
**DEED OF TRUST AND FIXTURE FILING
(With Assignment of Rents and Security Agreement)**

THIS DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (as it may be amended and modified from time to time, the “Deed of Trust”) is made as of August 14, 2019, by and among TNU Properties, LLC, an Idaho limited liability company (“Trustor”), whose mailing address is 22349 Kimberly Road, Suite E, Kimberly, Idaho 83341; Heritage West Title Insurance Agency of Box Elder County, LLC (“Trustee”), whose mailing address is 11 West Forest Street, Brigham City, Utah 84302, and Timothy M. Obenchain, whose mailing address is 4140 Hidden Lakes Drive, Kimberly, Idaho 83341, and Henry Investments, LLC, an Idaho limited liability company, whose mailing address is P.O. Box 227, Eden, Idaho 83325 (collectively, “Beneficiary”). Provided further and to which said foregoing Beneficiary does expressly consent and agree: (i) by addendum to this Deed of Trust, executed solely by Trustor, other individuals and entities may be identified and included as being “Beneficiary” under this Deed of Trust; and (ii) by and pursuant to each such addendum such other individuals and entities shall be jointly and collectively recognized as Beneficiary hereunder; and (iii) the foregoing Beneficiary and said other individuals and entities shall jointly and collectively organize to act as a single “Beneficiary” hereunder (the “Beneficiary Group”); and (iv) absent agreement of the Beneficiary Group to the contrary the person or entity having the greatest amount secured by and under this Deed of Trust shall possess the authority and control to the enforcement of this Deed of Trust for the benefit of the Beneficiary Group.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, that certain improved real property located in Brigham City, Box Elder County, state of Utah, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Premises”);

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Premises including, without limitation, easements, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the “Improvements”), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, rents, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the “Rents”), subject to the terms and provisions of Article II of this Deed of Trust with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or

portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, that Trustor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference; all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Premises or the Improvements; all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements; all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor; and all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property");

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 Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH all proceeds of the foregoing.

The entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "Obligations"):

- (1) Payment of indebtedness in the total principal amount of SEVEN MILLION FIVE HUNDRED THOUSAND AND 00/100 Dollars (\$7,500,000.00), *plus* additional principal amounts, not to exceed the maximum principal amount of \$7,500,000.00, for which Trustor becomes indebted to other individuals and entities hereafter identified and included as being "Beneficiary" under this Deed of Trust (the "Loan"), with interest thereon, evidenced by certain agreements entitled "Loan Agreement and Promissory Note Secured by Real Property and Improvements" by, between and in favor of Beneficiary, respectively, and Trustor (as each said agreement and promissory note may be amended, added to, modified, extended, and renewed from time to time), the respective terms of which are incorporated herein by reference, and such other loan agreements and promissory notes from Trustor as the borrower thereunder, to other individuals and entities hereafter identified and included as being "Beneficiary" under this Deed of Trust and reciting it is secured by this Deed of Trust, as it may be amended, modified, extended, and renewed from time to time (individually and collectively, the "Note");
- (2) Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the rate of interest under the Note;
- (3) Payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;
- (4) Performance of every obligation, covenant, indemnity and agreement of Trustor contained in the Loan Documents (as defined hereinbelow);
- (5) Performance of every obligation, covenant, indemnity and agreement of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor reciting that the obligations thereunder are secured by this Deed of Trust;
- (6) For the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected;
- (7) Payment of interest and other sums as provided in the Loan Documents, and all other monies agreed or provided to be paid by Trustor in the Loan Documents;

- (8) Performance of all obligations of any surety or indemnitor of any of the obligations of Trustor under the Loan Documents; and
- (9) Payment of all costs and expenses, including court costs, attorney fees, witness fees (including fees and expert witnesses), paid, advanced, or incurred by Beneficiary to protect and preserve the Trust Estate or the validity or priority of this Deed of Trust, or to enforce the remedies of Beneficiary or Trustee as provided for herein or in other Loan Documents.

This Deed of Trust, the Note, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents."

