

RECORDING REQUESTED BY:



\*W2451055\*

WHEN RECORDED MAIL TO:

Jonathan A. Olick, Esq.  
Duane Morris LLP  
1540 Broadway  
New York, NY 10036

E# 2451055 PG 1 OF 17  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
23-DEC-09 904 AM FEE \$44.00 DEP SC  
REC FOR: LANDMARK TITLE COMPANY  
ELECTRONICALLY RECORDED

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(Space above this line for Recorder's Use)

**DEED OF TRUST**

**MADE BY**

**BOYER GSA WAREHOUSE, L.C.,  
a Utah limited liability company  
"Trustor"**

**TO**

**LANDMARK TITLE COMPANY,  
a Utah corporation  
"Trustee"**

**IN FAVOR OF**

**GSA IRS OGDEN LEASE FINANCE TRUST,  
a New York common law trust established under a Trust Agreement,  
dated as of October 14, 2009, between Federal Funding Group, LLC  
and The Bank of New York Mellon  
"Beneficiary"**

LTC# 48209

**DEED OF TRUST**  
**Weber, Utah**

THIS DEED OF TRUST is made as of the 22 day of December, 2009, by **BOYER GSA WAREHOUSE, L.C.**, a Utah limited liability company ("Trustor"), whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101, to **LANDMARK TITLE COMPANY**, a Utah corporation ("Trustee"), whose address is 675 East 2100 South #200, Salt Lake City, Utah 84106, in favor of **GSA IRS OGDEN LEASE FINANCE TRUST**, a New York common law trust ("Beneficiary") established under a Trust Agreement, dated as of October 14, 2009, between Federal Funding Group, LLC (the "Initial Beneficiary") and The Bank of New York Mellon, whose address is 101 Barclay Street, Floor 7W, New York, New York 10286.

**RECITALS:**

A. Beneficiary is the holder of a loan, in the original principal amount of \$14,500,000, made to Trustor (the "Loan"). The Loan is evidenced by a promissory note (the "Note") issued by Trustor under a Loan Agreement, dated as of October 14, 2009 (the "Loan Agreement") between the Initial Beneficiary and Trustor, as assigned, by the Initial Beneficiary to the Beneficiary. Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. It is a condition to Trustor's obligations under the Loan Agreement that Trustor execute and deliver this Deed of Trust to secure Trustor's obligations under the Loan Agreement.

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

Trustor hereby grants, assigns, remises, releases, warrants and conveys to Trustee, its successors and its assigns, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, as provided below, all of its present and future estate, right, title and interest in and to the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness, including Make-Whole Premium, evidenced by or owing under the Loan Agreement, the Note or any of the other Loan Documents (as defined in the Loan Agreement) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Trustor or any other obligor to or benefiting Beneficiary which are evidenced or secured by or otherwise provided in the Loan Agreement, this Deed of Trust or any of the other Loan Documents; and (iii) the reimbursement of Beneficiary for any and all sums expended or advanced by Beneficiary pursuant to any term or provision of or constituting additional indebtedness under or secured by this Deed of Trust or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby encumbered includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Trustor may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which are owned by Trustor. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Deed of Trust deemed to be conveyed hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Deed of Trust is hereby deemed also to be a "Security Agreement" under the Uniform Commercial Code of the State of New York (the "Code"), or if applicable, the Uniform Commercial Code in effect in the State where the Real Estate is located, for purposes of granting a security interest in such property, which Trustor hereby grants to Beneficiary, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Beneficiary, its successors and its assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Trustor's representations and warranties set forth in Section 3.06 of the Loan Agreement are incorporated herein as if set forth herein in their entirety.
2. **Covenants and Agreements as to the Premises.** Each and all of Trustor's covenants and agreements set forth in the Loan Agreement are incorporated herein as if set forth herein in their entirety.
3. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Trustor, any tax is due or becomes due in respect of the execution and delivery of this Deed of Trust, the Loan Agreement or any of the other Loan Documents, Trustor covenants and agrees to pay such tax in the manner required by any such law. Trustor further covenants to reimburse Beneficiary for any reasonable sums which Beneficiary may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, except as otherwise specified in the Loan Agreement, Trustor shall not be required to pay any income or franchise taxes of Beneficiary or any of the Additional Beneficiary.
4. **Lease Assignment.** Trustor acknowledges that, concurrently herewith, Trustor is delivering to Beneficiary, as additional security for the repayment of the Loans, an Assignment

