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6156263-6203672

RETURN TO:  
Leslie Ottley  
79 South Main Street, 13th Floor  
Salt Lake City, UT 84111  
LOAN NUMBER:5850375

08/31/95 4:38 PM 50.00  
~~6156263~~  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
AMERICA WEST TITLE  
REC BY:Z JOHANSON DEPUTY - WI

CONSTRUCTION/TERM DEED OF TRUST; ASSIGNMENT  
OF CONTRACTS, RENTS, AND PROFITS; AND  
SECURITY AGREEMENT, FIXTURE FILING,  
AND FINANCING STATEMENT

THIS DEED OF TRUST SECURES PAYMENT OF A NOTE WITH A VARIABLE RATE OF INTEREST.

THIS DEED OF TRUST is made this 31st day of August, 1995, by and between Valley View Memorial Park, hereinafter "Trustor," whose address is 4400 West 4100 South, West Valley City, Utah 84120; America West Title Agency, Inc., hereinafter "Trustee," whose address is 1660 East Murray Holladay Road, Salt Lake City, Utah 84117; and FIRST SECURITY BANK OF UTAH, N.A., hereinafter "Beneficiary," whose address is 79 South Main Street, Salt Lake City, Utah 84111.

WITNESSETH:

That Trustor, in consideration of the indebtedness recited herein, does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN, AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, that real property in Salt Lake County, Utah, more particularly described in the attached Exhibit A and by this reference incorporated herein (the "Real Property").

TOGETHER WITH all leasehold estate, right, title, and interest of Trustor in and to all leases or subleases covering the Real Property or any portion of it, now or hereafter existing or entered into, and all amendments and extensions of the same, and all right, title, and interest of Trustor thereunder, and all rents, issues, profits, royalties, income, and other benefits derived from the Real Property, subject to the right, power, and authority given to Trustor outlined herein to collect and apply such rents;

TOGETHER WITH all right, title and interest of Trustor in and to all options to purchase or lease the Real Property or any portion of it or interest in it, and any greater estate in the Real Property now owned or hereafter acquired by Trustor;

TOGETHER WITH all easements, rights-of-way, and rights used in connection with the Real Property or as a means of access to it, and all tenements, hereditaments, privileges, and appurtenances belonging to, used, or enjoyed with the Real Property or any part of it, and all water rights and shares of stock evidencing the same connected to the Real Property;

TOGETHER WITH any and all buildings, structures, improvements and all landscaping now or hereafter located in, or on, or used in connection with the Real Property, including but not limited to all fixtures attached to said buildings, structures and improvements, along with a security interest in all right, title and interest of Trustor in and to all tangible goods and personal property (the "Personal Property") now owned or hereafter acquired by Trustor and now or hereafter located in or on, and used or intended to be used in connection with, the Real Property, including but not limited to all building components and materials, machinery, equipment, engines, boilers, incinerators, furniture and furnishings, appliances, equipment used for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air, and light, all elevators and related machinery and equipment, fire prevention and security equipment, plumbing, telephone equipment, cable and other television equipment, cables and antennas, lighting fixtures and systems, fences, and all right, title and interest of Trustor now owned or hereafter acquired in and to the property described in Exhibit B, if attached hereto, which by this reference is incorporated herein (such property to the extent that it constitutes personal property also being included within the definition of "Personal Property"); and including all replacements for, accessions, modifications, and additions thereto, that Trustor now has or may hereafter acquire (hereinafter "Improvements");

TOGETHER WITH all minerals, claims, mining claims, oil, gas, and other hydrocarbon substances on the Real Property, as well as all development rights, air rights, and solar rights that Trustor now has or may hereafter acquire in the Real Property;

TOGETHER WITH all right, title, and interest of Trustor in and to all sales contracts of any nature whatsoever now or hereafter executed covering any portion of the Real Property or the Improvements, together with any and all modifications of it and also together with all deposits or payments made in connection with it;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Real Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Real Property;

TOGETHER WITH all interests, estate, or other claims, both in law and in equity, that Trustor now has or may hereafter acquire in the Real Property.

The entire estate, Real Property, Personal Property, Improvements, and interest hereby conveyed to Trustee is hereinafter referred to as the "Property."

THE PROPERTY IS CONVEYED TO TRUSTEE FOR THE PURPOSE OF SECURING THE FOLLOWING:

(a) Payment of the indebtedness (including principal, interest, and late charges) evidenced by a note of even date (hereinafter "Note") made, executed, and delivered by Trustor to the order of Beneficiary in the principal amount of One Million Dollars (\$1,000,000.00), together with all modifications, extensions, renewals and substitutions therefor, which Note is incorporated herein by reference. The interest rate under the note is a variable rate.

(b) Payment of all sums advanced by Beneficiary to protect the Property, with interest, which sums shall be considered an advance pursuant to the Loan Documents and subject to the same interest rate set forth in the Note for late payments and shall be payable upon demand by Beneficiary.

(c) Performance of all obligations of Trustor contained in this Deed of Trust and the Loan Documents and any and all instruments and documents given to document and secure the payment and performance of any obligation secured hereby, including performance of Trustor's obligations under the Construction/Term Loan Agreement of even date herewith executed by Trustor and Beneficiary (the "Construction Loan Agreement") relating to the construction of Improvements on the Real Property.

(d) Payment of all other sums or extensions of credit for the benefit of Trustor or any guarantor in connection with this loan transaction.

*\* Being recorded to collect the legal Description CONTAINED herein*

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including but not limited to the issuance by Beneficiary of bonds, set-aside letters, letters of credit, etc., with their interest according to the tenor of any document or instrument documenting the same, that may hereafter be loaned or advanced by Beneficiary to Trustor or may serve to obligate Beneficiary to a third party.

(e) Performance of all obligations of Trustor under any tri-party agreement, buy-and-sell agreement, permanent loan commitment, or equivalent by and among Trustor, Beneficiary, and any other lender relating to the loan evidenced by the Note (the "Tri-Party Agreement").

(f) Payment of all other sums which may hereafter be loaned to Trustor by Beneficiary when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

The definitions of the term "Loan Documents" and all other definitions of terms in the Construction Loan Agreement of even date are hereby incorporated and are controlling in this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE I - COVENANTS AND AGREEMENTS OF TRUSTOR

##### 1.1 Payment of Secured Obligations.

Trustor shall pay according to the terms of the Loan Documents the indebtedness evidenced by the Loan Documents, together with all interest on it, charges, fees, and other sums provided in the Loan Documents, and any future advances secured by this Deed of Trust.

##### 1.2 Maintenance, Repair, and Alterations.

Trustor shall keep the Property in good condition and repair. Trustor shall not commit any waste on the Property or take any actions that might invalidate any insurance required to be carried on the Property. Trustor shall not remove, demolish, or materially alter (except such alterations as may be required by laws, ordinances, or regulations) any improvements to the Property without the prior written consent of Beneficiary. Trustor shall complete promptly in accordance with the Loan Documents and in a good and workmanlike condition and manner all improvements that are to be constructed on the Real Property; properly restore any improvement that may be damaged or destroyed; pay when due all claims for labor performed and materials furnished; comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Property or any part of it or requiring any alterations or improvements; keep and maintain abutting grounds, sidewalks, roads, parking, and landscape areas in good and neat order and repair; and comply as lessors with all provisions of any lease covering all or any part of the Property; and comply as lessees with all provisions of any lease covering all or any part of the Property if this Deed of Trust covers a leasehold interest.

##### 1.3 Insurance.

At all times, Trustor shall provide, maintain, and keep in force those policies of insurance that are required by the Loan Documents.

##### 1.4 Certificates of Insurance and Payment of Premiums.

Trustor shall comply with all provisions of the Construction Loan Agreement regarding evidence of insurance and payment of premiums, and all other provisions relating to insurance. All policies of insurance shall have attached thereto a lender's loss endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. At least thirty (30) days before the expiration of each required insurance policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premiums and the reissuance of a policy or policies continuing insurance in force as required by this Deed of Trust and Loan Documents. If Trustor fails to provide, maintain, or deliver to Beneficiary the policies of insurance or their certificates as required by this Deed of Trust, Beneficiary may procure such insurance as required by the Loan Documents covering Beneficiary's interest, and Trustor agrees to pay all those premiums promptly on demand by Beneficiary. Such payment by Beneficiary shall be considered an advance pursuant to the Loan Documents and until such payment is made by Trustor, the amount of all such premiums together with interest at the default rate of interest under the Note shall be secured by this Deed of Trust.

##### 1.5 Insurance Proceeds.

Trustor shall give prompt written notice to Beneficiary upon occurrence of any casualty to the Property or any part of it. Any insurance proceeds shall be paid and applied as follows:

(a) In the event of any damage to or destruction of the Property, Beneficiary shall have sole authority to apply all or any part of the insurance proceeds (1) to the indebtedness secured hereby in the order that Beneficiary may determine, (2) to the restoration of the Property, or (3) to Trustor.

