

Recorded at the request of
and when recorded return to:

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APN: 45-340-0016

ENT 14822:2022 PG 1 of 43
Andrea Allen
Utah County Recorder
2022 Feb 02 11:15 AM FEE 40.00 BY KR
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

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

DATE: February 1, 2022

BY: WPC-H 321 SOUTH VINEYARD ROAD OREM STORAGE, LLC, a Delaware limited liability company, whose address is: c/o Wentworth Property Company, LLC, 802 North 3rd Avenue, Phoenix, Arizona 85003, Attn: James R. Wentworth, as "Trustor"

TO: COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation, whose address is: 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121, as "Trustee"

FOR THE BENEFIT OF: BANKERS TRUST COMPANY, an Iowa state chartered bank, whose address is: 2525 E. Camelback Rd., Suite 100, Phoenix, AZ 85016, Attn: Justin Lutz, as "Beneficiary"

**PRINCIPAL
INDEBTEDNESS
SECURED:**

Twenty Million and No/100 Dollars (\$20,000,000.00), evidenced by that certain Promissory Note dated December 22, 2021, executed by Holding Company (as defined herein), as the Maker and payable to Beneficiary as Payee (the "Note")

**LEGAL DESCRIPTION
OF REAL PROPERTY:**

That certain real property located in Utah County ("County"), State of Utah ("State") and more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("Property")

NOTICE: THIS DEED OF TRUST SECURES A PROMISSORY NOTE THAT PROVIDES FOR A VARIABLE INTEREST RATE BASED UPON CHANGES IN THE

PRIME RATE OF INTEREST, ALL AS MORE FULLY DESCRIBED IN THE PROMISSORY NOTE.

NOTICE: THIS DEED OF TRUST SECURES A MULTIPLE ADVANCE REVOLVING LINE OF CREDIT LOAN.

RECITALS

- A. Trustor is the owner of a fee simple estate and interest in the Property.
- B. Pursuant to the terms, conditions, and provisions of that certain Revolving Line of Credit Agreement dated December 22, 2021, executed by and among Trustor's direct parent company, WPC-H Storage JV, LLC, a Delaware limited liability company ("Holding Company"), and Beneficiary (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted and/or supplemented, referred to as the "Loan Agreement"), Beneficiary has agreed to make available to Holding Company a revolving line of credit facility in the aggregate maximum principal amount of up to Twenty Million and No/100 Dollars (\$20,000,000.00) (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Loan").
- C. The purpose of the Loan is to finance or reimburse Holding Company's or Holding Company's direct subsidiary's costs for the acquisition of real property improved with self-storage facilities located in the United States of America.
- D. As a condition to Lender making the Loan, extending credit to Holding Company, and otherwise advancing the loan proceeds, Holding Company has agreed to cause Trustor, as its direct subsidiary, to execute this Deed of Trust for purposes of securing the Loan.
- E. Trustor will directly or indirectly benefit from Beneficiary's making the Loan to Holding Company.

NOW, THEREFORE, as an inducement to Beneficiary to extend credit to Holding Company and otherwise advance loan proceeds for the purposes set forth above, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Trustor does hereby agree as follows:

GRANT IN TRUST. To secure the full and timely payment of the Secured Obligations (as hereinafter defined) and the full and timely performance and discharge of the Secured Obligations, Trustor hereby GRANTS, CONVEYS, WARRANTS and TRANSFERS unto Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, the Mortgaged Property (as hereinafter defined), subject only to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee forever, and Trustor hereby grants to Beneficiary a lien in and to and security interest upon all Equipment, Personalty, Fixtures, Contracts, leases and Rents and Profits (as defined below) and other personal property comprising a portion of the Mortgaged Property, and Trustor hereby binds itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; *provided, however*, that if

Trustor or Holding Company shall pay (or cause to be paid) the Secured Obligations as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Secured Obligations on or before the date same are to be performed and discharged, then Beneficiary shall cause the liens, security interests, estates, and rights granted by the Loan Documents (as hereinafter defined) to be released, reconveyed and/or terminated, in accordance with the provisions hereof and applicable law, but otherwise the same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Beneficiary confirming that the Secured Obligations have not been fully paid or the Secured Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