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I
COVENANTS AND AGREEMENTS OF TRUSTOR**

- 1.01 The Loan. Trustor will repay the Loan at the time and in the manner provided in the Note, this Deed of Trust and all other Loan Documents. All the covenants, conditions and agreements contained in the Note and the other Loan Documents dated as of the date hereof are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.
- 1.02 Warranty of Title. Trustor represents and warrants it has good, marketable and indefeasible fee simple title to the Trust Estate; and has the full power, authority and right to execute, deliver and perform its obligations under this Deed of Trust and to acquire, encumber, mortgage, give, grant, bargain, sell, alienate, convey, confirm, pledge, assign, hypothecate and grant a security interest in the Trust Estate; and that Trustor possesses and unencumbered fee estate in the Premises and the Improvements, and that it owns the Trust Estate free and clear of monetary liens, encumbrances and charges whatsoever. Trustor further represents and warrants that this Deed of Trust is and will remain a valid and enforceable first lien on and security interest in the Trust Estate. Trustor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend such title, validity and priority to Beneficiary against the claims of all persons whomsoever.
- 1.03 Payment and Performance of Secured Obligations. Trustor shall pay when due and perform each of the Obligations.
- 1.04 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good and safe condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined hereinbelow) and shall not suffer to occur or

exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease.

“Requirement” and “Requirements” mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation: (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of: (a) any consent, authorization, license, permit, or approval relating to the Trust Estate; (b) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate; (c) any Lien or Encumbrance (as defined in section 1.17 hereof); (d) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected; and (e) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected.

1.05 Required Insurance. Trustor shall at all times provide, maintain and keep in full force and effect, or cause to be provided, maintained and kept in full force and effect with respect to the Trust Estate, at no expense to Trustee or Beneficiary, policies of insurance in forms and amounts and issued by companies, associations or organizations reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as set forth below.

(A) Property. The Trust Estate shall be insured for the benefit of Beneficiary on a basis of “full replacement cost” (to mean the cost of replacing the Improvements on such Trust Estate, together with appurtenances and betterments in compliance with the prevailing building codes, without deduction for physical depreciation thereof, at the time of replacement of Trust Estate, following a loss) or such other limits as may be determined by Trustor and approved by Beneficiary, based on insurable values, for the Trust Estate securing the Loan. Trustor will not make decision not to replace, except upon the express written consent of Beneficiary. The “full replacement cost” shall be determined by an appraisal at Trustor’s sole expense, by an insurance company, appraiser or appraisal company. The value so determined shall be binding and conclusive upon the parties hereto. The Trust Estate shall be insured on an all risk basis.

(B) Liability.

- Comprehensive commercial liability insurance on the broadest forms available for similar risks, written on an “occurrence policy form”, against all claims for bodily injury, disease or death, Trust Estate damage, personal injury and contractual liability in an amount of not less than \$1,000,000.00 per occurrence and \$3,000,000.00 in

aggregate, or at Beneficiary's discretion, such other limits as may be reasonably determined to be usual and customary for similar use and occupancy in the area. The policy shall be endorsed to include Beneficiary as an additional insured.

- Trustor shall require contractors and subcontractors engaged on the Trust Estate to maintain commercial liability insurance, with extension to cover products or completed operations, with limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The general contractors and the subcontractors will have Trustor and Beneficiary included on their insurance required herein as additional insureds.
- Trustor will require vendors who will operate independently, or perform services for Trustor on the Trust Estate, to maintain commercial general liability coverage (including products or completed operations) with limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

(C) Other Insurance. The types and limits of coverage stipulated herein are the minimum requirements. Beneficiary retains the right to make any changes it reasonably deems necessary as a result of changing market conditions or governmental requirements. Trustor shall also maintain all insurance, surety and fidelity bonds that Trustor is required to maintain as landlord under tenant's leases, if any. Trustor may also maintain any other insurance and bonds, even if not specifically required herein, in amounts, and for such periods that are deemed to be prudent, or are customarily maintained by persons or entities operating properties of like kind, construction and occupancy in the locality of the Trust Estate, or as Beneficiary may from time to time require and approve. Compliance with insurance requirements will not in itself be construed to be limitation of Trustor's liability.

