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RUSSELL SHIRTS & WASHINGTON CO RECORDER  
2003 OCT 17 13:13 PM FEE \$50.00 BY AMH  
FOR: SOUTHERN UTAH TITLE CO

When recorded, return to:

MARISCAL, WEEKS, McINTYRE  
& FRIEDLANDER P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012-2705  
Attention: David L. Lansky, Esq.

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

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") is made as of the 17 day of September, 2003, by and among PIVOTAL MARK II, L.L.C., an Arizona limited liability company, whose mailing address and chief executive office (or residence if such party is an individual without an office) is located at 2555 East Camelback Road, Suite 700, Phoenix, Arizona 85016 ("Trustor"), LAWYERS TITLE OF ARIZONA, INC., 2425 East Camelback Road, Suite 700, Phoenix, Arizona 85016 ("Trustee"), and PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company, whose mailing address is 2555 East Camelback Road, Suite 700, Phoenix, Arizona 85016 ("Beneficiary").

**WITNESSETH:**

**SECTION 1. GRANTING CLAUSE; WARRANTY OF TITLE**

1.1 Trustor hereby irrevocably grants, transfers, assigns, conveys and warrants to Trustee, and its successors and assigns, **IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY**, for the benefit of Beneficiary, all of Trustor's present and future estate, right, title and interest in and to that real property and all buildings and other improvements now thereon or hereafter constructed thereon (the "Premises"), in the County of Washington, State of Utah, described on Schedule "A" attached hereto and by this reference made a part hereof, together with all of Trustor's right, title and interest in and to all of the following which, with the Premises (except where the context otherwise requires), are hereinafter collectively called the "Trust Property":

- (a) All appurtenances in and to the Premises;
- (b) All water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil and gas rights, royalties,

SOUTHERN UTAH TITLE COMPANY  
ACCOMMODATION RECORDING UNIT  
NOT EXAMINED

lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises, if any;

(c) All right, title and interest of Trustor now owned or hereafter acquired in and to all streets, roads, alleys and public places, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises, if any;

(d) All machinery, equipment, fixtures and materials now or at any time attached to the Premises, together with all processing, manufacturing and service equipment and other personal property now or at any time hereafter located on or appurtenant to the Premises and used in connection with the management and operation thereof;

(e) Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Premises, and the right to the use of any trade name, trademark, or service mark now or hereafter associated with the operation of any business conducted on the Premises;

(f) Any and all insurance proceeds, and any and all awards, including interest, previously and hereafter made to Trustor for taking by eminent domain of the whole or any part of the Premises or any easements therein; and

(g) Subject to the rights of Beneficiary under Section 3 hereof, all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Premises and all income, receipts, revenues, rents, issues and profits arising from the use or enjoyment of all or any portion of the Premises.

1.2 Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the Premises, that it is the lawful owner of the rest of the Trust Property, and that, except for those matters specifically described on Schedule B to the title insurance policy insuring this Deed of Trust (hereinafter called the "Permitted Exceptions"), the title to all the Trust Property is clear, free and unencumbered; Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever.

TRUSTOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

## SECTION 2. OBLIGATION SECURED

This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:

2.1 Payment of the sum of SIX MILLION THREE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$6,320,000.00), which may include, without limitation, future advances of principal made after the date hereof, with interest thereon, extension and other fees, late charges, prepayment premiums and reasonable attorneys' fees, according to the terms

of that Promissory Note of even date herewith, made by Trustor, payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof (the "Note"),

2.2 Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof;

2.3 Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained in the Note, that certain Security Agreement of even date herewith executed by Trustor for the benefit of Beneficiary ("Security Agreement"), and in any other document or instrument executed by or on behalf of Trustor related to the indebtedness hereby secured and of all monies expended or advanced by Beneficiary pursuant to the terms thereof or to preserve any right of Beneficiary thereunder.

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligation."

### **SECTION 3. LEASES; ASSIGNMENT OF RENTS AND LEASES**

3.1 To facilitate payment and performance of the Obligation, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to (a) all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any part of the Trust Property, whether written or oral and whether for a definite term or month to month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (the "Leases"), and (b) all income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof, including without limitation room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, tax impounds or reserves, insurance premiums impounds or reserves, operating costs and utilities impounds and reserves, proceeds of the sale of utilities and services, cancellation premiums, claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of the Trust Property, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Trust Property, together with the immediate and continuing right to receive all of the foregoing (the "Rents"). In furtherance of this assignment, and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases; the terms of all such assignments are incorporated herein by reference.

3.2 Trustor hereby authorizes and directs the lessees and tenants under the Leases that, upon written notice from Beneficiary, all Rents shall be paid directly to Beneficiary as they become due. Trustor hereby relieves the lessees and tenants from any liability to Trustor by reason of the payment of the Rents to Beneficiary. Nevertheless, Trustor shall have, and Beneficiary hereby grants to Trustor, a license to collect the Rents until Beneficiary notifies the lessees and tenants in writing to pay the Rents to Beneficiary. Beneficiary is hereby authorized to

give such notification only upon the occurrence of an Event of Default and at any time thereafter while such Event of Default is continuing. Receipt and application of the Rents by Beneficiary shall not constitute a waiver of any right of Beneficiary under this Deed of Trust or applicable law, shall not cure any Event of Default hereunder, and shall not invalidate or affect any act done in connection with such Event of Default, including, without limitation, any trustee's sale or foreclosure proceeding.

3.3 All Rents collected by Trustor shall be applied in the following manner:

(a) to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made;

(b) to the payment of ground rents (if any) payable with respect to the Trust Property;

(c) to the payment of any amounts due and owing under the Obligation;

(d) to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Trust Property; and

(e) to Trustor or its designee.

All Rents collected by Beneficiary may be applied to the items above listed in any manner that Beneficiary deems advisable and without regard to the foregoing priorities.

3.4 Trustor represents and warrants that to its actual knowledge as of the date of this Deed of Trust: (a) the Leases (as defined in Section 3.1(a)) are in full force and effect and have not been modified or amended; (b) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (c) there are no assignments, transfers, pledges or encumbrances of any Leases or Rents other than to Beneficiary; and (d) neither Trustor nor the lessees and tenants are in default under the Leases.

3.5 Trustor shall (a) fulfill or perform in a commercially reasonable manner each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (b) give prompt notice to Beneficiary of any written notice received by Trustor of default thereunder or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (c) enforce in a commercially reasonable manner, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder.

3.6 Trustor, without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld, conditioned or delayed), shall not: (a) cancel, modify or alter in any material respect, or accept the surrender of, any Lease; (b) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Beneficiary; (c) accept any

Rents more than one month in advance of the accrual thereof; (d) do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, would be a breach or default under the terms of any Lease or a basis for termination thereof; or (e) enter in to any new tenant leases.