TOGETHER WITH all rights, title, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to all structures and improvements now existing or hereafter erected on the Property, all easements, rights and appurtenances thereto or used in connection therewith, all rights, title, interest, and privileges now owned or hereafter acquired in and to: all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights, and public places, existing or proposed, abutting, adjacent, used in connection with, or pertaining to such real property or the improvements thereon; any strips or gores of real property between such real property and abutting or adjacent properties; all air rights, all water and water rights, sands, gravel, rocks and soil, timber and crops pertaining to such real property; and all other appurtenances, reversions, and remainders in or to such real property; all development rights or credits, all rents, royalties, issues, profits, revenues, income and other benefits thereof or arising from the use or enjoyment of all or any portion thereof (subject to the rights given below to Trustor to collect and apply such rents, royalties, issues, profits, revenues, income and other benefits), all air rights, water rights and water stock, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the related to the Property, all minerals, oil and gas, and other hydrocarbon substances in, on or under the Property; all rights held by Trustor as the declarant under any covenants, conditions and restrictions against the Property; any "Equipment" which has the meaning set forth in the UCC (defined herein) together with all of the following to the extent, if any, the same are not included within such definition: all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs, and office equipment, as well as all of such types of property that are leased and all rights and interests with respect thereto under such leases to the extent that any such lease does not prohibit or require a consent to the creation of a lien in favor of the Beneficiary (including, without limitation, options to purchase) together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located to the extent that any of the foregoing are now owned or hereafter acquired by the Trustor and to the extent that any other person now or hereafter grants or purports to grant a lien upon all or any of the foregoing as security for all or any portion of the Secured Obligations; all rights, title, and interests of Trustor, including equitable rights, in, to, and under all: (i) contracts for the purchase or sale of all or any portion of the Property, whether such contracts are now or at any time hereafter existing, including without limitation, all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be

provided by the purchasers under the contracts, including all amendments, supplements, and restatements thereof, and together with all payments, earnings, income, profits, and all other sums due or to become due arising from the sale of any portion of the Property or from the contracts, and together with any and all earnest money, security, letters of credit, or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi governmental agency, which are directly or indirectly related to the development, ownership, maintenance, or operation of the Property, whether such contracts, licenses, and permits are now or hereafter existing, including without limitation, all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no action letters from each governmental authority required (a) to evidence compliance by Trustor and all improvements constructed or to be constructed on the Property with all legal requirements applicable to the Property, and (b) to develop and/or operate the Property as contemplated by the Loan Agreement; (iii) financing arrangements relating to the financing or purchase of any portion of the Property by future purchasers; (iv) contracts for the design, construction or supplying of Improvements to the Property, including without limitation, all construction contracts and design services contracts; and (v) other contracts which in any way relate to or are for the use, enjoyment, occupancy, operation, maintenance, repair, management, or ownership of the Property (save and except the Leases), including without limitation maintenance and service contracts and management agreements (collectively, “Contracts”); all of the right, title, and interest of Trustor in and to: (i) furniture, furnishings, equipment, machinery, and goods (including, without limitation, crops, farm products, timber and timber to be cut, and as-extracted collateral); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (iii) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts, or other funds or evidences of cash, credit, or indebtedness deposited by or on behalf of Trustor with any governmental agencies, boards, corporations, providers of utility services, public or private, including, without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the land, improvements, Fixtures, Contracts, or other personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Property or the improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Property; (iv) the plans, and (v) all other personal property of any kind or character as defined in and subject to the provisions of the UCC (Article 9 Secured Transactions); any and all of which are now owned or hereafter acquired by Trustor, and which are now or hereafter situated in, on, or about the Property or the improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the land or stored elsewhere) for use in or on the Property or the improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof (collectively, “Personalty”); all fixtures, machinery, materials, supplies, equipment, building materials, systems, appliances and goods of every nature whatsoever now or hereafter located in, or on, attached or affixed to, or used or intended to be used in connection with, the Property, including, but without limitation, all heating, lighting, laundry, incinerating, gas, electric and