of Rents and Leases (the "Assignment of Leases") pursuant to which Trustor has assigned to Beneficiary, interests in the rents and income from the Premises. All of the provisions of the Assignment of Leases are hereby incorporated herein as if fully set forth at length in the text of this Deed of Trust. Trustor agrees to abide by all of the provisions of the Assignment of Leases.

5. **Effect of Extensions of Time.** If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Trustor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation or release.

6. **Beneficiary's Performance of Defaulted Acts and Expenses Incurred by Beneficiary.** If an Event of Default has occurred and is continuing, Beneficiary may, but need not (i) make any payment or perform any act herein required of Trustor in any form and manner deemed expedient by Beneficiary, (ii) make full or partial payments of principal or interest on prior encumbrances, if any, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof (other than Permitted Encumbrances), (iv) redeem from any tax sale or forfeiture affecting the Premises or (v) cure any default of Trustor in any lease of the Premises. All monies paid for any of the purposes authorized under this Paragraph 6 and, to the extent required under the Loan Agreement, all reasonable expenses paid or incurred in connection therewith, including attorney costs, and any other monies advanced by Beneficiary shall be so much additional indebtedness secured hereby, and may, to the extent permitted in the Loan Agreement, become immediately due and payable by Trustor to Beneficiary under the terms specified in the Loan Agreement. If an Event of Default has occurred and is continuing, in addition to the foregoing, any reasonable costs, expenses and fees, including attorney costs, incurred by Beneficiary in connection with (a) sustaining the lien of this Deed of Trust or its priority, (b) protecting or enforcing any of Beneficiary's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Loan Agreement, this Deed of Trust, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Loan Agreement, this Deed of Trust, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, which may become immediately due and payable by Trustor to Beneficiary in accordance with the terms of the Loan Agreement. Should any amount paid out or advanced by Beneficiary hereunder, or pursuant to any agreement executed by Borrowers in connection with the Loan, be used directly or indirectly to payoff, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Beneficiary shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

7. **Beneficiary's Reliance on Tax Bills and Claims for Liens.** Beneficiary, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without

inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) during the existence of an Event of Default, for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

8. **Event of Default; Acceleration.** An "Event of Default" shall mean an "Event of Default" as defined in the Loan Agreement. If an Event of Default occurs and is continuing, Beneficiary may, at its option, pursuant to the terms of Article V of the Loan Agreement, declare the whole of the indebtedness hereby secured to be immediately due and payable.

9. **Foreclosure.**

(a) **Remedies for Default.** Subject to the terms of Article V of the Loan Agreement, at any time following an Event of Default which is continuing, Beneficiary may, at its option, pursue any or all of the following remedies with respect to the Premises and, if the Premises is comprised of facilities and improvements or multiple parcels or at multiple locations, Beneficiary may pursue such remedies at one location or multiple locations, and need not (but shall retain the right to) pursue such remedies against the entire Premises (if comprised of multiple locations):

- (i) Declare any or all indebtedness to be due and payable immediately;
- (ii) Enter onto the Premises, in person or by agent or by court appointed receiver, and take any and all steps which may be desirable in Beneficiary's judgment to complete any unfinished construction and/or to manage, operate, preserve, develop, maintain and protect the Premises, and Beneficiary may apply any rents, royalties, income or profits collected against the indebtedness secured by this Deed of Trust without in any way curing or waiving any default of Trustor;
- (iii) As a matter of right and without regard to the then value of the Premises or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Premises, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor and the filing of any bond or other undertaking in connection therewith. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Premises or the date of expiration of any redemption period unless such receivership is sooner terminated.
- (iv) Cause Trustor to assemble any personal property and deliver it to Beneficiary at a place designated by Beneficiary;
- (v) Bring a court action to foreclose this Deed of Trust or to enforce its provisions or any of the indebtedness or obligations secured by this Deed of Trust;