3.7 Beneficiary does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Trustor as though this assignment had not been made. Beneficiary shall not be liable for the failure or inability to collect any Rents unless such failure is due to the gross negligence or willful misconduct of Beneficiary or its agents or employees.

3.8 Neither the Assignment of Rents and Leases contained herein or in any separate assignment nor the exercise by Beneficiary of any of its rights or remedies thereunder or in connection therewith, prior to Beneficiary obtaining actual possession of the Trust Property as provided in Paragraph 8.2 below, shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Trust Property or the occupancy, operation or use thereof. In the event Beneficiary obtains actual possession of the Trust Property as provided in Paragraph 8.2 below, Beneficiary shall have the rights, and Beneficiary's liability shall be limited, as provided in that Paragraph.

**SECTION 4. SECURITY AGREEMENT**

4.1 This Deed of Trust shall cover, and the Trust Property shall include, all property of Trustor now or hereafter affixed or attached to or incorporated upon the Premises, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Premises. To the extent any of the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the Obligation. In addition, for the purpose of securing the Obligation, Trustor hereby grants to Beneficiary, as secured party, a security interest in all of the property described below in, to, or under which Trustor now has or hereafter acquires any right, title or interest, whether present, future, or contingent: all equipment, inventory, accounts, general intangibles, instruments, documents, and chattel paper, as those terms are defined in the Uniform Commercial Code, and all other personal property of any kind (including without limitation money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter (a) in the possession or control of Beneficiary in any capacity; (b) erected upon, attached to, or appurtenant to, the Premises; (c) located or used on the Premises or identified for use on the Premises (whether stored on the Premises or elsewhere); or (d) used in connection with, arising from, related to, or associated with the Premises or any of the personal property described herein, the construction of any improvements on the Premises, the ownership, development, maintenance, leasing, management, or operation of the Premises, the use or enjoyment of the Premises, or the operation of any business conducted on the Premises; including without limitation all such property more particularly described as follows:

(i) Buildings, structures and improvements, and building materials, fixtures and equipment to be incorporated into any buildings, structures or improvements;

(ii) Goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, including without limitation, all such items used for (A) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (B) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (C) removal of dust, refuse, garbage or snow; (D) transmission, storage, processing or retrieval of information; and (E) floor, wall, ceiling and window coverings and decorations;

(iii) Income, receipts, revenues, issues, profits, rents, accounts or other payments for the use or occupancy of rooms and other public facilities, including without limitation, room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, and claims for damages arising from the breach of any leases;

(iv) Water and water rights, ditches and ditch rights, reservoirs and reservoir rights, stock or interest in irrigation or ditch companies, minerals, oil and gas rights, royalties, and lease or leasehold interests;

(v) Plans and specifications prepared for the construction of any improvements, including without limitation, all studies, estimates, data, and drawings;

(vi) Documents, instruments and agreements relating to, or in any way connected with, the operation, control or development of the Premises, including without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners association or similar group and all rights arising from the foregoing and any special declarant's rights thereunder;

(vii) Claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including without limitation those arising on account of any loss of, damage to, taking of, or diminution in value of, all or any part of the Premises or any personal property described herein;

(viii) Sales agreements, escrow agreements, deposit receipts, and other documents and agreements for the sale or other disposition of all or any part of the Premises or any of the personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of the Premises or any of the personal property described herein;

(ix) Policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety, and awards, loss payments, proceeds, and premium refunds that may be payable with respect to such policies, certificates, contracts, agreements or rights;

(x) Contracts, agreements, permits, licenses, authorizations and certificates, including without limitation all architectural contracts, construction contracts, management contracts, service contracts, maintenance contracts, franchise agreements, license agreements, building permits and operating licenses;

(xi) Trade names, trademarks, service names and service marks (subject to any franchise or license agreements relating thereto);

(xii) Refunds and deposits due or to become due from any utility companies or governmental agencies;

(xiii) Replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, all of the personal property described herein;

(xiv) Books, records, correspondence, files and electronic media, and all information stored therein;

(xv) Water taps and sewer taps and all rights arising under any agreements to acquire water taps or sewer taps;

together with all products and proceeds of all of the foregoing, in any form, including all proceeds received, due or to become due from any sale, exchange or other disposition thereof, whether such proceeds are cash or non-cash in nature, and whether represented by checks, drafts, notes or other instruments for the payment of money. The personal property described or referred to in this Paragraph 4.1 is hereinafter called the "Personal Property." The security interests granted in this Paragraph 4.1 are hereinafter severally and collectively called the "Security Interest."

4.2 The Security Interest shall be self-operative with respect to the Personal Property, but Trustor shall execute and deliver on demand such additional security agreements and other instruments as may be requested in order to impose the Security Interest more specifically upon the Personal Property. Further, Beneficiary is hereby authorized to complete and file one (1) or more financing statements reflecting the Security Interest. The Security Interest, at all times, shall be prior to any other interests in the Personal Property except any lien or security interest granted in connection with any Permitted Exception or otherwise to Beneficiary. Trustor shall act and perform as reasonably necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents reasonably requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all actual costs and expenses of filing and recording, including the costs of any searches, reasonably deemed necessary by Beneficiary from time to time to establish and determine the validity and the continuing priority of the Security Interest.

4.3 Trustor shall not sell, transfer, assign or otherwise dispose of any Personal Property or any interest therein without obtaining the prior written consent of Beneficiary, except Personal Property that Trustor is obliged to replace pursuant to the terms hereof unless replaced



with Personal Property of equal or greater value. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition in excess of that required for replacements shall be paid to Beneficiary to be applied to the Obligation, whether or not then due. Trustor shall keep the Personal Property free of all security interests or other encumbrances, except the Security Interest and any security interests and encumbrances granted in connection with any Permitted Exception or otherwise to Beneficiary. Although proceeds of Personal Property are covered hereby, this shall not be construed to mean that Beneficiary consents to any sale of the Personal Property.

4.4 Trustor shall keep and maintain the Personal Property in good condition and repair, and shall promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance not consented to by Beneficiary in writing, except any security interest or encumbrance granted in connection with any Permitted Exception.

4.5 Except for purposes of replacement and repair, Trustor, without the prior written consent of Beneficiary, shall not remove, or permit the removal of, any Personal Property from the Premises.

4.6 Trustor hereby warrants, covenants and agrees that: (a) the Personal Property is or will be used primarily for business (other than farm) purposes; (b) the Personal Property will be kept at the Premises; and (c) Trustor's records concerning the Personal Property will be kept at Trustor's address as set forth in the beginning of this Deed of Trust or at the office of Trustor's property manager.