power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, alarm and sprinkler systems, intercom systems, plumbing, lifting, cleaning, generating, fire prevention, fire extinguishing apparatus and equipment, refrigerating, ventilating and communications apparatus, air conditioning apparatus, air cooling systems and equipment, boilers, furnaces, transportation systems (of people or things, including without limitation stairways, escalators, conveyors, elevators and related machinery and equipment), pool and pool operation and maintenance equipment, shades, awnings, blinds, curtains, drapes, attached floor coverings, including rugs and carpeting, television, radio and music cable antennae and systems, screens, storm doors and windows, stoves, refrigerators, dishwashers, disposals, ranges and other installed appliances, attached cabinets, partitions, ducts and compressors, and trees, plants and other items of landscaping, all of which, including replacements and additions (including abandonment) thereto, appurtenances, and equipment, recreational equipment and facilities of all kinds, lighting, traffic control, raw and potable water, gas, electrical, storm and sanitary sewer, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof (collectively, "Fixtures"), shall, to the fullest extent permitted by law and for the purposes of this Deed of Trust, be deemed conclusively to be real property and conveyed by this Deed of Trust, and all proceeds and products of any and all thereof, and Trustor agrees to execute and deliver, from time to time, such further instruments and documents as may be required by Beneficiary to confirm the lien of this Deed of Trust on any of the foregoing; all of the foregoing property referred to in this paragraph, together with the Property, are collectively referred to hereafter as the "Mortgaged Property". The listing of specific rights or property shall not be interpreted as a limit of general terms.

Trustor acknowledges and agrees that Beneficiary is obligated to make certain future advances, subject to the terms of the Loan Documents and so long as there is no Event of Default under the terms of the Loan Documents, and that the lien of this Deed of Trust secures repayment of all such future advances with the same priority as if there were made upon the recording of this Deed of Trust.

This Deed of Trust is given FOR PURPOSES OF SECURING, in such order of priority as Beneficiary may elect:

(a) Payment in full of the Note and any extensions, renewals, modifications, supplements, or replacements thereof, including payment of principal and interest pursuant to the terms of the Note in graduated, adjusted or graduated and adjusted payments, if the Note calls for graduation, adjustment or graduation and adjustment of payments, respectively, and including payment of interest as adjusted pursuant to the terms of the Note, if the Note calls for any adjustments in the rate at which interest accrues and including payment of amounts respecting interest added to principal, if the Note provides for the addition of accrued and unpaid interest to principal, and the performance and discharge of each and every obligation of Trustor set forth in the Note.

(b) Performance of each agreement of Trustor herein contained or incorporated herein by reference including those contained in the Loan Agreement, and other documents executed by Holding Company in connection with the Loan evidenced by the Note, other than

Holding Company's obligations under or pursuant to the Environmental Indemnity Agreement of even date herewith executed by Holding Company in favor of Beneficiary (which shall not be secured by the lien of this Deed of Trust) (collectively, the "Loan Documents"), which documents are hereby incorporated by reference.

(c) Payment and performance of all obligations under this Deed of Trust.

(d) All interest and charges on all obligations secured hereby including, without limit, late charges and loan fees.

(e) All obligations, debts and liabilities, plus interest thereon, of Trustor or Holding Company to Beneficiary, as well as all claims by Beneficiary against Trustor or Holding Company, whether now existing or hereafter arising, with respect to the loan evidenced by the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor or Holding Company may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

(f) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

The forgoing are collectively called the "Secured Obligations." Capitalized terms used herein without definition are used as defined in the Loan Agreement.