(vi) Cause any or all of the Premises to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; and

(vii) Exercise any other right or remedy available under the Loan Documents or otherwise available under law or in equity, including without limitation, rights and remedies with respect to the Personal Property that are available to a Secured Party under the Uniform Commercial Code.

(b) **Personal Property.** It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Code, as amended from time to time as adopted in the State of New York, except to the extent that the Uniform Commercial Code provides for application of the law of the State in which property is located or a different State (as applicable, the "State Code"), during the continuance of an Event of Default, Beneficiary may proceed under such State Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property and treat both real and personal property interests as one parcel or package of security.

(c) **Sale of Premises.**

(i) For any sale under the power of sale granted by this Deed of Trust, Beneficiary shall cause Trustee to record and give all notices required by law and the Loan Agreement. After compliance with such notice requirements, and upon the expiration of such time as is required by law, Trustee may sell the Premises upon any terms and conditions specified by Beneficiary and permitted by applicable law.

(ii) Trustee may postpone any sale by public announcement at the time and place noticed for the sale.

(iii) If the Premises consists of several lots or parcels, Beneficiary in its discretion may designate their order of sale or may elect to sell them through a single sale, or through two (2) or more successive sales, or in any other manner Beneficiary may elect. In the event Beneficiary elects to dispose of the Premises through more than one (1) sale, Trustor shall pay the costs and expenses of each such sale and of any judicial proceedings wherein the same may be made.

(iv) Any Person, including Trustor, Trustee, and Beneficiary, may purchase at any sale, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness secured hereby.

(v) Upon the completion of the sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the Premises sold, but without any covenant or warranty, express or implied, and the recitals in the deed or deeds of any facts affecting the regularity or validity of the sale shall be conclusive against all Persons.

(d) **Expenses.** In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable

expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorney costs, appraisers' fees, environmental audits, property inspections, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and reasonable expenses of the nature mentioned in this Paragraph and such other expenses and fees as may be incurred in the enforcement of Trustor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Deed of Trust, including the attorney costs of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Loan Agreement, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Trustor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(e) **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in accordance with the terms of the Loan Agreement.

(f) **Waiver of Rights.** Trustor waives all rights to direct the order in which any of the Premises shall be sold in the event of any sale under this Deed of Trust, and also any right to have any of the Premises marshaled upon any sale.

(g) **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Premises, nor any collection of rents, issues, profits, proceeds, other security or proceeds of other security, or other sums, nor the application of any collected sums to any indebtedness of Trustor, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all indebtedness then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, Lease, or option or a subordination of the lien of this Deed of Trust.

(h) **Power to File Notices and Cure Defaults.** Subject to any notice and cure rights set forth herein or in the Note or any other Loan Document, Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as Trustor's attorney-in-fact, which agency is coupled with an interest, (a) to execute and record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, and (b) upon the occurrence and during the continuance of an Event of Default, to perform any obligation of Trustor hereunder; provided, that (i) Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary, and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Paragraph.

(i) **Actions By Trustee or Beneficiary.** During the existence of an Event of Default, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be required under the Loan Agreement, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers under applicable laws, whether confirmed herein or in another Loan Document), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Premises; (b) to make additions, alterations, repairs and improvements to the Premises that they or either of them may consider necessary or appropriate to keep the Premises in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counselor other necessary or desirable consultants). Trustor shall immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Default Rate. "**Lien or Encumbrance**" means each and all of the following in respect of the Premises: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust. "**Person**" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

10. **Rights Cumulative.** Each right, power and remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

11. **Beneficiary's Right of Inspection.** Subject to the rights of any lessee and the terms of the applicable lease of the Premises, Beneficiary and its representatives shall have the right to inspect the Premises and the books and records of Trustor as are set forth in the Loan Agreement.