4.7 Trustor represents and warrants that (a) the name specified above for Trustor is the true and correct legal name of Trustor, and (b) the address specified above is the address of Trustor's chief executive office (or residence if Trustor is an individual without an office). Trustor shall give Beneficiary immediate written notice of any change in the location of: (x) Trustor's chief executive office (or residence if Trustor is an individual without an office), as set forth in the beginning of this Deed of Trust; (y) the Personal Property or any material part thereof; or (z) Trustor's records concerning the Personal Property. Trustor shall give Beneficiary immediate written notice of any change in the name, identity or structure of Trustor.

4.8 All covenants and warranties of Trustor contained in this Deed of Trust regarding the Trust Property shall apply to the Personal Property whether or not expressly referred to in this Section 4. The covenants and warranties of Trustor contained in this Section 4 are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust.

4.9 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 that regard, the following information is provided:

Name of Debtor: PIVOTAL MARK I, L.L.C., a Utah limited liability company, and PIVOTAL MARK II, L.L.C., an Arizona limited liability company.



Address of Debtor: See the initial paragraph hereof.

Name of Secured Party: PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company.

Address of Secured Party: See the initial paragraph hereof.

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.

## SECTION 5. PROTECTION AND PRESERVATION OF THE TRUST PROPERTY

5.1 Trustor shall neither commit nor permit to occur any waste upon the Trust Property but shall at all times make or cause to be made all repairs, maintenance, renewals and replacements as may be necessary to maintain the Trust Property in good condition and repair. Trustor shall neither use nor permit the use of the Trust Property in violation of any applicable statute, ordinance or regulation, including, without limitation, the Americans With Disabilities Act of 1990 and corresponding rules and regulations (the "ADA"), or any policy of insurance insuring the Trust Property.

5.2 Trustor shall promptly complete any improvements that may be commenced by Trustor, in good and workmanlike manner and in conformity with the ADA and with plans and specifications approved by Beneficiary. Trustor shall repair and restore or cause to be repaired and restored, in conformity with the ADA, any portions of the Trust Property that may be damaged or destroyed. Trustor shall pay when due all claims for work performed and materials furnished on or in connection with the Trust Property or any part thereof and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, liens, claims of liens or encumbrances upon the Trust Property. Trustor shall comply with all laws, ordinances and regulations now or hereafter enacted, including, without limitation, the ADA, affecting the Trust Property or requiring any alterations or improvements to be made. Except as required by law, Trustor shall not remove, substantially alter, or demolish any building or improvement included in the Trust Property without Beneficiary's prior written consent.

5.3 (a) Trustor shall provide and maintain, or cause to be provided and maintained, policies of causes of loss-special form (formerly known as "all risk") property insurance on the Trust Property in an amount not less than the full insurable value, on a replacement-cost basis, of the Trust Property and, when requested by Beneficiary, shall, to the extent such risks are commonly insured against by persons owning like properties in the locality of the Trust Property, also provide and maintain policies of insurance in amounts reasonably required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement and/or business loss, flood damage and all other risks commonly insured against by persons owning like properties in the locality of the Trust Property or commonly required by prudent institutional lenders making loans secured by liens against such properties. All such policies shall contain standard, non-contributory trust beneficiary clauses making losses payable

to Beneficiary. Trustor shall also provide and maintain, or cause to be provided and maintained, commercial general liability (sometimes referred to as comprehensive public liability) insurance with a combined single limit of Five Million and No/100 Dollars (\$5,000,000.00) and containing endorsements naming Beneficiary as an additional insured. All insurance policies shall be with companies from time to time approved by Beneficiary (which approval shall not be unreasonably withheld, conditioned or delayed), shall provide that Beneficiary is to receive thirty (30) days' notice prior to cancellation and shall otherwise be in form and substance reasonably satisfactory to Beneficiary. Original policies of insurance or certificates thereof shall be delivered to Beneficiary; renewal policies shall be delivered to Beneficiary thirty (30) days before the expiration of the then-existing policies with satisfactory proof that the premiums for renewal have been paid.

(b) In the event of loss, Trustor shall give immediate notice to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company is hereby authorized and directed to make payment for loss directly to Beneficiary, instead of to Trustor or to Trustor and Beneficiary jointly. Provided, that (i) no Event of Default then exists, and (ii) the costs to repair of any single building comprising the Trust Property are not more than fifty percent (50%) of the full replacement cost of such building and such repairs can be completed prior to the maturity date of the Note (including any period for which Trustor has exercised its Extension Option), then Beneficiary shall permit such insurance proceeds to be used for the restoration or repair of the Trust Property in accordance with the terms and conditions hereof and the balance shall be paid to Trustor. In all other cases Beneficiary may apply all or any part of such insurance proceeds to the payment of the Obligation, whether or not then due, or the restoration or repair of the Trust Property. Beneficiary shall not be responsible for any insurance, for the collection of any insurance proceeds, or for the insolvency of any insurer. Application of insurance proceeds by Beneficiary shall not cure nor waive any Event of Default nor invalidate any act done hereunder because of any such Event of Default. In the event of the sale of the Trust Property under the power of sale herein granted to Trustee, or upon foreclosure of this Deed of Trust as a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of the Trust Property without sale, then all right, title and interest of Trustor in and to all insurance policies then in force shall inure to the benefit of and pass to the beneficiary in possession, receiver or purchaser at such sale, as the case may be. Beneficiary is hereby appointed attorney in fact for Trustor to assign and transfer such policies as set forth in the immediately preceding sentence.

(c) If the insurance proceeds are to be used for the restoration and repair of the Trust Property, they shall be held by Beneficiary in a pass book savings account selected by Beneficiary in its reasonable discretion (the "Restoration Account"). Trustor, at its expense, shall promptly prepare and submit to Beneficiary all plans and specifications necessary for the restoration and repair of the damaged Trust Property, together with evidence reasonably acceptable to Beneficiary setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder and covered by performance and labor and material payment bonds. The plans and specifications and all other aspects of the proposed restoration and repair shall be subject to Beneficiary's approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the insurance proceeds held in the Restoration Account are insufficient to complete the restoration and repair, Trustor shall deposit

in the Restoration Account an amount equal to the difference between the amount then held in the Restoration Account and the total contract price for the restoration and repair. Trustor may commence restoration and repair of the damaged Trust Property only when authorized in writing by Beneficiary to do so and thereafter shall proceed diligently with the restoration and repair until completed. Disbursements shall be made from the Restoration Account for the restoration and repair in accordance with a disbursement schedule, and subject to other terms and conditions, reasonably acceptable to Beneficiary. Disbursements from the Restoration Account shall be charged first against funds deposited by Trustor and, after such funds are exhausted, against the insurance proceeds deposited therein. In the event the amounts held in the Restoration Account exceed the cost of the restoration and repair of the damaged Trust Property, the excess funds shall be promptly disbursed to Trustor to the extent of any amounts deposited therein by Trustor. Any funds remaining after such disbursement, at Beneficiary's option, may be applied by Beneficiary to the payment of the Obligation, whether or not then due, or may be disbursed to Trustor. All funds held in the Restoration Account are hereby assigned to Beneficiary as further security for the Obligation. Beneficiary, at any time, may apply all or any part of the funds held in the Restoration Account to the curing of any Event of Default.