For purposes of Utah Code Annotated § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Mortgaged Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which lender may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

In addition to any other debt or obligation secured, this Deed of Trust also will secure unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or other Protective Advances or costs incurred for maintaining improvements on or for the protection of the Mortgaged Property. Each of Trustor's covenants in this Deed of Trust are intended to be in addition to, and not in lieu of, any other covenants of Trustor or Holding Company in any of the other Loan Documents, and in cases where the

provisions are inconsistent or can be interpreted differently, the interpretation most restrictive as to Trustor shall apply.

For purposes of Utah Code Annotated § 57-1-25 and Utah Code Annotated § 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

COVENANTS OF TRUSTOR

To ensure payment of the Note and all amounts due thereunder and to protect the security of this Deed of Trust, Trustor covenants and agrees as follows:

1. **Warranty of Title.** Trustor warrants that it has marketable fee simple title to the Mortgaged Property, subject only to the Permitted Exceptions. Trustor warrants that its title to the Mortgaged Property is and will remain lien free and unencumbered, except for the Permitted Exceptions. Trustor agrees to warrant and defend title to the Mortgaged Property for the benefit of Beneficiary against all claims whatsoever, except the Permitted Exceptions and those matters consented to in writing by Beneficiary. Trustor warrants that this Deed of Trust is and will remain a valid and enforceable first and senior lien on the Mortgaged Property, subject only to the Permitted Exceptions. Trustor agrees that any greater title to the Mortgaged Property that Trustor may acquire during the term of this Deed of Trust will be subject to this Deed of Trust.

2. **Performance of Obligations Secured.** Trustor shall perform fully and in a timely manner all obligations of Trustor contained in this Deed of Trust. All sums payable by Trustor hereunder shall be paid without demand, counterclaim, offset, deduction or defense, and Trustor waives all rights now or hereinafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

3. **Insurance.** Trustor shall keep the Mortgaged Property insured with an all-risk policy insuring against loss or damage by fire with extended coverage and against any other risks or hazards (to the extent insurable) and which, in the opinion of Beneficiary, should be insured against, in an amount not less than the full insurable value thereof on a replacement cost basis, with a company or companies and in such form and with such endorsements as may be approved or required by Beneficiary, including, if applicable, boiler explosion coverage and sprinkler leakage coverage. All losses under said insurance shall be payable to Beneficiary and shall be applied in the manner provided in Paragraph 3 herein. Trustor also shall carry comprehensive general public liability insurance for not less than \$1,000,000 per occurrence per location and \$2,000,000 in the aggregate (or such greater amount as may be reasonably requested by Beneficiary from time to time), in such form and with such companies as are reasonably satisfactory to Beneficiary. Trustor also shall carry insurance against flood if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder. All hazard, flood and rent loss insurance policies shall be endorsed with a standard noncontributory mortgagee clause in favor of and in form acceptable to Beneficiary, and may be canceled or modified only upon not less than ten (10) days' prior written notice to Beneficiary. All of the above-mentioned insurance policies or certificates of such insurance satisfactory to Beneficiary, together with receipts for the payment of premiums thereon, shall be delivered to and held by Beneficiary, which

delivery shall constitute assignment to Beneficiary of all return premiums to be held as additional security hereunder. Trustor shall provide certificates of renewal to Beneficiary upon receipt. Beneficiary shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Trustor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

4. **Condemnation and Insurance Proceeds.**

a. Payment of Proceeds. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary and to be applied in accordance with the provisions of Subparagraph (4b) herein. In addition, all causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the Mortgaged Property, or in connection with or affecting the Mortgaged Property or any part thereof, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are hereby assigned to Beneficiary as additional security, and the proceeds thereof shall be paid to Beneficiary. Trustor shall have the right and the obligation to assume the burden and expense of appearing, prosecuting, and/or defending any action or proceeding described in this paragraph, or adjusting any casualty loss covered by insurance, provided that any compromise or settlement thereof shall be made only with the prior consent and approval of Beneficiary, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, following an Event of Default and so long as it is continuing, Beneficiary may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Trustor, immediately upon obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of \$250,000 or knowledge of the institution of any proceedings relating to condemnation or other taking of or damage or injury to the Mortgaged Property or any portion thereof, shall immediately notify Beneficiary in writing of such occurrence. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may participate in any such proceedings and may join Trustor in adjusting any loss covered by insurance. Notwithstanding the foregoing, if no Event of Default exists, Trustor shall be entitled to settle and receive the proceeds payable in connection with any claim which is less than \$250,000.00 for use in connection with the restoration or demolition of the improvements, or to the extent such proceeds are not promptly utilized for such restoration or demolition purposes, for application against the obligations secured hereby in the order selected by Beneficiary.