(D) Other Insurance Requirements. The following provisions shall apply with respect to the insurance coverage required in subsections (A), (B) and (C) above:

1. *Insurance Companies:* All insurance required herein shall be issued by insurance companies selected by Trustor, but subject to approval by Beneficiary, which approval shall not be unreasonably withheld.
2. *Mortgagee and Loss Payee Clause:* The Trust Estate insurance shall have attached thereto a standard non-contributing, non-reporting mortgagee clause or its equivalent satisfactory to, and naming Beneficiary, as first mortgagee, entitled to collect directly from the insurers the proceeds payable under such insurance, as its interest may appear, and stipulating that this entitlement will in no

way be adversely affected by any act, error or omission of Trustor which may void any or all coverage provided.

3. *Waiver of Subrogation:* The Trust Estate policies will contain a standard waiver of subrogation provision.
4. *Cancellation:* Trustor shall immediately notify Beneficiary of any cancellation of, non-renewal, or such material change as may adversely affect any insurance policy or coverage in force. Each policy shall contain a provision obligating the insurer to send at least thirty (30) days prior written notice to Beneficiary of the intent to cancel or make such change, and that any loss otherwise payable to Beneficiary thereunder shall be paid notwithstanding any act or negligence of Beneficiary or Trustor which might, absent of such provision, result in a forfeiture of all or part of such insurance payment.
5. *Contravention of Insurance:* Trustor will not intentionally do, allow or permit anything to be done on or about the Trust Estate that will affect, impair or contravene any policies of insurance that may be in force for the Trust Estate, or any part thereof, or the use thereof, against damage or destruction by fire, public liability, or any other cause of loss. Further, Trustor at its sole cost and expense, will comply and cause compliance of the Trust Estate and the operations, maintenance and use thereof with all insurance requirements, whether or not compliance therewith shall require structural changes in or interfere with the use and enjoyment of the Trust Estate, or any part thereof.
6. *Leases:* Trustor will require each of its tenant's property insurance policy provide a standard waiver of subrogation clause and each liability policy include Beneficiary as additional insured.
7. *Evidence.* All such policies of insurance, or certificates of insurance evidencing that such insurance is in full force and effect, together with evidence of insurable value, shall be delivered immediately to Beneficiary (not later than fifteen (15) days following the recordation of this Deed of Trust) together with proof of the payment of the premiums thereof. At least ten (10) days prior to the expiration of each such policy Trustor shall furnish Beneficiary evidence that such policy has been renewed or replaced in the form of a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance hereof of the types and in the amounts required.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or

assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by section 1.05 hereof shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

- 1.07 Indemnification; Subrogation; Waiver of Offset. If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorney fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

Trustor waives any and all right to claim or recover against Beneficiary, his heirs, successors and assigns, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction; and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined herein below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) 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 of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) 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 herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any amount secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.08 Impositions. Trustor shall pay, or cause to be paid, 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, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"); provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Beneficiary and measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in this section above, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay, or fails to cause to be paid, such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Obligations, immediately due and payable. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

Subject to the following provisions of this paragraph of this section, and upon request by Beneficiary, Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof. Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings; provided, however, this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this section, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's absolute and sole discretion: (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings; (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

Trustor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure whereby the lien of

real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

- 1.09 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.
- 1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee.
- 1.11 Actions by Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation: (i) to enter upon and take possession of the Trust Estate; (ii) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined in section 1.17 hereof) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (v) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and fees of trustee and attorneys) together with interest thereon equal to the rate of interest under the Note from the date of such expenditures.
- 1.12 Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable, and Beneficiary's acceptance of one or more monthly installments made by a new owner shall not constitute a waiver of such right. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any

maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary.

