of the grant of this Security Instrument.

Section 15.9 RATIFICATION. Trustor hereby ratifies and confirms every act that Trustee and its successors may lawfully do at the Property by virtue of powers granted to Trustee hereunder.

ARTICLE 16 - STATE SPECIFIC PROVISIONS

Section 16.1 INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 POWER OF SALE.

(a) Time is of the essence hereof. Upon the occurrence of an Event of Default the Debt shall immediately become due and payable and Administrative Agent may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof (the "Notice of Default"), and Trustee shall file the Notice of Default for record in each court wherein the Property or some part or parcel thereof is situated. Administrative Agent shall also deposit with Trustee the Note and all other documents evidencing the Debt.

(b) After the lapse of such time as may then be required by law following the recordation of the Notice of Default, any Notice of Default and notice of sale (the "Notice of Sale") having been given, as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in Notice of Sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, or consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed beyond the time permitted by law, then notice thereof shall be given in the same manner as the original Notice of Sale. Trustee shall execute and deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Administrative Agent, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expense of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of interest applicable under the Note secured hereby from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

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

(d) Upon the occurrence of any Event of Default, Administrative Agent shall have the option to the extent permitted by law to declare the Debt immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property and Administrative Agent shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

Section 16.3 INSURANCE. All references in this Security Instrument to “all risk” coverage shall provide insurance coverage to the same extent as specified in “special perils” coverage.

Section 16.4 QUALIFICATION OF TITLE INSURANCE COMPANY AS TRUSTEE. Should the “Trustee” as used throughout this Security Instrument, including without exception Article 15, be a title insurance company or agency, such Trustee shall be qualified in the State of Utah in the following manner, consistent with the provisions of Utah Code Ann. § 57-1-21: (a) Trustee must hold a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the State of Utah, (b) Trustee must actually be doing business in the State of Utah, and (c) Trustee must maintain a bona fide office in the State of Utah. In the event of any express conflict between the provisions of the Security Instrument and the provisions of Utah Code Ann. § 57-1-21 with regard to the qualifications of the Trustee, the provisions of Utah Code Ann. § 57-1-21 shall apply.

Section 16.5 REQUEST FOR NOTICE OF DEFAULT. Trustor requests that one copy of any notice of default and of any notice of sale required hereunder or by applicable law be mailed to Trustor at its address hereinbefore set forth, and notice of any change of Trustor’s address shall only be effective if given by Trustor to both Trustee and to Administrative Agent in the manner required by this Security Instrument.

Section 16.6 UTAH UNIFORM ASSIGNMENT OF RENTS ACT. Trustor hereby expressly acknowledges that Trustor is bound by the terms and provisions of the Utah Uniform Assignment of Rents Act (Utah Code Ann. Section 57-26-101, et seq.) and that Trustor shall, in all respects fully abide by and act to accommodate and comply fully with all the provisions of that Act and the rights and remedies of Administrative Agent arising thereunder by reason of the assignment of rents provided in this Security Instrument.

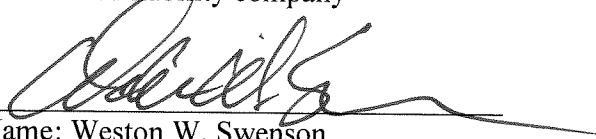
Section 16.7 INTEGRATION. PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, TRUSTOR IS NOTIFIED THAT THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

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

**TRUSTOR:**

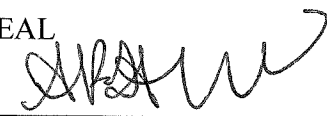
**NOVVA SLC NORTH, LLC,**  
a Delaware limited liability company

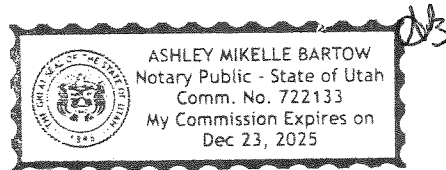
By:   
Name: Weston W. Swenson  
Title: President and Chief Executive Officer

**ACKNOWLEDGMENT**

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

On this 10 day of May, 2024, personally appeared before me Weston W. Swenson, who being by me duly sworn (or affirmed), did say that he is the President and Chief Executive Officer of **NOVVA SLC NORTH, LLC**, and that said instrument was signed on behalf of said limited liability company by authority of its limited liability company agreement (or of a resolution of its board of directors, as the case may be) and said President and Chief Executive Officer acknowledged to me that said limited liability company executed the same.

SEAL  
  
\_\_\_\_\_  
(Signature)  
My commission expires: 12/23/2025

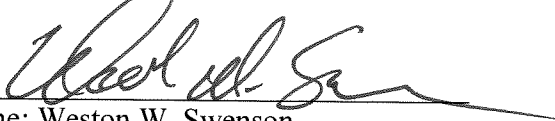


[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]





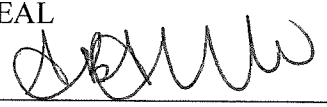
**NOVVA SLC COMMON, LLC,**  
a Delaware limited liability company

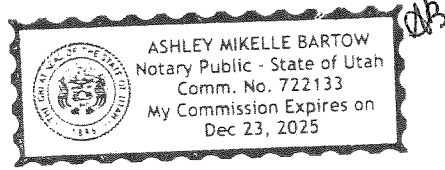
By:   
Name: Weston W. Swenson  
Title: President and Chief Executive Officer

**ACKNOWLEDGMENT**

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

On this 06 day of May, 2024, personally appeared before me Weston W. Swenson, who being by me duly sworn (or affirmed), did say that he is the President and Chief Executive Officer of **NOVVA SLC COMMON, LLC**, and that said instrument was signed on behalf of said limited liability company by authority of its limited liability company agreement (or of a resolution of its board of directors, as the case may be) and said President and Chief Executive Officer acknowledged to me that said limited liability company executed the same.