b. Application of Proceeds. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Trustor may receive or to which Trustor may become entitled with respect to the Mortgaged Property in the event of any damage or injury to or a partial condemnation or other partial taking of the Mortgaged Property shall be paid over to Beneficiary and shall be applied first toward reimbursement of all costs and expenses of Beneficiary in connection with recovery of the same, and then shall be applied, as follows:

i. Beneficiary shall consent to the application of such payments to the restoration of the Mortgaged Property so damaged if and only if Trustor fulfills all of the following conditions, a breach of any one of which shall constitute an Event of Default under this Deed of Trust: (i) that no Event of Default then exists under this Deed of Trust or the Note; (ii) Beneficiary is satisfied that the insurance or award proceeds shall be sufficient to fully restore and rebuild the Mortgaged Property free and clear of all liens except the lien of this Deed of Trust, or, in the event that such proceeds are in Beneficiary's reasonable judgment insufficient to restore and rebuild the Mortgaged Property, then Trustor shall either: (a) deposit promptly with Beneficiary funds or (b) first expend its own funds, for restoration costs in an amount which, in any case, together with the insurance or award proceeds, shall be sufficient in Beneficiary's reasonable judgment to restore and rebuild the Mortgaged Property; (iii) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed substantially in accordance with plans and specifications and drawings submitted to and reasonably approved by Beneficiary, which plans and specifications and drawings shall not be substantially modified, changed or revised without Beneficiary's prior written consent, said consent not to be unreasonably withheld; and, (v) any and all monies which are made available for restoration and rebuilding hereunder shall be disbursed through Beneficiary, the Trustee or a title insurance company satisfactory to Beneficiary, in accord with standard construction lending practice, including, if requested by Beneficiary, monthly lien waivers and title insurance endorsements, or in any other manner approved by Beneficiary in Beneficiary's discretion; or,

ii. If less than all of conditions (i) through (v) in Subparagraph (b.i.) above are satisfied, then such payments shall be applied in the sole and absolute discretion of Beneficiary: (i) to the payment or prepayment including any applicable prepayment premium of any indebtedness secured hereby in such order as Beneficiary may determine; or, (ii) to the reimbursement of Trustor's expenses incurred in the rebuilding and restoration of the Mortgaged Property. In the event Beneficiary elects under this Subparagraph (b.ii.) to make any monies available to restore the Mortgaged Property, then all of conditions (i) through (v) in Subparagraph (b.i.) above shall apply, except such conditions which Beneficiary, in its sole discretion, may waive.

c. Inadequate Insurance. If any material part of the Mortgaged Property is damaged or destroyed and the loss is not adequately covered by insurance proceeds collected or in the process of collection, Trustor shall deposit, within twenty (20) days of the Beneficiary's request therefor, the amount of the loss not so covered.

d. Condemnation Award and Insurance Proceeds. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Trustor may receive or to which Trustor may become entitled with respect to the Mortgaged Property in the event of a total condemnation or other total taking of the Mortgaged Property shall be paid over to Beneficiary and shall be applied first toward reimbursement of all costs and expenses of Beneficiary in connection with recovery of the same, and then shall be applied to the payment or prepayment (with any applicable prepayment premium) of any indebtedness secured hereby in such order as Beneficiary may determine, until the indebtedness secured hereby has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the indebtedness secured hereby shall be paid to Trustor as its interest may then appear.

e. No Waiver. Any application of such amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