(b) In the event of any loss of or damage to the Property or any part of it, all insurance proceeds shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, but shall be under no obligation, to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance.

(c) Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing contained in this Deed of Trust shall excuse Trustor from repairing or maintaining the Property as provided in paragraph 1.2, or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether or not such proceeds are sufficient. The application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

##### 1.6 Assignment of Policies upon Foreclosure.

In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in entire or partial extinguishment of any indebtedness secured by this Deed of Trust, all right, title, and interest of Trustor in and to all policies of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Property.

##### 1.7 Waiver of Offset.

All sums payable by Trustor under this Agreement shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction, and the obligations and liabilities of Trustor under this Deed of Trust shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (1) any damage to or destruction of or any condemnation or similar taking of the Property or any part of it; (2) any restriction or prevention of or interference with any use of the Property or any part of it; (3) any title defect or encumbrance or any eviction from the Property or any part of it by any person or entity holding title superior to Trustor or otherwise; (4) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (5) any claim that Trustor has or might have against Beneficiary; (6) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or of any of the Loan Documents or of any other agreement with Trustor; or (7) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided in this Deed of Trust, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Trustor.

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1.8 Taxes and Impositions.

(a) Trustor agrees to pay, or cause any lessee of all or any part of the Property to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation levies and charges resulting from covenants, conditions, and restrictions affecting the Property, that are assessed or imposed upon the Property or become due and payable and that create, may create, or appear to create a lien upon the Property or any part of it (all of which taxes, assessments, and other charges of like nature are hereinafter referred to as "impositions"); provided, however, that if by law any such imposition is payable in installments, or imposition in installments as the same become due and before any fine, penalty, interest, or cost may be added to it for the nonpayment of any such installment and interest.

(b) If at any time after the date of this Deed of Trust there shall be assessed or imposed (1) a tax or assessment on the Property in lieu of or in addition to the impositions payable by Trustor pursuant to subparagraph (a) above, or (2) a license fee, tax, or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments, or fees shall be included within the term "impositions" as defined in subparagraph (a) above, and Trustor shall pay and discharge together with all accrued interest on them shall immediately become due and payable. Anything to the contrary in this Deed of Trust notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits, or similar tax levied on Beneficiary or on the obligations secured hereby.

(c) Subject to the provisions of subparagraph 1.8(d), Trustor covenants to furnish Beneficiary, within thirty (30) days after the date that any such imposition is due and payable by Trustor, official receipts of the appropriate taxing authority or other proof satisfactory to Beneficiary proving that payment has been made.

(d) Trustor shall have the right before any delinquency occurs to object to the amount or validity of any imposition by appropriate legal proceedings, but this shall not in any way relieve, modify, or extend Trustor's covenant to pay any such imposition at the time and in the manner provided in this paragraph 1.8, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so object to an imposition, and unless, at Beneficiary's sole option, (1) Trustor demonstrates to Beneficiary's satisfaction that the legal proceedings conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such imposition prior to final determination of such proceedings; or (2) Trustor furnishes a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (3) Trustor provides a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) Trustor covenants and agrees not to suffer, permit, or initiate the joint assessment of real and personal property or any other procedure in which the lien of the real property taxes and the lien of the personal property taxes is assessed, levied, or charged to the Property as a single lien.

(f) At Beneficiary's option, subject to applicable law, Trustor shall pay to Beneficiary on the day monthly interest payments are due under the Note until the Note is paid in full, a sum ("Funds") equal to one-twelfth of: (i) yearly impositions (ii) yearly leasehold payments or ground rents on the property, if any; (iii) yearly insurance premiums for the insurance policies required by the Construction Loan Agreement; and (iv) yearly mortgage insurance premiums, if any. These items are called "escrow items." Beneficiary may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held by Beneficiary. Nothing contained herein shall cause Beneficiary to be considered a trustee of the Funds or to be obligated to pay any amounts in excess of the amount of the Funds deposited with Beneficiary for application to the purposes for which the Funds were deposited. Beneficiary shall apply the Funds to pay the escrow items. Unless applicable law requires interest to be paid, Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. Beneficiary shall give to Trustor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the indebtedness and obligations secured by this Deed of Trust.

If the amount of the Funds held by Beneficiary, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor on monthly payments of Funds. If the amount of the Funds held by Beneficiary is not sufficient to pay the escrow items when due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency in one or more payments as required by Beneficiary. Should Trustor fail to make up the deficiency, Beneficiary may, at Beneficiary's election, but without any obligation to do so, advance any amounts required to make up the deficiency, which advance shall be secured by this Deed of Trust and shall be immediately repayable to Beneficiary by Trustor with interest thereon at the default rate under the Note, or the Beneficiary at its option may, without making any advance whatever, apply any sums held by it (including the Funds) to any obligation of Trustor secured hereby.

Upon payment in full and full performance of all indebtedness and obligations secured by this Deed of Trust, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If under Article IV of this Deed of Trust the Property is sold or acquired by Beneficiary, Beneficiary shall apply, no later than immediately prior to the sale of the Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the indebtedness and obligations secured by this Deed of Trust.

(g) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary at Trustor's expense a tax reporting service contract covering the Real Property of the type, duration and with a company satisfactory to Beneficiary.

1.9 Utilities.

Trustor shall pay, or cause any lessee of all or any part of the Property to pay, when due, all utility charges that are incurred for the benefit of the Property or that may become a charge or lien against the Property for gas, electricity, water, or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion of it, whether or not such assessments or charges are liens thereon.

1.10 Defense of Property.

Trustor will, at its own expense, appear in and defend any action or proceeding that might affect Beneficiary's security or the rights or powers of Beneficiary or Trustee or that purports to affect any of the Property. If Trustor fails to perform any of its covenants or agreements contained in this Deed of Trust, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization, or other debtor relief proceeding) is commenced that might affect Beneficiary's or Trustee's interest in the Property or Beneficiary's right to enforce the security of this Deed of Trust, the Beneficiary and/or Trustee may, at their option, make any appearances, disburse any sums, and take any actions as may be necessary or desirable to protect the Property or enforce the security of Beneficiary's rights under this Deed of Trust or to remedy the failure of Trustor to perform its covenants (without, however, waiving any default of Trustor). Trustor agrees to pay all reasonable out-of-pocket expenses of Beneficiary and Trustee thus incurred pursuant to Article V below. Any sums disbursed or advanced by Beneficiary or Trustee will be an additional indebtedness of Trustor secured by this Deed of Trust and will be payable by Trustor upon demand. Any such sums to be disbursed or advanced by Beneficiary will bear interest at the rate set forth in the Note for sums owing after maturity. This paragraph does not require Beneficiary or Trustee to incur any expenses, make any appearances, or take any actions.

1.11 Actions by Trustee and/or Beneficiary to Preserve Property.

Should Trustor fail to make any payment and not cure the default after notice as provided in the Loan Documents or fail to do any

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act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each at its own discretion, without obligation to do so, without notice to or demand upon Trustor, and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right but not the obligation (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs, and improvements to the Property that they or either of them may consider necessary or proper to keep the Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or that may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien, or debt that in the judgment of either may affect or appears to affect the security of this Deed of Trust or to be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Beneficiary shall also have the right (at its discretion) if Trustor is in default under the Loan Documents to order (at Trustor's expense) a new appraisal of the Property, and Trustor hereby agrees to cooperate in allowing such appraisal to take place; provided, that Beneficiary may not exercise this right more than once a year. Immediately upon demand by Beneficiary, Trustor shall pay all costs and expenses incurred by Beneficiary or Trustee in connection with the exercise by Beneficiary or Trustee of the foregoing rights, pursuant to Article V below. Any such sums advanced by Beneficiary will bear interest at the rate set forth in the Note for sums owing after maturity.

#### 1.12 Eminent Domain.

Should the Property or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceedings or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice to Beneficiary.

(a) Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor and shall be entitled at its option to commence, appear in, and prosecute in its own name any action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damages. All such compensation, awards, damages, rights of action, and proceeds awarded to Trustor are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the proceeds as Beneficiary or Trustee may require.

(b) In the event any portion of the Property is so taken or damaged, Beneficiary shall have sole authority to apply all such proceeds after deducting all costs and expenses (regardless of their nature and whether incurred with or without suit), including attorney's fees incurred by it in connection with such proceeds, upon any indebtedness secured by this Deed of Trust and in such order as Beneficiary may determine, or to apply all such proceeds after such deductions to the restoration of the Property upon such conditions as Beneficiary may determine. Such application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

#### 1.13 Additional Security.

If Beneficiary at any time holds additional security for any of the obligations secured by this Deed of Trust, it may, in the event of default, proceed against any of the collateral in any order Beneficiary determines.