SEAL  
  
(Signature)  
My commission expires: 12/23/2025



[END OF SIGNATURES]

**EXHIBIT A**

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN WEST JORDAN, IN THE COUNTY OF SALT LAKE, STATE OF UTAH, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

Lot 1, Novva Data Centers Subdivision, Amending Lot 1, Vast Data Centers Subdivision, according to the official plat thereof, recorded March 14, 2024 as Entry 14216122 in Book 2024P at Page 060, in the office of the Salt Lake County Recorder.

Less and excepting that portion of the property conveyed to the City of West Jordan by Quit Claim Deed recorded as Entry No. 14216123 in Book 11477 at Page 7506.

PARCEL 1A:

Non-exclusive, perpetual Waterline Easements, as set forth in that certain Amended and Restated Declaration of Water Easements, recorded February 28, 2024, as Entry No. 14209877, in Book 11474 at Page 5911 of the Salt Lake County Official Records.

PARCEL 2:

Lot 2, Novva Data Centers Subdivision, Amending Lot 1, Vast Data Centers Subdivision, according to the official plat thereof recorded March 14, 2024 as Entry 14216122 in Book 2024P at Page 060, on file and of record in the office of the Salt Lake County Recorder.

Less and excepting that portion of the property conveyed to the City of West Jordan by Quit Claim Deed recorded as Entry No. 14216123 in Book 11477 at Page 7506.

PARCEL 2A:

Non-exclusive, perpetual Waterline Easements, as set forth in that certain Amended and Restated Declaration of Water Easements, recorded February 28, 2024, as Entry No. 14209877, in Book 11474 at Page 5911 of the Salt Lake County Official Records.

PARCEL 3:

Lot 3, Novva Data Centers Subdivision, Amending Lot 1, Vast Data Centers Subdivision, according to the official plat thereof recorded March 14, 2024 as Entry 14216122 in Book 2024P at Page 060, on file and of record in the office of the Salt Lake County Recorder.

PARCEL 4:

Parcel A, Vast Data Centers Subdivision, Amending Parcel 2, RWK Subdivision Amended, according to the official plat thereof recorded January 7, 2021 as Entry 13525332 in Book 2021P at Page 007, on file and of record in the office of the Salt Lake County Recorder.

Less and excepting therefrom any portion lying within the bounds of the 111 Commerce Center Subdivision, according to the official plat thereof recorded July 29, 2022, as Entry No. 13992383 in Book 2022P at Page 178, on file and of record in the office of the Salt Lake County Recorder.

PARCEL 4A:

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A non-exclusive, perpetual Sewer Easement, as set forth in that certain Declaration of Sewer Easements, recorded February 2, 2024, as Entry No. 14200939, in Book 11469 at Page 8500 of the Salt Lake County Official Records.

**PARCEL 4B:**

Non-exclusive, perpetual Waterline Easements, as set forth in that certain Amended and Restated Declaration of Water Easements, recorded February 28, 2024, as Entry No. 14209877, in Book 11474 at Page 5911 of the Salt Lake County Official Records.

**PARCEL 4C:**

A non-exclusive, perpetual Water Easement, as set forth in that certain Declaration of Water Easement, recorded March 29, 2024, as Entry No. 14222034, in Book 11481 at Page 1472 of the Salt Lake County Official Records.

**PARCEL 4D:**

A non-exclusive, perpetual Sewer Easement, as set forth in that certain Declaration of Sewer Easements, recorded March 29, 2024, as Entry No. 14222035, in Book 11481 at Page 1480 of the Salt Lake County Official Records.

**PARCEL 5:**

A non-exclusive, perpetual easement for access as set forth in that certain Declaration of Easements recorded February 2, 2024 as Entry No. 14200940 in Book 11469 at Page 8507 of the Salt Lake County Official Records.

Shown for informational purposes only, Parcel Numbers: **26-10-276-005, 26-10-276-006-0000, 26-10-276-007, 26-10-276-008-0000**

**SCHEDULE I**

**TRUSTOR**

1. Novva SLC North, LLC, as to Parcel 1
2. Novva SLC East, LLC, as to Parcel 2
3. Novva SLC Common, LLC, as to Parcels 3 and 4

## SCHEDULE II

### OTHER SECURITY INSTRUMENTS

1. That certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof, by NOVVA PHOENIX, LLC, a Delaware limited liability company, as trustor, to FIDELITY NATIONAL TITLE AGENCY, INC., as trustee, for the benefit of Administrative Agent, as beneficiary.
2. That certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof, by 400 PAUL AVENUE (SF) OWNER, LLC, a Delaware limited liability company, as trustor, to COMMONWEALTH LAND TITLE COMPANY, as trustee, for the benefit of Administrative Agent, as beneficiary.
3. That certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof, by NOVVA COLORADO LLC, a Delaware limited liability company, as trustor, to the PUBLIC TRUSTEE OF EL PASO COUNTY, COLORADO, as trustee, for the benefit of Administrative Agent, as beneficiary.
4. That certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof, by NOVVA LAS VEGAS, LLC, a Delaware limited liability company, as trustor, to FIDELITY NATIONAL TITLE AGENCY OF NEVADA INC., as trustee, for the benefit of Administrative Agent, as beneficiary.
5. That certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof, by NOVVA RENO, LLC, a Delaware limited liability company, as trustor, to FIDELITY NATIONAL TITLE AGENCY OF NEVADA INC., as trustee, for the benefit of Administrative Agent, as beneficiary.