12. **Disbursement of Insurance or Eminent Domain Proceeds.** Any insurance or eminent domain proceeds will be applied and disbursed as provided in the Loan Agreement.

13. **Rights of Beneficiary to Release Debtors or Security.** Without affecting Trustor's liability for the payment of any of the indebtedness secured by this Deed of Trust, Beneficiary may from time to time and without notice to Trustor (a) release any Person liable for the payment of the indebtedness, (b) extend or modify the terms of the indebtedness with the consent of Trustor and, if required, any guarantor of the indebtedness, or (c) accept additional real or personal property of any kind as security, or alter, substitute or release any property securing the indebtedness.

14. **Full Reconveyance.** Upon the payment and performance in full of all indebtedness secured by this Deed of Trust, Beneficiary agrees to request Trustee to reconvey the Premises, and upon payment by Trustor of the fees and all other sums owing to Trustee under this Deed of Trust, Trustee shall reconvey the Premises without warranty to Trustor or to the Person or Persons to whom Trustor directs, in writing, or to such other Person or Persons that are legally entitled to it (as the case may be). Such Person or Persons must pay all costs of recordation. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto."

15. **Notices.** Any notices, communications and waivers under this Deed of Trust shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express courier, addressed in each case as follows:

**Trustor:**

Boyer GSA Warehouse, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attention: President  
Telephone: 801-521-4781  
Facsimile 801-521-4793

**With a copy to:**

Parr Brown Gee & Loveless  
185 South State Street, Suite 800  
Salt Lake City, Utah 84111  
Attention: David Gee, Esq.  
Telephone: 801-532-7840  
Facsimile: 801-532-7750

**Beneficiary:**

GSA IRS Ogden Lease Finance Trust  
c/o The Bank of New York Mellon  
101 Barclay Street, Floor 7W

New York, New York 10286  
Attention: New York City Municipal Finance Unit  
Telephone: 212-815-3575  
Telecopy: 212-815-3455

with copies to:

FEDERAL FUNDING GROUP, LLC  
230 Park Avenue, Suite 1160  
New York, New York 10169  
Telephone: 212-792-7860  
Telecopy: 212-792-7865  
Attention: Thomas P. Zarrilli

and

Duane Morris LLP  
1540 Broadway  
New York, New York 10036  
Telephone: 212-692-1000  
Telecopy: 212-692-1020  
Attention: Jonathan A. Olick, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

16. **Waiver.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Loan Agreement. Trustor hereby covenants and agrees that Trustor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Trustor, for itself and all who may claim through or under it, waives any claims based on allegations that Beneficiary has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Deed of Trust or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Trustor waives, to the extent permitted by law, all rights and remedies that Trustor may have or be able to assert by reason of applicable laws pertaining to the rights and remedies of sureties.

17. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Deed of Trust secures more than the stated principal amount of the Note and interest thereon; this Deed of Trust secures any and all other amounts which may become due under the Loan Agreement, the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Beneficiary to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Deed of Trust.

18. **Waiver of Rights of Redemption and Reinstatement.** Trustor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption as may be provided in the State Code.

19. **Fixture Filing.** Trustor and Beneficiary agree that this Deed of Trust shall constitute a financing statement and fixture filing under the Uniform Commercial Code with respect to all "fixtures" (as defined in the Uniform Commercial Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Beneficiary. For purposes of the foregoing, Beneficiary is the secured party and Trustor is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

20. **Compliance with Applicable Laws.**

(a) **Prevailing Codes.** In the event that any provision in this Deed of Trust shall be inconsistent with any provision of the codes of the State of Utah governing or relating to foreclosure of mortgage or deed of trust liens (herein called "Utah Codes"), the provisions of Utah Codes shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with Utah Codes.