5.4 Trustor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on or against the Trust Property and, following request of Beneficiary, shall deliver to Beneficiary, at least five (5) days before they become delinquent, receipts showing payment of all such taxes and assessments and shall pay or cause to be paid when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Trust Property. Trustor may contest in good faith the validity or amount of any tax, assessment, charge or encumbrance in the manner provided by law, provided that Trustor shall have furnished Beneficiary a cash deposit or other security in an amount and form reasonably satisfactory to Beneficiary to protect Beneficiary against the creation of any lien on, or any sale or forfeiture of, the Trust Property. Upon the final determination of Trustor's contest, Trustor shall promptly pay all sums determined to be due. Any deposit or security provided by Trustor shall be returned to Trustor upon the final determination of Trustor's contest and the payment by Trustor of the sums, if any, determined to be due.

5.5 Beneficiary may contest, by appropriate legal proceedings, the validity of any valuation for real or personal property tax purposes or of any levy or assessment of any real or personal property taxes against the Trust Property either in the name of Beneficiary or the name of Trustor or both. Trustor, upon notice and request by Beneficiary, shall join in any such proceedings. Trustor shall cooperate reasonably with Beneficiary in any such proceeding and execute any documents or pleadings required for such purposes. Following request of Beneficiary, Trustor shall provide Beneficiary with a copy of the Notice of Valuation within ten (10) days after receipt (five (5) days in the case of Personal Property). Trustor shall reimburse Beneficiary for all reasonable costs and legal expenses incurred by Beneficiary in connection with any such proceedings, but in no event shall such reimbursement exceed the tax savings achieved for the period covered by the Notice of Valuation. To facilitate the right of Beneficiary to contest any real or personal property tax valuation, levy, or assessment as described above, Trustor does hereby make, constitute and appoint Beneficiary, and its successors and assigns, Trustor's true and lawful agent, in Trustor's name, place and stead, or otherwise, to file any

claim or proceeding or to take any action, either in its own name, in that of its nominee, in the name of Trustor, or otherwise, to contest any real or personal property tax valuation, levy, or assessment. The agency given herein is a power coupled with an interest and shall be irrevocable so long as any part of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the foregoing rights and powers in any event.

5.6 In order to insure the payment of taxes and assessments that are now, or hereafter may be, a lien upon the Trust Property, and to insure the payment of all premiums on policies of insurance required herein, but subject to the last sentence of this Section 5.6, Trustor, if required by Beneficiary, shall at the option of Beneficiary pay to Beneficiary each month, in addition to any other payments required hereunder, an amount equal to the taxes and special assessments levied or to be levied against the Trust Property and the premium or premiums that will become due and payable to maintain the insurance on the Trust Property required hereunder, all as reasonably estimated by Beneficiary (giving due consideration to the previous year's taxes, assessments and premiums) less all deposits therefore already made, divided by the number of months remaining before one month prior to the date when the taxes, assessments and premiums become delinquent. If amounts paid to Beneficiary under the terms of this paragraph are insufficient to pay all taxes, assessments and premiums as they become due, Trustor shall pay to Beneficiary upon demand all additional sums necessary to fully pay and discharge these items. All moneys paid to Beneficiary under the terms of this paragraph may be either held by Beneficiary to pay the taxes, assessments and premiums before the same become delinquent or applied to the Obligation upon payment by Beneficiary from its own funds of the taxes, assessments and premiums. To the extent provision is not made for payment pursuant to this paragraph, Trustor shall remain obligated to pay all taxes, assessments and premiums as they become due and payable. Deposits made under this paragraph may be commingled with Beneficiary's general funds. Beneficiary shall have no liability to Trustor for interest on any deposits. Beneficiary covenants that, subject to Section 8.2, it shall apply any amounts paid by Trustor pursuant to this Section 5.6 to timely satisfy Trustor's tax and insurance obligations. In the event Beneficiary exercises its rights under the first sentence of this section based upon a material Event of Default, which Event of Default is not related to a failure to pay taxes, assessments or insurance premiums as required herein, Trustor's obligation to make monthly impound payments to Beneficiary as set forth in this section shall continue only until such Event of Default is cured.

5.7 Trustor hereby assigns, transfers and conveys to Beneficiary all compensation and each and every award of damages in connection with any condemnation for public or private use of, or injury to, the Trust Property or any part thereof, to the extent of the Obligation then remaining unpaid, and all such compensation and awards shall be paid directly to Beneficiary. Provided, that (i) no Event of Default then exists, (ii) Beneficiary has determined that the Trust Property can continue to be operated as a viable industrial project under the existing circumstances, and (iii) the costs to repair any single building comprising the Trust Property are not more than fifty percent (50%) of the full replacement cost of such building and such repairs can be completed prior to the maturity date of the Note (including any period for which Trustor has exercised its Extension Option), then Beneficiary shall permit such compensation and awards to be used for the restoration or repair of the Trust Property in accordance with the terms and conditions hereof. In all other cases Beneficiary may apply all or any part of such compensation

and awards to the payment of the Obligation, whether or not then due, or to the restoration or repair of the Trust Property. Any restoration or repair shall be subject to the conditions and procedures specified in Paragraph 5.3(c) above for insurance proceeds.

**SECTION 6. PROTECTION AND PRESERVATION OF BENEFICIARY'S INTEREST**

6.1 Trustor, by the payment of any such tax or taxes, shall protect Beneficiary against any and all loss from any taxation of indebtedness or deeds of trust, direct or indirect, that may be imposed upon this Deed of Trust, the lien of this Deed of Trust on the Trust Property, or upon the Obligation, by any law, rule, regulation or levy of the federal government, any state government, or any political subdivision thereof. In the event the burden of such taxation cannot lawfully be shifted from Beneficiary to Trustor, Beneficiary may declare the entire Obligation due and payable sixty (60) days after notice to Trustor.

6.2 If Trustor shall fail to pay when due any taxes, assessments, expenses or charges, to keep all of the Trust Property free from liens and claims of liens, to maintain and repair the Trust Property as required herein, or to procure and maintain insurance thereon as required, or otherwise fail to perform as required herein, Beneficiary may advance the monies necessary to pay the same, to accomplish such maintenance and repairs, to procure and maintain such insurance or to so perform. Beneficiary is hereby authorized to enter upon the Trust Property for such purposes.