As used herein, “Transfer” shall mean: (i) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in Exhibit C attached hereto and incorporated herein by reference); (ii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any member interest in Trustor to or in any Person whether voluntary, involuntary, by operation of law, or otherwise; and (iii) the execution of any agreements to do any of the foregoing.

- 1.13 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a “Taking”), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the “Condemnation Proceeds”) are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds, Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary’s option and in Beneficiary’s sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in section 1.04 hereof or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

- 1.14 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds

additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

- 1.15 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.
- 1.16 Inspections. Beneficiary, and his agents, representatives and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.
- 1.17 Ownership; Liens and Encumbrances. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, 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 hundred fifty percent (150%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon equal to the rate of interest under the Note from the date of each such expenditure. Such costs and expenses shall be secured by this Deed of Trust.

“Lien or Encumbrance” and “Liens and Encumbrances” mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or

subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions as defined in Exhibit C.

- 1.18 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 without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (i) reconvey any part of said Trust Estate, (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.
- 1.19 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (i) release any person so liable, (ii) extend the Obligations, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (v) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.
- 1.20 Application of Insurance Proceeds and Condemnation Proceeds. Notwithstanding the other provisions of this Deed of Trust to the contrary, Beneficiary, at its election, may provide that Trustor shall have the right to apply insurance proceeds and Condemnation Proceeds to the repair, replacement, or restoration of the Trust Estate if each of the following conditions precedent is satisfied:
- (i) Trustor delivers notice to Beneficiary of its intention to repair, replace, or restore the Trust Estate within thirty (30) days after settlement of any claim under any insurance policies or any claim as to any Taking, the proceeds of which are used to pay for the repair, replacement, or restoration of the Trust Estate.
 - (ii) No event of default has occurred and is continuing under the Note, this Deed of Trust or the Loan Documents.
 - (iii) All applicable governmental authorities have approved the final plans and specifications for the repair, replacement, or restoration of the Trust Estate; and Trustor has obtained all other approvals and permits required for such repair, replacement, or restoration.
 - (iv) The approved contractor commences the repair, replacement, or restoration of the Trust Property.

If all of the above conditions are satisfied, Beneficiary will disburse the Condemnation Proceeds or the insurance proceeds in installment distributions to Trustor; provided that if requested by Beneficiary, Trustor shall execute such other and further documents regarding such disbursements and requirements as Beneficiary may reasonably request. If

any of the above conditions are not satisfied or, if after satisfaction of the above conditions, Trustor does not prosecute and complete the repair, replacement, or restoration of the Trust Estate with due diligence, Beneficiary may at any time apply the then Condemnation Proceeds or insurance proceeds not distributed to the payment of the obligations secured hereby, whether or not then due, and Beneficiary shall have no obligation to disburse such proceeds for the payment of the costs, expenses, and fees incurred in the repair, replacement, or restoration of the Trust Estate. If there are any Condemnation Proceeds or insurance proceeds remaining after payment in full of the costs, expenses, and fees incurred in the repair, replacement, or restoration of the Trust Estate, such funds shall be paid and applied to the obligations secured hereby.

ARTICLE II ASSIGNMENT OF RENTS

- 2.01 Assignment of Rents. Trustor absolutely, unconditionally and irrevocably assigns and transfers to Beneficiary all of Trustor's right, title and interest in all current and future leases, and rents, issues and profits of the Trust Estate ("Rents"), and hereby gives to and confers upon Beneficiary the right, power and authority to collect all such Rents. 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 Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Such assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contain in any lease or otherwise to impose any obligation upon Beneficiary. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as no event of default has occurred and is continuing under the Note, this Deed of Trust or the Loan Documents. The assignment of the Rents of the Trust Estate in this Article II is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.
- 2.02 Leases. Upon the request of Beneficiary, Trustor shall furnish Beneficiary with copies of all executed leases. All leases shall provide that they are subordinate to this Deed of Trust and that the lessee agrees to attorn to Beneficiary. Trustor shall: **(i)** observe and perform all the obligations imposed upon the lessor under the leases and shall not do or permit to be done anything to impair the value of the leases as security for the Obligations; **(ii)** promptly send to Beneficiary copies of all notices of default which Trustor shall send or receive thereunder; **(iii)** enforce all of the terms, covenants, and conditions contained in the leases on the part of the lessee thereunder to be observed and performed, short of termination thereof; **(iv)** not collect any Rents more than one (1) month in advance; **(v)** not execute any other assignment of the lessor's interest in the leases or Rents; and **(vi)** execute and deliver at the request of Beneficiary all such further assurances, confirmations and assignments in connection with the Trust Estate as Beneficiary shall from time to time request.