#### 1.14 Appointment of Successor Trustee.

Beneficiary may substitute a trustee or trustees to execute the trust created by this Deed of Trust, and when such substitution has been filed for record in the office of the Recorder of the County in which the Property is located, it shall be conclusive evidence of the appointment of such trustee or trustees, and the new trustee or trustees shall have all of the powers and duties of the trustee or trustees listed in this Deed of Trust or conferred by applicable law.

#### 1.15 Liens.

Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances, and charges upon the Property, any part of it, or interest in it; provided, however, that Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance, or charge, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one and one half (150%) of the amount of the claim, and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance, or charge to be removed and discharged. If Trustor fails to discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may but shall not be obligated to discharge the same, either by paying the amount claimed to be due, by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any funds advanced or credit extended by Beneficiary for this purpose shall be secured by this Deed of Trust and be payable as provided above in paragraph 1.11 for sums advanced by Beneficiary to preserve the Property.

#### 1.16 Beneficiary's Powers.

Without affecting the liability of any person liable for the payment of any obligation mentioned in, and without affecting the lien or charge of, this Deed of Trust upon any portion of the Property not then or up to that time released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time and without notice to any other persons or entities liable for the payment of such obligations (a) release any person so liable; (b) extend the maturity or alter any of the terms of any such obligation; (c) grant other indulgences; (d) release, reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion, or all of the Property; (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with Trustor and its other creditors in relation thereto. By accepting payment of any obligation mentioned in this document after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure to so pay.

#### 1.17 Leases.

Trustor will furnish to Beneficiary for its advance approval all leases or occupancy agreements, if any, affecting the Property or any part of it. Beneficiary's approval of such leases or occupancy agreements shall not be unreasonably withheld. Beneficiary shall under no circumstances be liable under or considered a party to such leases or occupancy agreements affecting the Property unless Beneficiary so agrees in writing.

#### 1.18 Zoning; Subdivision.

Trustor will not (without the prior written consent of Beneficiary) seek, make, or consent to any change in the zoning or conditions of use of the Property that would impair the ability of Trustor to construct improvements on the Property. Trustor will comply with and make all payments required under the provisions of any covenants, conditions, or restrictions that have been or will be recorded affecting the Property, including but not limited to those contained in any declaration and constituent documents of any condominium, cooperative, or planned unit development project on the Property. Trustor will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Trustor hereby represents, warrants, and covenants that the Property is in compliance with all applicable laws, ordinances, codes, and regulations.

#### 1.19 Accounting; Changes in Condition.

Trustor shall keep financial records, which it will provide to Beneficiary upon request, and shall notify Beneficiary of any material adverse change in such financial records as required in the Construction Loan Agreement. Trustor shall provide to Beneficiary no later than 120 days following the close of its fiscal year, or following the close of the calendar year if Trustor computes its taxes on a calendar year basis, signed financial statements (which shall include an income statement, a balance sheet, a tax return, and any other requested statements), together with certified operating statements and rent rolls as more particularly required by the terms of the Construction Loan Agreement.

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**1.20 Security Agreement.**

This Deed of Trust constitutes a Security Agreement, fixture filing, and financing statement when recorded to the extent allowed under applicable law. Trustor hereby grants to Beneficiary a continuing security interest in all personal property identified in Exhibit B along with all of the Property identified at the beginning of this Deed of Trust ("the collateral") to secure the payment and performance of Trustor's obligations under this Deed of Trust, the Note, the Construction Loan Agreement, and the other Loan Documents. Beneficiary's security interest shall attach without further act on the part of Beneficiary or Trustor. Trustor is the record owner of the Real Property. Trustor agrees that Beneficiary may file this Deed of Trust or a copy thereof in the real estate records or with any governmental authority as a financing statement for any of the collateral. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In the event that any of the collateral, including proceeds, consists of or is evidenced by notes, drafts, letters of credit, advices of credit, instruments, documents, leases, money, chattel paper, negotiable documents or similar property, Trustor shall immediately upon Beneficiary's written request therefor, endorse and assign such collateral over to Beneficiary and deliver actual physical possession of such collateral to Beneficiary.

Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver, and if appropriate, to file with the appropriate filing officer or office the security agreements, financing statements, continuation statements, or other instruments that Beneficiary may request or require in order to impose, perfect, or continue the perfection of the lien or security interest created by this Deed of Trust. Upon the occurrence of any default under this Deed of Trust, Beneficiary shall have the right to sell any of the collateral (including any of the Property that is personal property) at any one or more public or private sales as permitted by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, that are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any person, including both Trustor and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition, and Beneficiary shall be entitled to credit bid.

Expenses of retaking, holding, preparing for sale, selling, or the like shall be borne by Trustor and shall include Beneficiary's and Trustee's attorney's fees and legal expenses. Upon demand of Beneficiary, Trustor shall assemble such personal property and make it available to Beneficiary at the Property, a place which is hereby deemed to be reasonably convenient to Beneficiary and Trustor. Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices in this document, Trustor agrees that such notice shall be and is reasonable notice to Trustor.

No collateral may be removed from the Property unless it is immediately replaced by similar property of at least equivalent value on which Beneficiary will immediately have a valid first lien security interest.

**1.21 Trustee's Powers.**

At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Property, Trustee may (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**1.22 Ground Leases.**

Trustor agrees to pay when due all rents and other payments and perform all covenants and agreements contained in any lease, sublease or ground lease that may constitute a portion of or an interest in the Property, not to surrender, assign or sublease any such lease, sublease or ground lease, and not to take any other action that would affect or permit the termination of any such lease, sublease or ground lease. Trustor covenants to furnish to Beneficiary within thirty (30) days after the date upon which such rents or other payments are due and payable by Trustor, receipts or other evidence satisfactory to Beneficiary evidencing the payment thereof.

**1.23 Inspections.**

Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

**1.24 Warranties of Title.**

Trustor warrants that it had and has good, absolute, and fee simple title to the Property during any and all prior or subsequent disbursements of funds pursuant to the Construction Loan Agreement, and Trustor is lawfully seized and possessed of all parts of the Property and has the right and authority to convey its interest in the Property as security for the obligations of Trustor secured by this Deed of Trust. Trustor further warrants that the Property is unencumbered and free and clear of all easements, restrictions, and covenants except as may be specifically agreed to by Beneficiary in writing, either in Exhibit C attached to this Deed of Trust or otherwise in writing. Trustor warrants that it will own and have good and absolute title to all Property hereafter acquired, free and clear of all purchase money or other security interests or rights of any lessors thereto and Trustor will forever warrant and defend the title to the Property unto the Beneficiary against all claims and demands of all persons whomsoever.

**1.25 Survival of Warranties.**

Trustor hereby agrees to fully and faithfully satisfy and perform, during the term of the Note and any extensions thereof, the obligations of Trustor contained in the Loan Documents. All warranties, representations, covenants, and agreements contained in the Loan Documents and all promises or obligations of Trustor so referenced shall survive and remain in effect until such time as the indebtedness owed Beneficiary by Trustor secured by this Deed of Trust is extinguished and all obligations of Trustor to Beneficiary are satisfied.

**1.26 Further Assurances.**

Trustor will from time to time and at Beneficiary's request execute supplementary security agreements, trust deeds, financing statements, or equivalent security or lien instruments or other instruments of further assurance with respect to the Property or any part thereof, and Trustor will take such further actions requested by Beneficiary as shall be necessary to effectuate the purposes and intent of this Deed of Trust; provided that no additional liability shall be incurred by Trustor in such event that is inconsistent with the provisions of the Loan Documents.

**ARTICLE II - TRUSTOR'S HAZARDOUS SUBSTANCE COVENANTS, WARRANTIES, REPRESENTATIONS, AND INDEMNIFICATION**

**2.1 Trustor and its successors and assigns pledge, warrant, and represent that:**

(a) No pollutants or other toxic or hazardous substances, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as: smoke, vapor, soot, fumes, acids, alkalis, chemicals, or waste (including materials to be recycled, reconditioned, or reclaimed) (collectively "substances") have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape on or from the Property.

(b) No asbestos or asbestos-containing materials have been or shall be installed, used, incorporated into, or disposed of on Trustor's Real Property.

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(c) No polychlorinated biphenyls ("PCBs") are or shall be located on or in Trustor's Property in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(d) No underground storage tanks or wetlands are or shall be located at Trustor's Real Property.

(e) Trustor covenants, warrants, and represents that the Property is free and clear of all hazardous, dangerous, or toxic substances as said terms are generally defined and regulated under local, state, and federal laws and regulations.

(f) The Property and Trustor's operations at the Real Property (including those of any tenant of the Trustor and each other occupant of any of the Real Property) are and shall at all times be in compliance with all applicable federal, state, and local statutes, laws, regulations, rules and ordinances relating to land use, zoning or protection of the environment, or to the generation, use, storage, removal, transportation, handling or disposal of underground storage tanks, petroleum storage tanks, toxic materials, hazardous substances, hazardous waste or other similar materials or substances, as such substances may be identified or defined by such laws and regulations from time to time.