(b) **Codes Governing Receivers.** If any provision of this Deed of Trust shall grant to Beneficiary (including Beneficiary acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 9 of this Deed of Trust any powers, rights or remedies prior to, upon or following the occurrence and continuance of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Beneficiary or in such receiver under Utah Codes in the absence of said provision, Beneficiary and such receiver shall be vested with the powers, rights and remedies granted in Utah Codes to the full extent permitted by law.

(c) **Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any Person for payment of any indebtedness or performance of any indebtedness secured hereby, Trustee may, without liability therefor and without notice and upon the direction of Beneficiary (and further provided Beneficiary has the right to otherwise take or direct such actions under this Deed of Trust or under the Loan Agreement): (a) reconvey all or any part of the Premises;

(b) consent to the making of any map or plat thereof; (c) join in any grant of easement thereon; or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(d) **Substitution/Removal of Trustee.** Beneficiary may remove Trustee or any successor Trustee at any time or times and appoint a successor Trustee by providing written notice of such substitution to Trustor in accordance with the Loan Agreement and by recording a written substitution in the county where the Premises are located, and in accordance with applicable law. Upon that appointment, all of the powers, rights and authority of Trustee will immediately become vested in its successor.

(e) **Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

21. **Miscellaneous.**

(a) **Successors and Assigns.** This Deed of Trust and all provisions hereof shall be binding upon and enforceable against Trustor and its assigns and other successors. This Deed of Trust and all provisions hereof shall inure to the benefit of Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Deed of Trust is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Trustor and Beneficiary shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Deed of Trust and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. Trustor agrees that this Deed of Trust is to be construed, governed by and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws rules; provided, however, that with respect to issues relating to the creation, perfection, priority and enforcement of the liens on and security interest in the Real Estate, the laws of the state in which the Real Estate is located shall govern.

(c) **Municipal and Zoning Requirements.** To the extent it would result in, or be reasonably likely to result in, a material adverse effect: (i) Trustor shall not by act or omission permit any building on Premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Trustor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. (ii) Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement necessary to operate the facility and Trustor shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof. Any act or omission by Trustor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(e) **Relationship of Beneficiary and Trustor.** Beneficiary shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Trustor or of any lessee, operator, concessionaire or licensee of Trustor in the conduct of their respective businesses, and, without limiting the foregoing, Beneficiary shall not be deemed to be such partner, joint venturer, agent or associate on account of Beneficiary becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust, any of the other Loan Documents, or otherwise.

(f) **Time of the Essence.** Time is of the essence of the payment by Trustor of all amounts due and owing to Beneficiary under the Loan Agreement, the Note and the other Loan Documents and the performance and observance by Trustor of all terms, conditions, obligations and agreements contained in this Deed of Trust and the other Loan Documents.

(g) **No Merger.** It being the desire and intention of the parties hereto that the Deed of Trust and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Beneficiary acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(h) **Conflict with Loan Agreement.** In the event there is a conflict between the terms of this Deed of Trust and the terms of the Loan Agreement, the terms of the Loan Agreement shall control.

(i) **Jurisdiction and Venue.** TRUSTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY TRUSTOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS DEED OF TRUST SHALL BE LITIGATED IN NEW YORK, NEW YORK, OR IF BENEFICIARY INITIATES SUCH ACTION, ANY COURT IN WHICH BENEFICIARY SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. TRUSTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTIONS IN ANY ACTION OR PROCEEDING COMMENCED BY BENEFICIARY IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS DEED OF TRUST. TRUSTOR WAIVES ANY CLAIM THAT NEW YORK, NEW YORK, OR ANY SUCH OTHER JURISDICTION, IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD TRUSTOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED

BY LAW AFTER THE MAILING THEREOF, TRUSTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY BENEFICIARY AGAINST TRUSTOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR TRUSTOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY BENEFICIARY, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY BENEFICIARY, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND TRUSTOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(j) Waiver of Right to Jury Trial. BENEFICIARY AND TRUSTOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(k) Maximum Indebtedness. This Deed of Trust secures payment of, and the indebtedness secured by this Deed of Trust shall include, any unpaid balances of Loans advances which Beneficiary may make or be obligated to make to Trustor under this Deed of Trust, the Loan Agreement, or any other Loan Document at any time after this Deed of Trust is delivered to the recorder for record to the extent that the total unpaid indebtedness of the Loan, exclusive of interest thereon, does not exceed the maximum amount of Fifty Million and No/100 Dollars (\$50,000,000.00) which may be outstanding at any time and from time to time.