6.3 Upon written request by Beneficiary, Trustor shall appear in and prosecute or defend any action or proceeding that is reasonably likely to affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary hereunder and shall pay all costs, expenses (including the cost of searching title) and reasonable attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary. Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien that in the reasonable judgment of Beneficiary appears to be prior or superior to the lien of this Deed of Trust, other than any Permitted Exceptions.

6.4 Without obtaining the prior written consent of Beneficiary, Trustor shall not sell, transfer, convey, assign or otherwise dispose of, or further encumber, all or any part of the Trust Property or any interest therein, voluntarily or involuntarily, by operation of law or otherwise, except as contemplated by, and in accordance with the terms set forth in Section 9.20 below. If Trustor is a corporation, limited liability company, partnership, joint venture or trust, any material change in the ownership of, or interest in, Trustor, or any pledge or encumbrance of any interest in Trustor, shall be deemed to be a transfer of the Trust Property. A "material change" in ownership shall be any change which results in F. Francis Najafi, J. Jahm Najafi and/or the Public Safety Personnel Retirement System of the State of Arizona, owning less than fifty-one percent (51%) of Trustor. Consent to any such transaction shall not be deemed to be consent or a waiver of the requirement of consent to any other such transaction.

6.5 Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Trust Property in any

improvement district. Trustor shall promptly give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Trust Property in an improvement district. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Trust Property in an improvement district, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

6.6 All rights, powers and remedies granted Beneficiary herein, or otherwise available to Beneficiary, are for the sole benefit and protection of Beneficiary, and Beneficiary may exercise any such right, power or remedy at its option and in its sole and absolute discretion without any obligation to do so. In addition, if, under the terms hereof, Beneficiary is given two or more alternative courses of action, Beneficiary may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. All monies advanced by Beneficiary under the terms hereof and all amounts paid, suffered or incurred by Beneficiary in exercising any authority granted herein, including reasonable attorneys' fees, shall be added to the Obligation, shall be secured by this Deed of Trust, shall bear interest at the highest rate payable on any of the Obligation until paid, and shall be due and payable by Trustor to Beneficiary immediately without demand.

6.7 Trustor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered in the content of this Deed of Trust or in the execution or acknowledgment hereof. In addition, Trustor shall do such further acts as may be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Deed of Trust, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the lien and security interest hereof.

## SECTION 7. REPRESENTATIONS AND WARRANTIES

7.1 If Trustor is a corporation, limited liability company, partnership or trust, it (a) is duly organized, validly existing and in good standing under the laws of the state in which it is organized; (b) is qualified to do business and is in good standing under the laws of the state in which the Trust Property is located and in each state in which it is doing business; (c) has full power and authority to own its properties and assets and to carry on its business as now conducted; and (d) is fully authorized and permitted to execute and deliver this Deed of Trust. The execution, delivery and performance by Trustor of this Deed of Trust and all other documents and instruments relating to the Obligation will not result in any breach of the terms or conditions or constitute a default under any agreement or instrument under which Trustor is a party or is obligated. Trustor is not in default in the performance or observance of any covenants, conditions or provisions of any such agreement or instrument.

7.2 To Trustor's actual knowledge as of the date of this Deed of Trust, the liens, security interests and assignments created hereby will be valid, effective, properly perfected and enforceable, first position liens, security interests and assignments, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the rights of creditors generally and general principles of equity.



7.3 All financial statements, profit and loss statements, statements as to ownership and other statements or reports previously or hereafter given to Beneficiary by or on behalf of Trustor are and shall be true, complete and correct in all material respects as of the date thereof. There has been no material adverse change in the financial condition or the results of the operation of Trustor since the latest financial statement of Trustor given to Beneficiary.

7.4 Trustor has filed all federal, state and local tax returns and has paid all of its current obligations before delinquent, including all federal, state and local taxes and all other payments required under federal, state or local law.

7.5 To Trustor's knowledge as of the date of this Deed of Trust, except as disclosed to Beneficiary in the physical condition report on the Trust Property, the Trust Property is not in violation of the ADA and is not subject to any existing, pending or threatened investigation in connection with the ADA.

7.6 To Trustor's knowledge as of the date of this Deed of Trust, except as disclosed in writing to Lender, the Trust Property is not in violation of any Hazardous Materials Law and is not subject to any existing, pending or threatened investigation in connection with any Hazardous Materials Law. "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common-law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Trust Property, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

7.7 All representations and warranties made herein shall survive the execution hereof, the execution and delivery of all other documents and instruments in connection with the Obligation, and until the Obligation has been fully paid and performed.

## SECTION 8. DEFAULTS; REMEDIES

8.1 The occurrence of any of the following events or conditions shall constitute an "Event of Default" under this Deed of Trust:

(a) Any failure or neglect to perform or observe any of the material terms, provisions, or covenants of this Deed of Trust (other than a failure or neglect described in one or more of the other provisions of this Section 8.1) and such failure or neglect either (i) cannot be remedied, (ii) can be remedied within thirty (30) days by prompt and diligent action, but it continues unremedied for a period of thirty (30) days after written notice thereof to Trustor (provided, that if Trustor has commenced such remedy but, despite prompt and diligent action, such remedy is not completed within thirty (30) days, such failure shall not constitute an Event of Default if Trustor diligently continues to prosecute the remedy to completion and completes such remedy within a



total of ninety (90) days from the date of such notice, or (iii) can be remedied, although not within thirty (30) days even by prompt and diligent action, but such remedy is not commenced within thirty (30) days after written notice thereof to Trustor or is not diligently prosecuted to completion;

(b) Any warranty or representation contained in this Deed of Trust that shall be or shall prove to have been false in a material respect when made or furnished;

(c) Any event of default under the Note or Security Agreement which continues beyond any applicable notice and cure periods;

(d) The creation by Trustor of any encroachment upon the Trust Property that has occurred following the recordation of this Deed of Trust without the approval of Beneficiary that is not removed or corrected or insured over within ninety (90) days after its creation;

(e) The failure to maintain any policies of insurance required under this Deed of Trust, which failure continues unremedied for a period of ten (10) days after written notice thereof to Trustor;

(f) Any sale, encumbrance, hypothecation or other transfer, direct or indirect, by operation of law or otherwise, of the Trust Property, in whole or in part, or any interest therein, without the concurrent payment of the Obligation.