2.2 Trustor and its successors and assigns agree to promptly notify Beneficiary of any event or occurrence, whether occurring on the Real Property or on adjacent or nearby property, that poses a risk of contamination of the Property or of air or water on, under or near the Real Property, with any hazardous substance, toxic material, hazardous waste or similar substance or material as defined in or regulated by any applicable local, state or federal law, rule, regulation or ordinance.

2.3 Trustor and its successors and assigns agree to indemnify, defend, and hold harmless Beneficiary, its successors, assigns, officers, directors, employees and agents against any loss, liability, cost, injury, expense or damage, including without limitation court costs and attorneys' fees and expenses, in connection with or arising from the presence, escape, seepage, leakage, spillage, discharge or emission on or from the property encumbered by this Deed of Trust of any hazardous or toxic substances, materials or waste that are or may be regulated by federal, state, or local law. This indemnification (a) shall survive the release, foreclosure or satisfaction of this Deed of Trust or the transfer of the property encumbered hereby, (b) is separate and distinct from the other obligations under this Deed of Trust and the indebtedness secured hereby, and (c) is not secured by this Deed of Trust.

### ARTICLE III - ASSIGNMENT OF RENTS, ISSUES, PROFITS, AND CONTRACTS

#### 3.1 Assignment of Rents, Issues, and Profits.

Trustor hereby assigns and transfers absolutely to the Beneficiary all the rents, issues, income, and profits of the Property and hereby gives to and confers upon Beneficiary the right, power, and authority to collect these rents, issues, and profits. However, Trustor shall have the right to collect such rents, issues, and profits (but not more than one month in advance) prior to or at any time there is not a default under the Loan Documents.

#### 3.2 Collection upon Default.

Upon default under any of the Loan Documents, Beneficiary may at any time without notice and either in person, by agent, or by a receiver appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof; in its own name sue for or otherwise collect all rents, issues, and profits of the Property, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, in such order as Beneficiary may determine. Trustor further confers upon Beneficiary the right to enter into leases of the Property on behalf of and as attorney-in-fact for Trustor and to collect all rents, issues and profits thereunder. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact at the option of Beneficiary at any time and from time to time to demand, receive, and enforce payment; to give receipts, releases, and satisfactions; and to sue, in the name of Trustor or Beneficiary, for all such rents, issues, and profits and apply the same to the indebtedness and obligations secured hereby. The collection of such rents, issues, and profits, or the entering upon and taking possession of the Property, or the application thereof as stated above, shall not cure or waive any default or notice of default under this document or invalidate any act done in response to such default or pursuant to such notice of default.

#### 3.3 Discount or Reassignment.

In lieu of or in addition to any other remedy, in the event of any default under any of the Loan Documents, Beneficiary may at any time without notice and at Beneficiary's sole option sell, transfer, discount, reassign, convey, or otherwise dispose of, at any public or private sale, all or any part of Trustor's right, title, and interest in and to any lease of the Property, including but not limited to all rents and other payments falling due under such lease, and apply these proceeds to any indebtedness secured hereby without prejudice to the right of Beneficiary to recover any deficiency from Trustor.

#### 3.4 Leasing of Premises.

Beneficiary shall not be liable for any loss sustained by Trustor resulting from Beneficiary's failure to let the premises after default or from any other act or omission of Beneficiary in managing the premises after default unless such loss is caused by the willful misconduct of Beneficiary. This Deed of Trust shall not place responsibility for the control, care, management, or repair of the Property upon Beneficiary, nor shall it make Beneficiary responsible or liable for any waste committed on the Property by the tenants under any lease or any other parties, or for any dangerous or defective condition of the premises, or for any negligence in the management, upkeep, repair, or control of the premises resulting in loss, injury, or death to any person.

#### 3.5 Trustor's Covenants.

Trustor pledges with Beneficiary to observe and perform all of the obligations imposed upon Trustor as lessor under any lease of the Property and not to do or permit to be done anything to impair the security of such lease, not to collect any of the rent, income, or profits arising or accruing under said lease or from the premises described in the Lease more than thirty (30) days in advance of the time when they are due, and then to collect only the next installment falling due; not to execute any other assignment of Trustor's interest in said lease or any rent, income or profits arising or accruing thereunder; not to alter, modify, or change the terms of such lease or cancel or terminate it or accept a surrender of the leasehold premises without the prior written consent of Beneficiary; and at Beneficiary's request to take any further actions to evidence or perfect the assignment of such leases and their corresponding rents to Beneficiary outlined herein, including any and all subsequent leases upon all or any part of the Property as Beneficiary may from time to time require.

#### 3.6 Notices and Filings.

At the request of Beneficiary, Trustor will make, execute, and deliver to Beneficiary memoranda of assignment, notices, financing statements, renewals, and amendments thereof pursuant to the Uniform Commercial Code and other notices and filings that Beneficiary may require in a form satisfactory to Beneficiary. In order to evidence and perfect the interest of Beneficiary in any lease or other interest assigned hereby, Trustor shall pay the cost of filing any such instruments in any public offices wherever filing is deemed necessary or desirable by Beneficiary.

#### 3.7 Assignment of Contracts.

(a) All of Trustor's right, title, and interest in and to and all of the benefits under all contracts, including but not limited to all construction contracts, escrow accounts, escrow agreements, earnest money agreements, sales agreements, purchase agreements, deposit receipts, plans and specifications, government permits, planning and zoning approvals, building permits, utility agreements, causes of actions and claims, and

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any and all other agreements or rights involving or incidental to the acquisition and construction of the Project and the sale, lease, or assignment of the units of the Project (herein "Assigned Documents") are hereby assigned to Beneficiary, and Trustor hereby grants a security interest in the Assigned Documents to Beneficiary to secure all of the obligations secured by this Deed of Trust. Upon default as specified in Article IV of this Deed of Trust, Beneficiary shall have the right, but not the obligation, at any time and without notice to Trustor, to receive directly all payments made or to be performed under the Assigned Documents. This assignment and the rights of Trustor specifically extend but are not limited to all money paid or deposited as deposits or into escrow with respect to the Project. As regards the sums placed in escrow pursuant to the Loan Documents or Assigned Documents, Beneficiary shall be entitled to the assignment of such sums as long as it performs or causes to be performed the obligations of the Loan Documents or Assigned Documents. Any notice given to the escrow holder or to any party or parties to the Assigned Documents of Beneficiary's decision to exercise its rights hereunder shall be conclusive proof of a default on the part of Trustor. Trustor hereby consents to the payment directly to Beneficiary of all amounts due or falling due under the Assigned Documents and agrees to hold harmless any escrow holder and all parties to the Assigned Documents from and against all claims, loss, liability, and expense, including but not limited to reasonable attorney's fees, with respect to any payments made or to be made directly to Beneficiary. Upon any default on the part of Trustor under the Loan Documents or the Assigned Documents, Beneficiary shall further have the right, but not the obligation, at any time and without notice to Trustor, to cure any such default or otherwise protect its security under this Deed of Trust for the obligations and indebtedness of Trustor. Beneficiary shall incur no liability for any action taken by it pursuant to this Section 3.7. No action taken by Beneficiary to collect any deposits, down payments, or other payments in connection with the Assigned Documents, or any action to enforce the terms of the Assigned Documents, or any other action taken by Beneficiary pursuant to its rights and remedies under this Deed of Trust, will make Beneficiary a "mortgagee-in-possession" of the Property, unless Beneficiary personally or by agent enters into actual possession of the Property. Possession by a court-appointed receiver will not be considered possession by Beneficiary.

(b) Without the prior written consent of Beneficiary, Trustor shall not (1) modify or cancel or assign to anyone (other than Beneficiary) its right, title, or interest in and to any of the Assigned Documents or the deposits or funds due thereunder; (2) subordinate or permit subordination of any Assigned Documents to the lien of any deed of trust that is subordinate to the Deed of Trust; (3) use any portion of the deposits, down payments, or other payments due Beneficiary under the Assigned Documents other than to pay Beneficiary's Deed of Trust; or (4) in any manner impair Beneficiary's interest in the deposits, down payments or other payments made in connection with the Assigned Documents.

(c) Neither this Assignment of Contracts nor any action on the part of Beneficiary shall constitute an assumption by Beneficiary of any of the obligations of Trustor under the Assigned Documents, and Trustor shall continue to be liable for all obligations thereunder.

(d) Trustor hereby covenants and agrees to make, execute, and deliver from time to time, as Beneficiary may require, written assignments and memoranda of assignments in forms acceptable to Beneficiary and its attorneys and suitable for recording any and all Assigned Documents now or hereafter made and to deliver such further assurances as Beneficiary may require.

(e) Trustor hereby irrevocably constitutes and appoints Beneficiary its true and lawful attorney-in-fact in its name and stead or otherwise, to exercise all rights of Trustor under the Assigned Documents upon the occurrence of any default thereunder or under this Deed of Trust on the part of Trustor. This power of attorney is coupled with an interest and is irrevocable.