- 2.03 Collection Upon an Event of Default. Upon the occurrence of an event of default under the Note, this Deed of Trust or the Loan Documents, Beneficiary may, at any time without notice, either in person or by agent, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorney fees) upon payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of, and/or renew existing leases and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.
- 2.04 Application of Rents. Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.
- 2.05 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Premises under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.
- 2.06 Indemnity. Trustor shall indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with the assignment under this Article II; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

- 2.07 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Beneficiary, the assignment under this Article II shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

ARTICLE III SECURITY AGREEMENT

- 3.01 Security Agreement. This Deed of Trust is, constitutes and shall be deemed to be a “security agreement” within the meaning and for all purposes of the Uniform Commercial Code; and Beneficiary shall be entitled to all the rights and remedies of a “secured party” under such Uniform Commercial Code.

The Trust Estate includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Trustor in the Trust Estate. By executing and delivering this Deed of Trust, Trustor has granted and hereby grants to Beneficiary, as security for the Debt, a security interest in the Trust Estate to the full extent that the Trust Estate may be subject to the Uniform Commercial Code (such portion of the Trust Estate so subject to the Uniform Commercial Code being called in this section, the “Collateral”). Trustor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may from time to time reasonably consider necessary to create, perfect or preserve Beneficiary’s security interest therein granted. This Deed of Trust shall also be effective as a financing statement covering any other Trust Estate and may be filed in any other appropriate filing or recording office. This Deed of Trust shall also constitute a “fixture filing” for the purposes of the Uniform Commercial Code. All or part of the Trust Estate are or are to become fixtures. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary, Trustor shall at its expense assemble the Collateral and make it available to Beneficiary at the Premises. Trustor shall pay to Beneficiary on demand any and all expenses, including Beneficiary’s attorney fees, incurred or paid by Beneficiary with respect to the Collateral. Written notice sent to Trustor in accordance with provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority

and proportions as Beneficiary in its discretion shall deem proper. In the event of any change in name, identity or structure of any Trustor, such Trustor shall notify Beneficiary thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Beneficiary's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with filing and recording thereof. If Beneficiary shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Trustor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Beneficiary shall deem necessary, and shall pay all expenses and fees in connection with filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Trustor's obligation under the Note, this Deed of Trust and the other Loan Documents. Trustor hereby irrevocably appoints Beneficiary as its attorney-in-fact, coupled with an interest, to file with appropriate public office on its behalf any financing or other statements, as secured party, in connection with the Collateral covered by this Deed of Trust.

- 3.02 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) that (i) at the request of Beneficiary, Trustor will join Beneficiary in executing one or more financing statements and fixture filings pursuant to the Uniform Commercial Code as in effect in the State of Utah ("Uniform Commercial Code"), in form satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable; and (ii) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.
- 3.03 Use of Personal Property by Trustor. So long as no event of default has occurred and is continuing under the Note, this Deed of Trust or the Loan Documents, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.
- 3.04 Remedies Upon an Event of Default. In addition to the remedies provided in Article II and Article IV hereof, upon the occurrence of an event of default under the Note, this Deed of Trust or the Loan Documents, Beneficiary may, at its option, do any one or more of the following:
- (i) Personally take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary.

- (ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney fees) incurred in connection therewith.
- (iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder.
- (iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine.
- (v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;
- (vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and
- (vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in section 5.05 hereof.