8.2 Upon the occurrence of any Event of Default, and at any time while such Event of Default is continuing, Beneficiary may do one or more of the following:

(a) Declare the entire Obligation to be immediately due and payable, and the same, with all costs and charges, shall be collectible thereupon by action at law;

(b) Give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein. Trustee shall then record and give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Trustor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale;

(c) Commence proceedings for foreclosure of this Deed of Trust in the manner provided by law for the foreclosure of a real property mortgage;

(d) Exercise any or all of the remedies of a secured party under the Uniform Commercial Code with respect to the Personal Property. If Beneficiary should proceed to dispose of any of the Personal Property in accordance with the provisions of the Uniform Commercial Code, five (5) days' prior written notice by Beneficiary to Trustor shall be deemed to be commercially reasonable notice under any provision of the Uniform Commercial Code requiring notice. Trustor, however, agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all personal property used on or in connection with the Premises or any business conducted thereon by the Trustor and covered by separate security agreements, is encumbered as one unit, that this Deed of Trust and such security interests, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and that all property encumbered (both realty and personalty), at Beneficiary's option, may be sold as such in one unit as a going business, subject to the provisions of applicable law;

(e) Without regard to the adequacy of any security for the Obligation or the solvency of Trustor or any other person or entity, send notifications to any and all lessees and tenants under the Leases that all Rents shall be paid to Beneficiary. Thereafter, Beneficiary shall be entitled to collect the Rents until Trustor cures all Events of Default and may apply the Rents collected at its sole discretion to the maintenance of the Trust Property and/or the payment of the Obligation;

(f) Apply any funds in the possession or control of Beneficiary under the provisions of Paragraph 5.6 above to the payment of the Obligation, in lieu of the purposes specified in that paragraph;

(g) Apply for and obtain, without regard to the adequacy of any security for the Obligation or the solvency of the Trustor or any other person or entity, a receiver by any court of competent jurisdiction to take charge of all the Trust Property, to manage, operate and carry on any business then being conducted or that could be conducted on the Premises, to carry on, protect, preserve, replace and repair the Trust Property, and receive and collect all Rents and to apply the same to pay the receiver's expenses for the operation of the Trust Property and then in the manner provided in Paragraph 3.3 above. Upon appointment of said receiver, Trustor shall immediately deliver possession of all of the Trust Property to such receiver. Neither the appointment of a receiver for the Trust Property by any court at the request of Beneficiary or by agreement with Trustor nor the entering into possession of all or any part of the Trust Property by such receiver shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Trust Property or the occupancy, operation or use thereof. Trustor agrees that Beneficiary shall have the absolute and unconditional right to the appointment of a receiver in any independent and/or separate action brought by Beneficiary regardless of whether Beneficiary seeks any relief in such action other than the appointment of a receiver. In that respect, Trustor waives any express or implied requirement under common law or statute, to the extent applicable, that a receiver may be appointed only ancillary to other judicial or non-judicial relief;

(h) Without regard to the adequacy of any security for the Obligation or the solvency of Trustor or any other person or entity, enter upon and take possession of all or any part of the Trust Property, either in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction; Trustor shall on demand peaceably surrender possession of the Trust Property to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all Rents, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall not be subject to any liability charge, or obligation therefor to Trustor, other than for gross negligence or willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Trustor (and all net losses, costs and expenses thereby incurred shall be advances governed by Paragraph 6.6 above), to the same extent as the owner thereof could do, and to apply the Rents to pay the receiver's expenses, if any, for the operation of the Trust Property and then in the manner provided in Paragraph 3.3 above.

8.3 Trustor shall pay all costs and expenses, including without limitation costs of title searches and title policy commitments, Uniform Commercial Code searches, court costs and reasonable in-house and outside attorneys' fees, incurred by Beneficiary in enforcing payment and performance of the Obligation or in exercising the rights and remedies of Beneficiary hereunder; provided, however, that notwithstanding the aforesaid, with respect to any legal action between the parties hereto that is pursued to judgment the prevailing party only shall be reimbursed by the other party for all costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the preservation and enforcement of its rights under this Agreement. All such costs and expenses shall be secured by this Deed of Trust and by all other lien and security documents securing the Obligation. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by the prevailing party.

8.4 In addition to any remedies provided herein for an Event of Default, Beneficiary shall have all other legal or equitable remedies allowed under applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage). No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any Event of Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Event of Default is continuing. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Obligation after its due date, Beneficiary shall not thereby waive the agreement contained herein that time is of the essence, nor shall Beneficiary waive either its right to require prompt payment or performance when due of the remainder of the Obligation or its right to consider the failure to so pay or perform an Event of Default. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Note upon the foreclosure of this Deed of Trust or in any action to recover the Obligation or Obligations secured hereby, and as a material inducement to making the loan

evidenced by the Note, Trustor acknowledges and agrees that the successful bid amount made at any judicial or non-judicial foreclosure sale, if any, shall be conclusively deemed to constitute the fair market value of the Premises, that such bid amount shall be binding against Trustor in any proceeding seeking to determine or contest the fair market value of the Premises and that such bid amount shall be the preferred alternative means of determining and establishing the fair market value of the Premises. Trustor hereby waives and relinquishes any right to have the fair market value of the Premises determined by a judge or jury in any action seeking a deficiency judgment or any action on the Obligation or Obligations secured hereby.

## SECTION 9. GENERAL PROVISIONS

9.1 Trustor shall defend, indemnify and hold harmless Beneficiary, any successors to Beneficiary's interest in the Trust Property, and all shareholders, directors, officers, employees and agents of all of the foregoing and their heirs, personal representatives, successors and assigns from and against all claims, costs, expenses, actions, suits, proceedings, losses, damages and liabilities of any kind whatsoever, including but not limited to all amounts paid in settlement of, and all costs and expenses (including attorneys' fees) incurred in defending or settling, any actual or threatened claim, action, suit or proceeding, directly or indirectly arising out of or relating to the Obligation, this Deed of Trust, or the Trust Property, including but not limited to (a) any violation of or claim of violation of the ADA with respect to the Trust Property; or (b) any breach of any of the warranties, representations and covenants contained herein, but excluding any claim or liability which arises as the direct result of the gross negligence or willful misconduct of Beneficiary, its agents, servants, contractors or employees or any matter first arising after Beneficiary obtains title to or possession of the Trust Property. This indemnity provision shall continue in full force and effect and shall survive the payment and performance of the Obligation, the release of record of the lien of this Deed of Trust, any foreclosure (or action in lieu of foreclosure) of this Deed of Trust, the exercise by Beneficiary of any other remedy under this Deed of Trust or any other document or instrument evidencing or securing the Obligation, and any suit, proceeding or judgment against Trustor by Beneficiary hereon.