(f) This Assignment shall no longer be in effect after Trustor fulfills all of Trustor's obligations set forth in the Loan Documents.

#### ARTICLE IV - DEFAULT

##### 4.1 Events of Default.

The failure by Trustor or any other party to the Loan Documents to strictly comply with any of the terms and conditions of the Loan Documents or any of the terms, agreements, covenants or conditions contained in this Deed of Trust within any applicable time period shall be a default under this Deed of Trust and under the other Loan Documents, including but not limited to the following:

(a) Any representation or disclosure made to Beneficiary by Trustor or by any other party to the Loan Documents proves to be materially false or misleading on the date that it was made, whether or not that representation or disclosure appears in this Deed of Trust, including any material misrepresentation or omission made in any loan application made by Trustor or any other party to the Loan Documents to Beneficiary.

(b) Trustor (or any other applicable party to the Loan Documents) fails to make any deposit of funds required under the Loan Documents within five (5) days after written notice from Beneficiary.

(c) Trustor (or any other applicable party to the Loan Documents) fails to comply with any other covenant contained in the Loan Documents that calls for the payment of money and does not cure that failure within five (5) days after notice from Beneficiary.

(d) Trustor (or any other party to the Loan Documents) fails to comply with any covenant, warranty, agreement, term, condition, or representation contained in the Loan Documents, other than those referred to in subsections (b) and (c) above, and does not cure that failure within ten (10) days after written notice from Beneficiary.

(e) Construction of Trustor's Project is abandoned or is not completed by the Completion Date defined in the Construction Loan Agreement and is not cured within the time specified by Beneficiary in a written notice to Trustor.

(f) Construction of Trustor's Project is halted prior to completion for any period of ten (10) consecutive days.

(g) The personal guaranties, if any, of the Loan Documents are not at all times in full force and effect.

(h) The Permanent Loan Commitment or Tri-Party Agreement, if any, expires or is terminated for any reason.

(i) Any other default occurs under the Loan Documents or any other agreement executed by Trustor in connection with the Loan Documents.

(j) Beneficiary, in its judgment, deems that the security for the Note has been impaired or that there has been a material adverse change in the financial status of Trustor or any guarantor of the Note or Trustor's obligations under the Construction Loan Agreement.

(k) Beneficiary, in its sole discretion, deems itself insecure.

(l) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Property, or any judgment involving monetary damages shall be entered against Trustor which shall become a lien on the Property or any portion thereof, or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy.

(m) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed by or against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree (if involuntary) shall remain unvacated and unstayed for an aggregate of forty-five (45) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the Property, or of any or all of the rents thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of forty-five (45) days (whether or not consecutive).

(n) Any suit shall be filed against Trustor or any guarantor which, if adversely determined, could substantially impair the ability

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of Trustor or any guarantor to perform all of its obligations to Beneficiary.

#### 4.2 Acceleration Upon Default; Additional Remedies.

If there is any default under Section 4.1 above, Beneficiary may declare all indebtedness secured by this Deed of Trust to be due and payable and the same shall then become due and payable without any presentment, demand, protest, or notice of any kind. Thereafter Beneficiary may exercise any or all of the following remedies:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability, or rentability of the Property or part of it or interest in it, increase the income from it or protect its security, and with or without taking possession of the Property, sue for or otherwise collect the rents, issues, and profits from it, including those past due and unpaid, and apply them (less costs and expenses of operation and collection, including attorney's fees) upon any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine. Entering and taking possession of the Property and collecting rents, issues, and profits shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done in response to such default or pursuant to such notice of default, and notwithstanding the continuing possession of the Property or the collection, receipt, and application of rents, issues, or profits, Trustee or Beneficiary shall continue to be entitled to exercise every right provided for in any of the Loan Documents or by law upon any default under this Deed of Trust, including the right to exercise the power of sale.
- (b) Begin to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants of this Deed of Trust.
- (c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code or other applicable law.
- (d) Exercise its right to direct the Trustee to pursue the nonjudicial foreclosure of this Deed of Trust by power of sale pursuant to applicable law. Trustee's exercise of the Power of Sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold or the Note and all indebtedness of Trustor to Beneficiary secured by this Deed of Trust has been paid in full.
- (e) Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property 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 Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. 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 date of confirmation of sale of the Property unless such receivership is sooner terminated.

If Beneficiary elects to foreclose by exercise of the power of sale contained in this Deed of Trust or permitted by statute, Beneficiary may notify Trustee and direct Trustee to proceed with foreclosure as provided by statute.

Upon receipt of such notice from Beneficiary, Trustee shall cause all notices to be given and recorded as required by law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recording the Notice of Default and after Notice of Sale has been given as required by law, sell the Property at the time and place of sale fixed by it in the Notice of Sale, either as a whole or in separate lots or parcels and in such order as Trustee shall decide, unless the Beneficiary specifies certain terms and conditions that are permitted by applicable law, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Beneficiary shall be entitled to credit bid any or all of the indebtedness secured by this Deed of Trust. The Trustee may postpone any sale in the manner provided by applicable law by public announcement at the time and place noticed for the sale. Trustee shall deliver to the purchaser or purchasers of the Property its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Any person, including without limitation Trustor, Trustee, or Beneficiary, may purchase at such sale.

#### 4.3 Remedies Not Exclusive.

Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust, the Loan Documents, or other agreement, or any laws now or hereafter in force, notwithstanding that some or all of the indebtedness and obligations secured by this Deed of Trust may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy conferred upon or reserved to Trustee or Beneficiary shall be exclusive of this Deed of Trust or now or hereafter existing at law, in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may otherwise be entitled may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

#### 4.4 Notice of Other Action.

Trustee is not obligated to notify any party hereto of pending sale of any of the Property under any other Deed of Trust or of any action or proceeding affecting any of the Property in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee or unless required by applicable law.

#### 4.5 Sale Proceeds.

The proceeds of any sale under this Deed of Trust will be applied in the following manner to the extent it is consistent with applicable law:

FIRST: Payment of the costs and expenses of the sale, including but not limited to Trustee's fees, attorney's fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities, and advances of Trustee, together with interest on all advances made by Trustee at the rate set forth in the Note for sums owing after its maturity.

SECOND: To the obligations secured by this Deed of Trust, with the proceeds being applied first to all expenses and sums incurred by Beneficiary in order to protect its security as more fully outlined in this Deed of Trust, secondly to accrued and unpaid interest, and then to unpaid principal. If the obligations secured by this Deed of Trust are not fully repaid, the unpaid portion shall accrue interest at the rate in the Note for sums owing after its maturity.

THIRD: To any persons having recorded liens subsequent to the interest of the Trustee in this Deed of Trust as their interests may appear.

FOURTH: The surplus, if any, to the person or persons legally entitled thereto.

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If allowed by applicable law, the Trustee may alternatively deposit any excess proceeds remaining after the first and second applications with the clerk of a court of appropriate jurisdiction.

**4.6 Waivers.**

Trustor waives all rights to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust and also any right to have any of the Property marshalled or sold in any particular order upon any sale.

Trustor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust or to collect any indebtedness secured by this Deed of Trust to the fullest extent permitted by law.

The waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

Beneficiary's consent to any act or omission by Trustor will not be a consent to any other or subsequent act or omission or a waiver of the need for such consent in any future or other instance.

**4.7 Cumulative Rights.**

All remedies contained in this Deed of Trust are cumulative, and Beneficiary also has all other remedies provided by law or in any other agreement between Trustor and Beneficiary. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust will be construed to be a waiver of that right or remedy. No delay or failure by Beneficiary to declare a default or to exercise any right or remedy following a default by Trustor will be construed to be a waiver of such default. Further, the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent defaults.

**ARTICLE V - INDEMNIFICATION, ATTORNEY'S FEES, AND SUBROGATION**

**5.1** Trustor shall indemnify, defend, and hold Beneficiary along with Beneficiary's officers, employees, agents, representatives, directors, and affiliates harmless from all liability, loss, expense, claims, and causes of action arising from litigation concerning this Deed of Trust or the Property or any part of it or interest in it, or its occupancy by Trustor or any lessee of Trustor, or the management of the Property, or from any work or thing whatsoever done in or about the property during the term of this Deed of Trust or arising from any act or negligence of Trustor, or from any work or thing or employees or tenants, or arising from any accident, injury, or damage whatsoever, however caused, to any person or persons, or to the property of any person, persons, corporation or corporations occurring during the existence of the term of this Deed of Trust on, in, or about the Property, or arising or resulting from any breach or failure or alleged failure of Trustor to perform at the time and in the manner required by each of the covenants, agreements, representations, warranties, and obligations of Trustor under this Deed of Trust or the other Loan Documents, under any lease of the Property, under the Assigned Documents, or arising from any false representation or breach of warranty made by Trustor in this Deed of Trust or any other of the Loan Documents, including all costs, attorney's fees, expenses and liabilities incurred as a result of such claim or any action or proceedings brought thereon, specifically including all reasonable attorney's fees and expenses incurred by Beneficiary in any such litigation, whether or not that litigation is prosecuted to judgment, and including all of Beneficiary's costs of investigation and attorney's fees and costs incurred in connection with any appeal or any bankruptcy case. All of the foregoing are referred to as "Indemnified Claims." In case of such action or proceedings brought against Beneficiary by reason of any Indemnified Claim, Trustor (after notice from Beneficiary) shall resist or defend such action or proceedings, with counsel satisfactory to Beneficiary, or Beneficiary shall have the option to defend in its own name with the right to be reimbursed by Trustor.