The proceeds of any sale under the foregoing section 3.04(a)(vi) shall be applied as follows:

- First, to the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorney fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein

(except any Impositions or Liens and Encumbrances subject to which such sale shall have been made); then

- To the payment of the Obligations in such order as Beneficiary shall determine; then
- The surplus, if any, shall be paid to Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy he may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

- 3.05 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

- 4.01 Events of Default. Each of the following events shall constitute an event of default under the Note, this Deed of Trust and the Loan Documents.
- (i) Failure by Trustor to pay any monthly payment of principal and/or interest when due under the Note, this Deed of Trust or any other Loan Document, within the applicable grace period.
 - (ii) Failure by Trustor to pay the entire amount of the Loan on or before its maturity date.
 - (iii) Failure by Trustor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Trustor, under the Note, this Deed of Trust or the Loan Documents and the expiration of thirty (30) days after written notice of such failure by Beneficiary to Trustor; provided however; that if the cure of any such default cannot reasonably be effected within such thirty (30) day period and Trustor shall have promptly and diligently commenced to cure such default within such thirty (30) day period, then the period to cure shall be deemed extended for up to an additional sixty (60) days (for a total of ninety (90) days from Beneficiary's default notice) so long as Trustor

diligently and continuously proceeds to cure such default to Beneficiary's satisfaction.

- (iv) Trustor is unable or admits in writing Trustor's inability to pay Trustor's monetary obligations as they become due, or makes a general assignment for the benefit of creditors, or applies for, consents to, or acquiesces in, the appointment of a trustee, or other custodian for Trustor or the property of Trustor or any part thereof, or in the absence of such application, consent, or acquiescence a trustee, or other custodian is appointed for Trustor or the property of Trustor or any part thereof, and such appointment is not discharged within sixty (60) days.
- (v) If Trustor seeks the appointment of a liquidator or trustee of Trustor, or if there shall be commenced against Trustor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Trustor or if any proceeding for the dissolution or liquidation of Trustor shall be instituted; provided, however, that such appointment, adjudication, petition or proceeding, if involuntary and not consented to by Trustor shall constitute an Event of Default only if not vacated, discharged, stayed, bonded or dismissed within ninety (90) days.
- (vi) Any litigation or proceeding is commenced before any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, local, or foreign) against or affecting Trustor or the property of Trustor or any part thereof and such litigation or proceeding is not dismissed within sixty (60) days, and if not dismissed, then not defended diligently and in good faith by Trustor.
- (vii) A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Trustor by any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, local, or foreign) is not paid and discharged or stayed within thirty (30) days after the entry thereof.
- (viii) All or any part of the property of Trustor is attached, levied upon, or otherwise seized by legal process, and such attachment, levy, or seizure is not quashed, stayed, or released within twenty (20) days of the date thereof.
- (ix) The occurrence of any Transfer, unless prior to such Transfer the holder of the Note has delivered to Trustor the written consent of such holder to such Transfer.

- (x) If Trustor encumbers any portion of the Trust Estate in a manner inconsistent with the terms of this Deed of Trust.
- (xi) If Trustor shall make an assignment for the benefit of creditors, or if Trustor shall generally not be paying its debts as they become due.
- (xii) Subject to Trustor's right to contest as provided herein, if the Trust Estate becomes subject to any mechanic's, materialman's, water, sewer, vault or other lien or encumbrance except a lien or encumbrance for local real estate taxes and assessments not then due and payable.
- (xiii) If Trustor fails to cure promptly any violations of laws, ordinances or regulations affecting the Trust Estate or pertaining to its use or operation.
- (xiv) If there shall occur any damage to the Trust Estate in any manner which is not covered by insurance solely as a result of Trustor's failure to maintain insurance required in accordance with this Deed of Trust.
- (xv) The occurrence of any event of default under the terms of the Note or the Loan Documents.

4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an event of default under the Note, this Deed of Trust or the Loan Documents, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind, Beneficiary may, in addition to the exercise of any or all of the remedies specified in section 3.04 hereof, or elsewhere in the Note, this Deed of Trust or the Loan Documents, do, undertake or exercise any of the following.