9.2 The acceptance of this Deed of Trust by Beneficiary shall not be considered a waiver of or in any way to affect or impair any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the payment or performance of the Obligation, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of or in any way to affect or impair the security of this Deed of Trust; Beneficiary may resort, for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

9.3 Without notice or demand, and without affecting the obligations of Trustor hereunder or the personal liability of any person for payment or performance of the Obligation, or amounts required to be paid under any guaranty executed in connection with this transaction, and without affecting the lien or the priority of the lien of this Deed of Trust, Beneficiary, from time to time, may: (a) extend the time for payment of all or any part of the Obligation, accept a renewal note therefor, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the Obligation; (b) take and hold other security for the payment or performance of the Obligation and enforce, exchange, substitute,

subordinate, waive or release any such security; (c) consent to the making of any map or plat of the Trust Property; (d) join in granting any easement on or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Trust Property; (e) join in any extension or subordination agreement; or (f) release or direct Trustee to release any part of the Trust Property from this Deed of Trust. Any such action by Beneficiary, or Trustee at Beneficiary's direction, may be taken without the consent of any junior lienholder and shall not affect the priority of this Deed of Trust over any junior lien.

9.4 Trustor waives and agrees not to assert: (a) any right to require Beneficiary to proceed against any guarantor, to proceed against or exhaust any other security for the Obligation, to pursue any other remedy available to Beneficiary, or to pursue any remedy in any particular order or manner; (b) the benefits of any legal or equitable doctrine or principle of marshalling; (c) the benefits of any statute of limitations affecting the enforcement hereof; (d) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment, relating to the Obligation, except for such notices as are expressly set forth in the Note, the Deed of Trust or the other Security Documents; (e) any benefit of, and any right to participate in, any other security now or hereafter held by Beneficiary; (f) the benefit of any law providing for any appraisal before sale of any portion of the Trust Property; and (g) all rights of valuation, appraisal, stay of execution and notice of election to mature or declare due the whole of the secured indebtedness hereunder.

9.5 Upon written request of Beneficiary stating that all of the Obligation has been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or, if requested, delivery, then Trustee (and Beneficiary if necessary to clear title), upon payment of Trustee's fees, shall execute and deliver in recordable form a release, without warranty, of the Trust Property. The recitals in such release of any matters or facts shall be conclusive as to the accuracy thereof. The grantee in such release may be described as "the person or persons legally entitled thereto." Five years after issuance of such full release, Trustee may destroy the Note and this Deed of Trust (unless directed in such request to retain them), unless prior thereto Trustee has been directed to deliver them to the person or persons to whom the property was released.

9.6 Beneficiary or Trustee, or both, shall have the right to inspect the Trust Property at all reasonable times, subject to the rights of tenants under the Leases.

9.7 Time is of the essence hereof. If more than one Trustor is named herein, the word "Trustor" shall mean all and any one or more of them, severally and collectively. All liability hereunder shall be joint and several. This Deed of Trust shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Note. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

9.8 The acceptance by Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The trust created hereby is irrevocable by Trustor.

9.9 This Deed of Trust cannot be changed except by agreement, in writing, signed by Trustor and Beneficiary.

9.10 No setoff or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying or performing the Obligation.

9.11 Each term, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid term, condition or provision had not been contained herein. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the Mortgagor and Beneficiary being the Mortgagee.

9.12 This Deed of Trust, the Obligation and the agreements of any person or entity to pay or perform the Obligation shall be governed by and construed according to the laws of the State of Utah, without giving effect to conflict of laws principles.

9.13 Notices and other communications under this Deed of Trust shall be in writing and shall be given by a reputable nationwide overnight courier (e.g., Federal Express), personal delivery or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to each party at the addresses set forth in the first paragraph of this Deed of Trust, or to such other address as a party may designate in writing. Any such notice shall be deemed effective on the date on which such notice is delivered, if notice is given by personal delivery, on the next succeeding business day after deposit with an overnight courier for next day delivery, or if notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or upon the expiration of three (3) business days following the date of mailing, whichever first occurs.

9.14 As further security for the payment and performance of the Obligation, Beneficiary shall be subrogated to the lien, although released of record, of any and all encumbrances paid from the proceeds of any loan included in the Obligation.

9.15 At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Trust Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; and (d) reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as "the person or person entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof.

Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

9.16 Beneficiary may appoint a successor trustee at any time by filing for recording in the office of the County Recorder of Washington County, Utah, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

9.17 Trustor, unless prohibited by law, shall pay directly or reimburse Beneficiary for any claim, payment or obligation for any tax due or payable as a result of Beneficiary granting the loan to Trustor and evidenced by the Note secured by this Deed of Trust, including, but not limited to any intangible or other tax on the indebtedness of the Note or created upon the documents executed in connection with the loan transaction.

9.18 (a) The Note is non-recourse. Beneficiary, for itself and its representatives, successors, endorsees and assigns, agrees, by acceptance hereof, that neither Trustor nor any of its members, partners, shareholders, employees, agents, officers, directors or affiliates shall be personally liable on this Deed of Trust and that it shall not seek to enforce any liability or obligation of Trustor or any of the other foregoing parties to perform the obligations contained in this Deed of Trust by any action or proceeding wherein a money judgment shall be sought against Trustor, and that any judgment or decree shall be enforceable against Trustor only to the extent of, and Beneficiary shall look for payment hereof solely to, Trustor's interest in the Trust Property.

(b) Without limiting the generality of the preceding paragraph, no present or future officer, director, shareholder, member, partner, agent, employee or affiliate of Trustor shall have any personal liability of any kind or nature for or by reason of any matter or thing whatsoever, under of in connection with this Deed of Trust, or any amendment or amendments made at any time or times, and Beneficiary waives any and all such personal liability of the foregoing persons to the extent any such personal liability is deemed to exist at law or in equity. The limitation of liability provided in this paragraph is in addition to any limitation on liability applicable to Trustor's officers, directors, shareholders, members, partners, agents, employees or affiliates provided by law or by any other contract, agreement to instrument relating to Trustor or Beneficiary provided; however, nothing in this paragraph shall be deemed to relieve any such person of liability with respect to liabilities arising from the fraud, gross negligence or willful misconduct of such person.

(c) The foregoing limitations of Trustor's (and its members, partners, shareholders, employees, agents, officers, directors and affiliates) liability shall not apply to, and regardless of the sale or other disposition of the Trust Property, Trustor shall remain personally liable for, any loss, damage or expense, including reasonable attorney's fees, suffered by Beneficiary as a result of any one or more of the following (collectively, "Recourse Obligations"):



(i) Trustor's default under any of the covenants and obligations contained in any of the Loan Documents, relating to (A) executing, modifying and terminating leases in the Trust Property without the consent of Beneficiary, where such consent is required; (B) transfers of any of the ownership interests in Trustor, in violation of the provisions of the Loan Documents (it being understood that any or all of the ownership interest in Trustor may be transferred to Affiliates as set forth in Section 6.4 above, and such transfer or transfers shall not constitute a default under any of the Loan Documents); and (C) mechanics or similar liens relating to work performed on or material delivered to the Trust Property prior to Beneficiary exercising its remedies, but only to the extent Beneficiary has advanced funds to pay for the work.