**5.2** Trustor shall reimburse Beneficiary and Trustee for all expenses incurred in any efforts to enforce any of the terms of this Deed of Trust or to defend against or to appear in or to prosecute any Indemnified Claim, including but not limited to disbursements for the satisfaction of taxes, payment of insurance premiums or lienable claims, title insurance charges, title search and lien search expenses, foreclosure costs, appraisals, and attorney's fees (including paralegal fees) and other legal costs incurred in administrative, district court, appellate court, and/or bankruptcy court or proceedings. The right to such attorney's fees and expenses shall have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights under this Deed of Trust, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorney's fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of breach.

**5.3** Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents, affiliates, and representatives, by way of subrogation or otherwise, for any loss sustained by Trustor, or any loss or damage to the Property, Trustor's other property, or the property of others under Trustor's control from any cause insured or required to be insured by the provisions of this Deed of Trust; provided, that nothing in this Deed of Trust shall be construed to impose upon Beneficiary any obligation to insure the Property or ensure that Trustor insures the Property.

**5.4** To the extent that proceeds of the Note are used to pay any outstanding lien, charge, or prior encumbrance against the Property, these proceeds may be advanced by Beneficiary who after payment of such funds shall be subrogated to any and all rights and liens belonging to any owner or holder of such outstanding liens, charges, and prior encumbrances, irrespective of whether said liens, charges, or encumbrances are released.

**ARTICLE VI - MISCELLANEOUS**

**6.1 Governing Law.**

This Deed of Trust shall be governed by the laws of the state where the Property is located.

**6.2 Severability.**

If any provision or clause of any of the Loan Documents conflicts with applicable laws, the conflicts shall not affect other provisions of such Loan Documents that can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable.

**6.3 Construction Mortgage.**

This Deed of Trust shall be construed and considered a construction mortgage under the Uniform Commercial Code and entitled to the priority provided therein.

**6.4 Limitation of Interest.**

It is the intent of Trustor and Beneficiary in the execution of this Deed of Trust to strictly comply with applicable laws governing unury and finance charges. Furthermore, Beneficiary and Trustor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate higher than the maximum interest rate permitted by the laws governing the loan evidenced by the Loan Documents. Trustor or any guarantor, endorser, or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest under the Note at a rate higher than the maximum interest that may be lawfully charged under the applicable laws, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith that may be in apparent conflict herewith. If a court of competent jurisdiction makes a final determination that the performance of any provision of the Loan Documents would result in paying an amount for such use, forbearance, or detention in excess of such rate, then (a) such provision shall be appropriately modified to the extent necessary to reduce the amount to an amount equal or lower to such rate, and (b) any such excess amounts already received by the holder of the Note shall be deemed to have been applied to the redemption at

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part of a like principal amount under the Note, and all necessary reallocations of subsequent payments with respect to such Note shall be made and appropriately annotated on such Note.

**6.5 Reconveyance by Trustee.**

Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held under this Deed of Trust. The recitals in such reconveyance of any matters or facts shall be conclusive proof of their truthfulness.

**6.6 Notices.**

Whenever Beneficiary, Trustor, or Trustee desires to give or serve any notice, demand, request, or other communication with respect to this Deed of Trust, each such notice, demand, request, or other communication shall be in writing and shall be effective only if it is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested. Any party may at any time change its address for such notices by delivering or mailing a notice of such change to the other parties to this Deed of Trust.

Trustor requests that any notice of default or notice of sale required by law be mailed or delivered to it at its address as follows:

Robert W. Windar  
4391 West 4100 South  
West Valley City, Utah 84120

Beneficiary requests that any notice to it be mailed or delivered to the following address:

First Security Bank of Utah  
79 South Main Street, 13th Floor  
Salt Lake City, UT 84111

**6.7 Acceptance by Trustee.**

Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**6.8 Invalidity of Certain Provisions.**

If the lien of this Deed of Trust is invalid or unenforceable for any part of the obligations secured by this Deed of Trust, or if the lien is invalid or unenforceable for any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the obligations secured by this Deed of Trust that is not secured or fully secured by the lien of this Deed of Trust.

**6.9 No Merger.**

If both the lessor's and lessee's estates under any lease or portion thereof that constitute a part of the Property shall at any time become vested in one owner, or if both the Trustor's interest and the Beneficiary's interest under this Deed of Trust become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Property and according to the provisions of this Deed of Trust, any leases or subleases then existing and created by Trustor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to the tenant or subtenant.

**6.10 Recording of Deed of Trust.**

This Deed of Trust is to be recorded in the real estate records of the county or counties where the Property is located. Trustor will pay for all recording costs whenever this Deed of Trust is recorded.

**6.11 Status Report.**

Trustor agrees to pay Beneficiary a reasonable charge, not to exceed any maximum allowed by law, for giving any statement of the status of the obligations secured by this Deed of Trust.

**6.12 Release, Modification, Additional Security, Consent.**

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 that indebtedness; (b) extend or modify the terms of payment of that indebtedness; (c) accept additional real or personal property of any kind as security, or alter, substitute, or release any property securing that indebtedness; or (d) cause Trustee to consent to making any map or plat of the Property, or to reconvey any part of the Property, or to join in granting any easement or creating any restriction on the Property, or to join in any subordination or other agreement affecting this Deed of Trust.

**6.13 Construction of Document.**

The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Note or any interest in it. If the Trustor consists of more than one person or entity, then each of the undersigned Trustors will be jointly and severally liable for the payment and performance of all obligations and agreements of Trustor under this Deed of Trust and will be deemed to have jointly and severally made all covenants, warranties and representations of Trustor contained in this Deed of Trust. Whenever the context requires, the singular includes the plural and vice versa and each gender includes the other gender. The headings of the articles of this Deed of Trust are for convenience only and do not limit its provisions. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**6.14 Binding Effect.**

The terms of this Deed of Trust will bind, apply to, and inure to the benefit of all parties hereto and to the heirs, legal representatives, personal representatives, successors, and assigns of Trustor and Beneficiary and the successors in trust of Trustee. Beneficiary shall have the right at any time to sell or assign participations in any or all of this Deed of Trust and the Loan Documents.

**6.15 Statements by Beneficiary.**

At reasonable intervals, and consistent with Section 6.11 above, Beneficiary shall upon Trustor's request or at Beneficiary's option furnish to Trustor a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust. Trustor shall have ten (10) days in which to contest the amounts stated by Beneficiary, and if not so contested, the amounts stated by Beneficiary shall

BK7261P62945

BK72+9P61231

be conclusively binding on Trustor.

**6.16 Due on Sale or Encumbrance.**

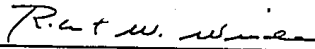
Should Trustor sell, convey, transfer, assign, encumber, or in any other manner dispose of the Property covered by this Deed of Trust (including the Personal Property) or any part of it, whether voluntarily or involuntarily, or by operation of law or otherwise, except in the ordinary course of leasing the Property by Trustor, or should Trustor sell, convey, transfer, encumber, or dilute the ownership of the Trustor, or agree to do the same, without prior written consent of the Beneficiary, then Beneficiary shall have the right at its option to declare all obligations secured by this Deed of Trust immediately due and payable. The limitation on transfer of ownership as described in the preceding sentence shall apply not only to the ownership of Trustor, but also to the ownership of any entity that has any ownership interest in Trustor, and to any entity that has access to any beneficial interest in Trustor through any chain of ownership. Consent to any such transaction shall not be deemed to be consent or waiver of the necessity of consent to any other transaction. Beneficiary's consent to any such transaction may be conditioned upon an increase in the interest rate of the indebtedness secured by this Deed of Trust as a substituted interest rate for that stated on the Note, along with the modifications required by Beneficiary to any other terms of the Loan Documents. If Beneficiary consents to any such transaction and/or to assumption of the loan secured by this Deed of Trust, Trustor shall not be released from any obligations hereunder. Upon the occurrence of any sale, conveyance, encumbrance, or transfer of the Property covered by this Deed of Trust, in addition to the consent required above, Beneficiary shall be paid a reasonable service charge for changing its records to reflect such transaction.

**6.17 Modification and Merger.**

This instrument cannot be waived, changed, discharged, or terminated orally but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought. All prior or contemporaneous agreements, understandings, and negotiations, whether oral or written, with respect to the subject matter of this Deed of Trust are merged into this document and are of no further effect. This Deed of Trust contains the entire agreement of the parties with respect to its subject matter. This integration clause is subject to the general integration clause contained in the Construction Loan Agreement.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust the day and year first above written.