- (i) Either in person or by agent, with or without bringing any action or proceeding, and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, 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 Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorney fees) upon the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents

or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale.

- (ii) Commence an action to foreclose the lien of this Deed of Trust as a mortgage or specifically enforce any of the covenants hereof.
- (iii) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold.
- (iv) Exercise all other rights and remedies provided herein, the Note or in the Loan Documents, now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.03 Foreclosure; Power of Sale. Trustee, if and as directed by Beneficiary, shall have all of the rights and may exercise all of the powers set forth in applicable law of the state of Utah. If Beneficiary elects to exercise the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note, and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

Upon receipt of such statement and notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such "Notice of Sale" and "Notice of Sale" having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said "Notice of Sale", either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof 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 the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, Trustee's fees and reasonable attorney fees, and costs of evidence of title in connection with the sale of the Trust Estate, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms of the Note, this Deed of Trust, and the Loan Documents, not then repaid, with accrued interest at the rate of interest under the Note; (ii) second, all sums due under the Note; (iii) all other sums, then secured by this Deed of Trust; and (iv) the remainder, if any, to the person or persons legally entitled thereto.

Subject to and in accordance with applicable law, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or

subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

- 4.04 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Uniform Commercial Code, Beneficiary, upon an event of default, may proceed under such Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, and treat both real and personal property interests as one parcel or package of security.
- 4.05 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Note, this Deed of Trust and the Loan Documents, and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty 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 or any guaranty 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 herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by the Note, this Deed of Trust and the Loan Documents, or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.
- 4.06 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in section 5.05 hereof.

ARTICLE V MISCELLANEOUS

- 5.01 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Note, this Deed of Trust or the Loan Documents, or under the law shall operate as a waiver thereof.
- 5.02 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Trust Estate, and (ii) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the

Obligations and marshaling in the event of foreclosure of the liens hereby created, and (iii) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the state of Utah pertaining to the rights and remedies of sureties.

- 5.03 Certificates: Affidavits. Within ten (10) business days after request by Beneficiary, Trustor shall furnish Beneficiary with a statement, duly acknowledged and certified, setting forth: (i) the amount of the original principal amount of the Note; (ii) the then outstanding principal balance of the Note; (iii) the date on which installments of interest and/or principal were last paid; (iv) any offsets or known defenses to the payment of the Note; and (v) that the Note, this Deed of Trust and the Loan Documents are valid, legal and binding obligations of Trustor, which have not been modified or if modified, giving particulars of such modification; provided, however, that Trustor shall not be required to deliver such statement more frequently than twice in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale or transfer) of the Note by Beneficiary.

Trustor shall deliver to Beneficiary upon request, tenant estoppel certificates from each tenant under any lease of the Trust Estate in form and substance satisfactory to Beneficiary; provided, however, that Trustor shall not be required to deliver such certificates more frequently than once in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale of transfer) of the Note by Beneficiary.

- 5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."
- 5.05 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Trustor: TNU Properties, LLC
Attn: Mike Standlee
22349 Kimberly Road, Suite E
Kimberly, Idaho 83341

To Beneficiary: Timothy M. Obenchain
4140 Hidden Lakes Drive
Kimberly, Idaho 83341

and

Henry Investments, LLC
P.O. Box 227
Eden, Idaho 83325

- 5.06 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.
- 5.07 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.
- 5.08 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected, and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured 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 debt which is not secured or fully secured by the lien of this Deed of Trust.
- 5.09 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an event of default under the Note, this Deed of Trust or the Loan Documents occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy or other court proceedings (whether at the trial or appellate level)), together with interest thereon equal to the rate of interest under the Note from the date of demand.
- 5.10 Governing Law. THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.
- 5.11 Waiver of Jury Trial. TRUSTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS

HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.