(ii) Any waste or intentional or willful destruction of any of the Trust Property by Trustor or its agents and contractors.

(iii) Any fraud or intentional or willful misrepresentation, by any party (other than Beneficiary) executing this Deed of Trust or any other Loan Document (even if other than Trustor) or any successor or permitted assign thereof.

(iv) Any misapplication of any proceeds (A) paid under any insurance policies or (B) realized from awards from condemnation or the exercise of the power of eminent domain (or a taking in lieu thereof), in any case arising from any of the Trust Property (which misapplication shall be deemed to have occurred in the event that any such proceeds are not used in the manner provided in the Loan Documents relative to casualty and/or condemnation, as applicable).

(v) After the occurrence and during the continuance of any Event of Default, any misapplication of the gross proceeds (including without limitation rents and all other revenues) from any of the Trust Property (which misapplication shall be deemed to have occurred in the event any of such gross proceeds are not first applied to costs of operating and maintaining the Trust Property, including without limitation, payment of the Note).

(vi) The removal of any personal property, fixtures and equipment of Trustor from the Trust Property by or on behalf of the Trustor and Trustor's failure to replace same with items of the same utility and the same or greater value.

9.19 **JURY WAIVER.** THE UNDERSIGNED AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED OR DELIVERED IN CONNECTION WITH, OR OTHERWISE RELATING TO, THE OBLIGATION (TOGETHER WITH THIS DEED OF TRUST, THE "RELATED DOCUMENTS"). THIS PROVISION IS A

**MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER RELATED DOCUMENTS.**

**9.20 PARTIAL RELEASE.** Subject to the conditions and procedures set forth in this Section 9.20, Trustor may obtain one or more partial releases (each, a "Partial Release") of portions of the Trust Property (each, a "Unit") from the lien of this Deed of Trust in accordance with, and upon compliance with, each of the following:

(a) Trustor shall not be entitled to obtain a Partial Release at any time an Event of Default remains uncured.

(b) Trustor shall deliver to Beneficiary a written request for a Partial Release, which request shall include a legal description of the Unit and a copy of the duly executed purchase agreement for the sale of the Unit by Trustor.

(c) Trustor, at its expense and as a condition of requesting each Partial Release, shall furnish Beneficiary, for Beneficiary's review and approval, copies of any additional covenants or restrictions which Trustor intends to record against the Trust Property in conjunction with or as a result of the sale of the Unit (the "Additional Restrictions"); no Additional Restrictions shall be recorded without Beneficiary's prior written approval, which shall not be unreasonably withheld or delayed.

(d) Trustor shall pay to Beneficiary a release price ("Release Payment") equal to 100% of the net sales price for the sale of such Unit (i.e., the gross sales price for the sale of the subject Unit less reasonable commission paid in connection with such sale (which in no event shall exceed 6% of such gross sales price) less other standard and reasonable closing costs related to such sale).

(e) Trustor shall promptly pay all costs and expenses of Beneficiary relating to each Partial Release, including reconveyance fees, title and recording fees and reasonable legal fees and expenses.

Except as specifically set forth in this Section 9.20, Trustor shall have no right to obtain, and Beneficiary shall have no obligation to grant, any releases of portions of the Trust Property from the lien of this Deed of Trust.

IN WITNESS WHEREOF, these presents are executed as of the date indicated above.

PIVOTAL MARK II, L.L.C., an Arizona limited liability company

By: Pivotal Group X, L.L.C., an Arizona limited liability company  
Its: Managing Member

By: F. Francis Najafi, Trustee of the F. Francis Najafi Family Trust  
Its: Administrative Member

By: [Signature]  
F. Francis Najafi  
Its: Trustee  
TRUSTOR

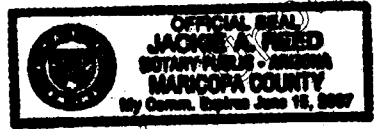
STATE OF ARIZONA  
County of MARICOPA ) ss.

On 9-26-03, before me, JACKIE A. REED, a Notary Public in and for said state, personally appeared F. Francis Najafi, as Trustee of the F. Francis Najafi Family Trust, Administrative Member of Pivotal Group X, L.L.C., an Arizona limited liability company, Managing Member of Pivotal Mark II, L.L.C., an Arizona limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

JACKIE A. REED  
Notary Public in and for said State

My commission expires:  
6-15-07



**SCHEDULE A****Legal Description**

BEGINNING at a point which lies South 88°43'01" East 654.58 feet along the section and township line from the north quarter corner of Section 4, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 00°00'00" East 110.60 feet to a point on the easterly right-of-way line of Snow Canyon Parkway, an 80.00 foot wide dedicated public roadway, said point being on the arc of 540.00 foot radius non tangent curve concave southwesterly, the radius point of which bears South 44°56'26" West; thence northwesterly 246.49 feet along the arc of said curve through a central angle of 26°09'11" to the point of curvature of a 44.72 foot radius non tangent curve concave northwesterly, the radius point of which bears North 08°39'44" West; thence northeasterly 44.59 feet along the arc of said curve through a central angle of 57°08'10" to the point of tangency; thence North 24°12'06" East 20.39 feet to the point of curvature of a 428.17 foot radius curve concave westerly; thence northerly 95.62 feet along the arc of said curve through a central angle of 12°47'45" to the point of compound curvature of a 122.61 foot radius curve concave westerly; thence northerly 13.85 feet along the arc of said curve through a central angle of 06°28'22" to the point of tangency; thence North 04°55'59" East 55.16 feet to the point on the arc of a 30.40 foot radius non tangent curve concave northwesterly, the radius point of which bears North 32°03'39" West; thence northeasterly 32.62 feet along the arc of said curve concave westerly; thence northerly 90.42 feet along the arc of said curve through a central angle of 15°10'22" to the point of tangency; thence North 18°42'35" West 12.70 feet to the point of curvature of a 1,414.00 foot radius curve concave westerly; thence northerly 67.24 feet along the arc of said curve through a central angle of 02°43'28" to the point of reverse curvature of a 402.24 foot radius curve concave easterly; thence northerly 195.86 feet along the arc of said curve through a central angle of 27°53'53" to a point on a radial line; thence along said radial line South 83°32'09" East 135.73 feet; thence North 77°28'56" East 141.13 feet; thence North 43°53'57" East 134.43 feet; thence South 88°47'01" East 294.62 feet; thence South 40°0'00" East 499.38 feet; thence South 01°13'10" West 194.35 feet; thence North 88°47'01" West 792.63 feet; thence South 00°00'00" East 151.82 feet to a point on said section and township line and the point of beginning.

CONTAINS 10.995 ACRES.