TRUSTOR:  
Valley View Memorial Park

  
By: Robert W. Winder, Vice President

Attached Exhibits:  
A - Real Property Description  
B - Covered Property Description

BK7261PG2946

BK7219PG1238

ACKNOWLEDGMENTS

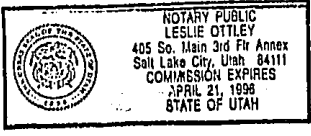
Corporate Acknowledgment

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 1995, by Robert  
W. Wenden Vice President  
Valley View Memorial Park

My commission expires: April 21, 1996  
Residing at: Salt Lake City

Leslie Ottley  
Notary Public



BK 7219 PG 1239  
BK 7261 PG 2947

EXHIBIT "A"

The land referred to herein is situated in the State of Utah, County of Salt Lake, and is described as follows:

PARCEL 1:

Beginning at the Northeast corner of the Quentin C. and Marilyn K. Winder property, said point being North 89 degrees 53 minutes 59 seconds East 158.00 feet along the section line from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89 degrees 53 minutes 59 seconds East 618.119 feet; thence South 1836.202 feet; thence West 1276.149 feet to the East line of Colony West No. 7 Subdivision; thence North along said East line and the East line of Colony West No. 6 Subdivision, 1569.86 feet to the Northeast corner of Lot 604 of said Colony West No. 6 Subdivision, said point also being on the South side of the Helen Snodgrass property; thence East along said South line 87.391 feet to the Southeast corner of the said Helen Snodgrass property; thence South 0 degrees 01 minutes 25 seconds West 1478.32 feet; thence East 412.50 feet to a point on the quarter section line; thence North 0 degrees 01 minutes 25 seconds East along said quarter section line 304.255 feet; thence East 417.21 feet; thence North 497.06 feet; thence West 218.98 feet; thence North 199.74 feet to the Northeast corner of the Edwin K. Winder property; thence West 33.00 feet to the Southeast corner of the Richard W. and Barbara W. Winder property; thence North 528.00 feet to the Northeast corner of the Blake D. and Kathryn Robinson property; thence West along the North line of said Blake D. and Kathryn Robinson property 6.637 feet to an extension of the East line of the Quentin C. and Marilyn K. Winder property; thence North along said extension line and said East line 218.525 feet to the point of beginning.

E2NW, W2NE  
21-06-201-018

less and excepting therefrom that portion conveyed to Winder Dairy, a Utah general partnership, by that certain Quit Claim Deed recorded April 4, 1982 as Entry No. 3662542 in Book 5357 at Page 1212, Salt Lake County Recorder's Office, and more particularly described as follows:

Beginning at a point South 0 degrees 01 minutes 25 seconds West 1062.784 feet along the quarter section line from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 367.055 feet; thence South 497.060 feet; thence West 367.259 feet to said quarter section line; thence North 0 degrees 01 minutes 25 seconds East 497.060 feet along said quarter section line to the point of beginning.

Also, less and excepting therefrom that portion conveyed to VALLEY VIEW MEMORIAL PARK by that certain Warranty Deed recorded April 7, 1982 as Entry No. 3664258 in Book 5357 at Page 1197, Salt Lake County Recorder's Office, and more particularly described as follows:

Beginning at a point South 0 degrees 01 minutes 25 seconds West 1062.784 feet along the quarter section line and due East 367.055 feet from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 50.000 feet; thence South 497.060 feet; thence West 50.000 feet; thence North 497.060 feet to the point of beginning.

PROPERTY ADDRESS: 4439 West 4100 South  
West Valley City, Utah 84120

PARCEL 2:

Beginning at a point South 0 degrees 01 minutes 25 seconds West 902.516 feet along the quarter section line from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 198.009 feet; thence South 160.268 feet; thence West 198.075 feet to said quarter section line; thence North 0 degrees 01 minutes 25 seconds East 160.268 feet along said quarter section line to the point of beginning.

NW NE  
21-06-201-014

Together with a right of way described as follows:

(continued)

BK 72219 PG 1240  
BK 7251 PG 2948

Beginning 33 feet South of the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 869.516 feet, more or less, to the North line of the property described in that certain Quit Claim Deed recorded October 11, 1985, in Book 5699 at Page 900, Salt Lake County Recorder's Office; thence East 33 feet along said North line; thence North 869.516 feet, more or less; thence West 33 feet to the point of beginning.

PROPERTY ADDRESS: 4357 South 4400 West  
West Valley City, Utah 84120

W<sup>2</sup> NE  
~21-06-201-020

PARCEL 3:

Beginning at a point South 0 degrees 01 minutes 25 seconds West 1062.784 feet along the quarter section line and due East 367.055 feet from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 50.000 feet; thence South 497.060 feet; thence West 50.000 feet; thence North 497.060 feet to the point of beginning.

PROPERTY ADDRESS: 4357 South 4400 West  
West Valley City, Utah 84120

PARCEL 4:

NW NE  
21-06-201-002

Beginning at a point on the South line of 4100 South Street, 33 feet East and 33 feet South of the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 125 feet; thence South 181.5 feet; thence West 125 feet; thence North 181.5 feet to the point of beginning.

PROPERTY ADDRESS: 4391 West 4100 South  
West Valley City, Utah 84120

PARCEL 5:

NE NW, E<sup>2</sup> NW  
~21-06-129-033

Commencing at the Northeast corner of the Northwest Quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 23 rods; thence South 106-2/3 rods; thence East 23 rods; thence North 106-2/3 rods, to the place of beginning.

Together with a right of way over the 2 rods adjoining on the West side of the above described tract.

PROPERTY ADDRESS: 4439 West 4100 South  
West Valley City, Utah 84120

PARCEL 6:

NE NW  
~21-06-129-037

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 10 rods; thence South 16 rods; thence East 10 rods; thence North 16 rods to the point of beginning.

Less and excepting therefrom the following:

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 112.30 feet; thence South 133.93 feet; thence East 112.30 feet; thence North 133.93 feet to the point of beginning.

PROPERTY ADDRESS: 4469 West 4100 South  
West Valley City, Utah 84120

PARCEL 7:

NE NW  
~21-06-129-036

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 112.30 feet; thence South 133.93 feet; thence East 112.30 feet; thence North 133.93 feet to the point of beginning.

PROPERTY ADDRESS: 4473 West 4100 South  
West Valley City, Utah 84120

Parcel 8:

NW NE  
21-06-100-30-115

Beginning South 01 degrees 25 minutes West 1062.784 feet and East 190.075 feet from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence North 120.544 feet, thence East 218.98 feet; thence South 120.544 feet; thence West 218.98 feet to the point of beginning.

DK 7219PG1241  
7261822949

EXHIBIT B

COVERED PROPERTY

The items or types of property in which Debtor/Trustor (referred to herein as "Trustor") has assigned and granted a security interest to Beneficiary/Secured Party (referred to herein as "Beneficiary") are described as follows:

1. Any and all buildings, structures, landscaping and improvements (collectively the "Improvements") now or hereafter located in, or on, or used, or to be constructed on or in connection with the Real Property described in Exhibit "A" to the "Construction/Term Deed of Trust; Assignment of Contracts, Rents, and Profits; and Security Agreement, Fixture Filing, and Financing Statement" between Trustor and Beneficiary (the "Real Property"), and all fixtures attached to said Improvements, along with all right, title and interest of Trustor in and to all tangible goods and personal property (the "Personal Property") now owned or hereafter acquired by Trustor and now or hereafter located in, or on, and used or intended to be used in connection with the Real Property or the Improvements, including but not limited to all building components (including all goods, building materials and building supplies for the Improvements such as bricks, mortar, lumber, hardware, concrete, components, steel, etc.), supplies, machinery, equipment, engines, boilers, incinerators, building materials, appliances (including freezers, refrigerators, fans, heaters, stoves, and incinerators), inventory, tools, HVAC equipment used for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air, and light, and all elevators and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, maintenance equipment and supplies, water heaters, water closets, sinks, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, carpets, attached floor coverings, telephone equipment, cable and other television equipment, cables and antennas, lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, partitions, sofas, shelves, lockers and cabinets), walls, beds, wall safes, furnishings, lamps, lighting fixtures (including chandeliers), trees and plants, fences, security systems and outdoor lighting, shelving, cleaning supplies, cleaning devices (including vacuums and window cleaning devices), and all signs, including all replacements for, accessions, modifications, and additions thereto, that Trustor now has or may hereafter acquire.

2. All refundable deposits belonging to Trustor with respect to deposits made by or on behalf of Trustor for water, gas, electrical or other utility services with respect to the Real Property or the Improvements.