IN WITNESS WHEREOF, Trustor and Beneficiary have executed this instrument the day and year first above written.

**BOYER GSA WAREHOUSE, L.C.**, a Utah limited liability company, as Borrower

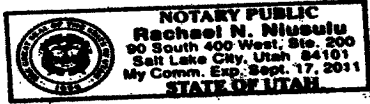
By: Boyer Project Company, L.C., a Utah limited liability company, its Manager

By: The Boyer Company, L.C., a Utah limited liability company, its Manager

By:   
Name: Steven B. O'Shea  
Title: Manager

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss

On this 10<sup>th</sup> day of December, 2009, personally appeared before me Steven B. Oster, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Manager of The Boyer Company, L.C., the Manager of Boyer Project Company, L.C., the Manager of Boyer GSA Warehouse, L.C. and that said document was signed by him/her in behalf of said limited liability company by Authority of resolutions of its Manager, and said Steven B. Oster acknowledged to me that said limited liability company executed the same.



Rachael Niusulu  
Notary Public



**EXHIBIT A****Legal Description****PARCEL 1:**

Lot 3, **BOYER TWELFTH STREET SUBDIVISION**, according to the official plat thereof, filed July 30, 2009 as Entry No. 2427157, in Book 70 of Plats, at Page 28 in the office of the Weber County Recorder, Weber County, Utah.

**PARCEL 2:**

The nonexclusive easement, appurtenant to PARCEL 1 described above, for ingress and egress by vehicular and pedestrian traffic upon, over and across the ingress and egress access lanes and drive aisles as they may be changed from time to time within the following described tract, as created by and provided for in that certain Cross Access And Easement Agreement recorded April 21, 2009 as Entry No. 2406042 in the office of the Weber County Recorder:

*12-233-0001-0007*

A part of the West half of Section 19, Township 6 North, Range 1 West, and the East half of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the South right-of-way line of 12th Street, said point being 1057.75 feet North from the Weber County brass cap monument of the West Quarter corner of said Section 19 (Basis of Bearings established using a line bearing South 65°43'26" East between the existing monument and the tower on Mount Ogden Peak) as established in November of 1995, previously monumented at a location South 6°51'27" West 57.82 feet; and running thence South 88°44'13" East 404.62 feet to a line as called for in Boundary Line Agreement recorded September 9, 1989 as Entry No. 1089984, in Book 1568, at Page 1232 in the office of the Weber County Recorder; thence two (2) courses along an old existing fence as called for in said Agreement as follows: South 0°59'24" West 683.98 feet and South 0°36'17" West 478.01 feet to the Northerly right-of-way line of the Central Pacific Railroad Company; thence North 78°14'54" West 509.33 feet along said right-of-way to a point 111.00 feet West of said West Quarter corner of Section 19; thence North 1069.49 feet to the South right-of-way line of 12<sup>th</sup> Street; thence South 88°44'13" East 111.03 feet along said right-of-way to the point of beginning.

**PARCEL 3:**

The non-exclusive easements, appurtenant to PARCEL 1 described above, for ingress and egress of vehicles and pedestrians and for vehicular parking, upon, over and across the "Easement Area", as defined, described and created pursuant to that certain Declaration Of Easements, Covenants And Restrictions recorded December 17, 2009 as Entry No. 2450189 in the office of the Weber County Recorder.

[FOR REFERENCE ONLY: Tax Parcel No. 15-495-0003] *jd*