- 5.12 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.
- 5.13 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.
- 5.14 Assignments. Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Deed of Trust. Trustor shall not, without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion, assign or transfer its rights under this Deed of Trust, the Note or the Loan Documents.
- 5.15 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.
- 5.16 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time 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 unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, 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 Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate 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 such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.
- 5.17 Integration. The Note, this Deed of Trust and the Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary, and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.
- 5.18 Binding Effect. The Note, this Deed of Trust and the Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor may not delegate its obligations under the Note, this Deed of Trust or the Loan Documents.

- 5.19 Time of the Essence. Time is of the essence with regard to each provision of the Note, this Deed of Trust and the Loan Documents as to which time is a factor.
- 5.20 Survival. The representations, warranties, and covenants of Trustor and in the Note, this Deed of Trust and the Loan Documents shall survive the execution and delivery of the Note, this Deed of Trust and the Loan Documents and the making of the Loan.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

03-108-0099

A tract of land located in the Southeast quarter of Section 15, Township 9 North, Range 2 West, Salt Lake Base and Meridian, having a basis of bearing of South 89°54'19" East as determined by GPS observations utilizing Leica Control Network between the monumented location of the Southwest corner (having record and measured NAD83 Lambert State Plane Coordinates of N=3709987.3701 E=1485917.2927 U.S. ft Utah North Zone) and the South quarter corner (having record and measured NAD83 Lambert State Plane Coordinates of N=3709982.981 E=1488554.9216 U.S. ft Utah North Zone) being described as follows:

Beginning at a fence post being located 876.70 feet North 00°04'56" West and 29.46 feet South 89°55'04" West from the monumented Southeast corner of said Section 15 (said point being on the West right of way line of 1200 West Street and Southeast corner having record Lambert State Plan Coordinates of N=3709978.5617 E=1491232.2959 U.S. ft Utah North Zone);
Running thence North 89°29'55" West 2640 feet to the North-South quarter section line, said point being evidenced by an existing fence post;
Thence North 00°16'57" East 498.90 feet, along or near an existing fence line to a fence post;
Thence South 89°30'03" East 2640.00 feet along or near an existing fence line, to a fence post representing the West right of way line of 1200 West Street;
Thence South 00°16'57" West 499.00 feet, along the West boundary of said 1200 West Street as described by Warranty Deed recorded as Entry No. 297293, Book 1143, at Page 1192 on November 30, 2010, to the point of beginning.

As per a Landmark Surveying Inc., Survey No. 3968.

EXHIBIT B**[Description of Personal Property]**

1. The personal property in which Trustor now or hereafter acquires an interest or right, which is now or hereafter affixed to the Premises or the Improvements or the construction of any Improvements thereon, together with any interest of Trustor in and to leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;
2. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;
3. All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Trustor's partners or shareholders, amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;
4. All other intangible property and rights relating to the Premises, the Improvements, the personal property described in paragraph 1 hereinabove, and the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will in any way relating to the Premises or the Improvements;
5. Trustor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;
6. All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;
7. All water stock relating to the Premises;

8. All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate;
9. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;
10. All licenses, permits, zoning approvals, site plan approvals, certificates of occupancy and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation or maintenance of the Premises and Improvements;
11. All keys and combinations to all doors, cabinets, safes, enclosures and other locking items or areas on or about the Premises and Improvements;
12. All other items of tangible personal property used in connection with the Premises and Improvements (excluding cash and rent receivables);
13. All plans, including drawings, as-builts, or other digitized or two-dimensional representations of the measurements, dimensions, layout, and features of the Premises and Improvements.
14. All proceeds from sale or disposition of any of the aforesaid collateral; and
15. All Trustor's rights in proceeds of the loan evidenced by the Note.

As used in this Exhibit B the terms "Obligations", "Note", "Trust Estate", "Premises", "Improvements", and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

EXHIBIT C

“Permitted Exceptions” means the following:

1. Sale, transfer, or other disposition of any Personal Property that is consumed or worn out in ordinary usage and that is promptly replaced with similar items of equal or greater value.
2. Liens and Encumbrances being contested in accordance with section 1.17 of the Deed of Trust.
3. Impositions being contested in accordance with Section 1.08 of this Deed of Trust.
4. This Deed of Trust.