3. All Receivables, Inventory, Equipment and General Intangibles without limitation whether now owned or hereafter acquired or arising, together with all products and proceeds therefrom (including without limitation proceeds of insurance policies insuring any Inventory and General Intangibles against loss by theft, casualty or otherwise). Said Receivables, Inventory and General Intangibles shall also include any substitutions for, accessions and modifications to and other additions and replacements for any of them and any other rights or interests arising out of or in connection with any of them. Included shall also be all records, accountings, reports, papers and documents relating to any of them, including all computer records, data programs, software, disks, etc., relating to or arising out of or used in connection with any of the Receivables, Inventory and General Intangibles.

4. All of the right, title and interest of Trustor, now existing, hereafter arising or hereafter acquired, in and to the following contracts, agreements and rights arising with respect to the Improvements: all building, construction, improvement, demolition or renovation contracts and agreements, all subcontracts, the plans and specifications for the Improvements, all surveys, architectural drawings, models, renderings, site plans, and other specifications, the Architect's contract, all performance and completion bonds, and all escrow accounts, escrow agreements, earnest money agreements, sales agreements, purchase agreements, deposit receipts, government permits, planning and zoning approvals, building permits, utility agreements, all causes of actions and claims related to any of the foregoing, and any and all other agreements or rights involving or incidental to the acquisition and construction of the Improvements and the sale, lease, or assignment of the units of the Improvements and any other agreements and contracts, instruments or documents relating to or arising out of or connected with the Improvements, including service, maintenance and other contracts, and all proceeds of the same or substitutions therefor or additions thereto, and also including all warranties, guarantees and maintenance contracts related to any mechanical equipment and machinery installed in the Improvements.

5. All cash or security deposits, advance rentals, common area payments, tenant deposits, and deposits or payments of a similar nature arising from the rental of the Real Property or the Improvements.

6. All hazard and other insurance policies now or hereafter covering the Improvements and the operation of the Improvements and all businesses associated with the Improvements (including but not limited to business interruption, lost business income, and rent loss insurance policies covering the Improvements and the operation and businesses thereof) and all of Trustor's right, title and interest in and to all claims and demands and general intangible rights with respect to such insurance policies, together with all proceeds thereof and refunds thereof.

7. All awards from eminent domain or condemnation proceedings covering the Improvements or the Real Property or any part thereof, together with all proceeds thereof, including without limitation all awards resulting from a change of grade of streets and awards for severance damages.

8. All water, water rights, water stock appurtenant to or used on or in connection with the Real Property or in connection with the Improvements.

9. General intangibles and other rights in the nature of rights in leases and rents (including common area maintenance payments, if any) including, but not limited to, all general intangibles (1) relating to the development or use of the Real Property or the Improvements such as, by way of example but not limitation, all governmental permits, approvals, or authorizations relating to construction on the Real Property, or relating to the formation or approval of the Improvements on the Real Property, all names under or by which the Real Property or any present or future Improvements on the Property may at any time be operated or known, and all rights to carry on business under such names or their variants, and all trademarks and goodwill in any way relating to the Real Property and the Improvements; (2) all general intangibles derived from the Real Property; and (3) all general intangibles derived from the Improvements.

10. All leasehold estate, right, title, and interest of Trustor in and to all leases or subleases covering the Real Property or the Improvements or any portion thereof, now or hereafter existing or entered into, and all amendments and extensions of the same, and all right, title, and interest of Trustor thereunder, and all rents, issues, profits, royalties, income, accounts, receipts, and other benefits derived from the Real Property or the Improvements.

11. All right, title and interest of Trustor in and to all options to purchase or lease the Real Property or any portion of it or interest in it, and any greater estate in the Real Property now owned or hereafter acquired by Trustor.

It is intended that proceeds, accessions, substitutions and improvements of or to all of the foregoing items and types of property are also covered as well as all such after acquired property.

BK726192950

BK721981242

EXHIBIT A

Order No. 95-457

PARCEL 1:

Beginning at a point on the section line, said point being North 89 degrees 53 minutes 59 seconds East 158.00 feet from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89 degrees 53 minutes 59 seconds East 618.119 feet along said section line; thence South 1836.202 feet; thence West 1276.149 feet; thence North 1569.86 feet; thence East 87.391 feet; thence South 1478.32 feet; thence East 411.922 feet; thence North 00 degrees 01 minutes 25 seconds East 184.735 feet; thence South 88 degrees 26 minutes 00 seconds East 47.765 feet; thence South 85 degrees 07 minutes 20 seconds East 50.26 feet; thence South 81 degrees 42 minutes 04 seconds East 30.10 feet; thence South 74 degrees 29 minutes 02 seconds East 20.05 feet; thence South 70 degrees 50 minutes 37 seconds East 40.03 feet; thence South 81 degrees 28 minutes 26 seconds East 38.97 feet; thence South 85 degrees 15 minutes 18 seconds East 49.29 feet; thence South 85 degrees 33 minutes 53 seconds East 40.39 feet; thence North 78 degrees 37 minutes 03 seconds East 18.87 feet; thence North 03 degrees 23 minutes 00 seconds East 36.466 feet; thence East 83.936 feet; thence North 617.604 feet; thence West 218.98 feet; thence North 199.74 feet; thence West 33.00 feet; thence North 528.00 feet; thence West 6.637 feet; thence North 214.676 feet to the point of beginning.

PARCEL 2:

Beginning at a point South 0 degrees 01 minutes 25 seconds West 902.516 feet along the quarter section line from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 198.009 feet; thence South 160.268 feet; thence West 198.075 feet to said quarter section line; thence North 0 degrees 01 minutes 25 seconds East 160.268 feet along said quarter section line to the point of beginning.

Together with a right of way described as follows:

Beginning 33 feet South of the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 869.516 feet, more or less, to the North line of the property described in that certain Quit Claim Deed recorded October 11, 1985, in Book 5699 at Page 900, Salt Lake County Recorder's Office; thence East 33 feet along said North line; thence North 869.516 feet, more or less; thence West 33 feet to the point of beginning.

PARCEL 3:

Beginning at a point South 1062.784 feet and East 416.616 feet from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 497.06 feet; thence West 83.936 feet; thence North 03 degrees 23 minutes 00 seconds East 162.584 feet; thence North 03 degrees 10 minutes 21 seconds East 180.66 feet; thence North 00 degrees 29 minutes 45 seconds East 154.382 feet; thence East 63.006 feet to the point of beginning.

PARCEL 4:

Beginning at a point on the South line of 4100 South Street, 33 feet East and 33 feet South of the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 125 feet; thence South 181.5 feet; thence West 125  
(Continued)

BK 7261 PG 2951



feet; thence North 181.5 feet to the point of beginning.

PARCEL 5-A:

Beginning at a point South 00 degrees 01 minutes 25 seconds West 33.00 feet from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00 degrees 01 minutes 25 seconds West 1099.642 feet; thence North 81 degrees 12 minutes 46 seconds West 20.314 feet thence South 34 degrees 54 minutes 44 seconds West 3.89 feet; thence South 01 degrees 14 minutes 49 seconds West 20.976 feet; thence West 389.415 feet; thence North 1119.998 feet to the South line of 4100 South Street; thence North 89 degrees 54 minutes 09 seconds East 412.627 feet along said South line to the point of beginning.

PARCEL 5-B:

Beginning at a point South 1153.70 feet and West 23.225 feet from the North quarter corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 01 degrees 14 minutes 49 seconds West 18.544 feet; thence South 28 degrees 31 minutes 20 seconds West 9.53 feet; thence South 01 degrees 40 minutes 16 seconds West 21.290 feet; thence South 00 degrees 21 minutes 54 seconds East 136.72 feet; thence South 00 degrees 27 minutes 53 seconds West 219.17 feet; thence South 88 degrees 26 minutes 00 seconds East 29.075 feet; thence South 00 degrees 01 minutes 25 seconds West 184.735 feet; thence West 411.922 feet; thence North 589.604 feet; thence East 389.415 feet to the point of beginning.

PARCEL 6:

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 10 rods; thence South 16 rods; thence East 10 rods; thence North 16 rods to the point of beginning.

Less and excepting therefrom the following:

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 112.30 feet; thence South 133.93 feet; thence East 112.30 feet; thence North 133.93 feet to the point of beginning.

PARCEL 7:

Beginning at a point 25 rods West from the Northeast corner of the Northwest quarter of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 112.30 feet; thence South 133.93 feet; thence East 112.30 feet; thence North 133.93 feet to the point of beginning.

Parcel 8:

Beginning South 01 degrees 25 minutes West 1062.784 feet and East 198.075 feet from the North Quarter Corner of Section 6, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence North 120.544 feet, thence East 218.98 feet; thence South 120.544 feet;

(Continued)

BK 7261 P2952

SCHEDULE A - Legal Description (cont'd)

Order No.: 95-457

thence West 218.98 feet to the point of beginning.

6203672  
11/01/95 10:13 AM 54.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
AMERICA WEST TITLE  
REC BY: V ASHBY DEPUTY - WI

BK 7261 PG 2953