5. Taxes, Liens and Other Items.

a. Trustor shall pay at least ten (10) days before delinquency, all taxes, bonds, assessments, special assessments, common area charges, fees, liens, charges, fines, penalties, impositions and any and all other items which are attributable to or affect the Mortgaged Property and which may attain a priority over this Deed of Trust, by making payment prior to delinquency directly to the payee thereof, unless Trustor shall be required to make payment to Beneficiary on account of such items pursuant to Paragraph 6 herein. Trustor will not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than as otherwise permitted in the Loan Agreement, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Mortgaged Property without the prior written consent of Beneficiary, Trustor will cause the same to be promptly discharged and released. In the event of the passage after the date of this Deed of Trust of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state, federal or any other purposes, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, the holder of this Deed of Trust and of the debt which it secures shall have the right to declare the principal sum and the interest due on a date to be specified but not less than sixty (60) days written notice to be given to Trustor by Beneficiary; provided, however, that such election shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such taxes and agrees to pay any such tax when hereafter levied or assessed against the Mortgaged Property, and such agreement shall constitute a modification of this Deed of Trust.

b. Trustor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Mortgaged Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Mortgaged Property that are included in the State Construction Registry and/or received by Trustor.

c. Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a notice of preconstruction service, preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary

by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been noticed in the State Construction Registry in any form prior to the date hereof with respect to the Mortgaged Property or recorded against the Mortgaged Property.

d. If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Annotated* § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

e. Trustor shall cause, as a condition precedent to the recording of this Deed of Trust, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Mortgaged Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

f. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected, if any, or that hereafter may be erected on the Mortgaged Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Mortgaged Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

g. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Mortgaged Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of

lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. 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 such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

6. **Impound Account.** Upon the occurrence of any Event of Default under this Deed of Trust, whether or not subsequently cured, Trustor agrees to pay to Beneficiary, if Beneficiary so requests, in addition to any other payments required hereunder or under the Note, the monthly installments, as estimated by Beneficiary, of all taxes, assessments and insurance premiums (together with ground rents if the Mortgaged Property includes a leasehold estate) for the purpose of building up a fund to insure payment when due or before delinquency of any or all of the taxes, assessments and insurance premiums (and rents if applicable) required to be paid with respect to the Mortgaged Property. If the amounts paid to Beneficiary under the provisions of this Paragraph 6 are insufficient to discharge the obligations of Trustor to pay such premiums, taxes and assessments (and rents if applicable) as the same become due or delinquent, Trustor shall pay to Beneficiary, upon its demand, such additional sums as are necessary to discharge Trustor's obligations to pay such amounts. All moneys paid to Beneficiary under this Paragraph 6 may be intermingled with other moneys of or paid to Beneficiary but a separate account called "Impound Account" shall be maintained therefor. Disbursements may be made against such account for the payment by Beneficiary of the foregoing amounts, whether before or after they become due and payable. In the event of an Event of Default, then the balance remaining from moneys paid to Beneficiary under the provisions of this Paragraph 6 may, at the option of Beneficiary, be applied to the payment of principal and/ or interest upon the Note after being applied to any of the purposes for which the Impound Account was established. Beneficiary will make such reports of the Impound Account as are required by law. If Beneficiary sells or assigns this Deed of Trust, Beneficiary shall have the right to transfer all amounts deposited under this Paragraph 6 to the purchaser or assignee, and Beneficiary shall thereupon be released and have no further liability hereunder for the application of such deposits, and Trustor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

7. **Maintenance and Preservation of the Mortgaged Property.** Trustor shall: (i) keep the Mortgaged Property in good condition and repair; (ii) not remove or demolish the Mortgaged Property or any part thereof without Beneficiary's prior written consent; (iii) not alter, restore or add to the Mortgaged Property without Beneficiary's prior written consent (except in connection with Capital Repairs made in accordance with the Loan Agreement); (iv) complete or restore promptly and in good and workmanlike manner the Mortgaged Property pursuant to Paragraph 4(b) or any part thereof which may be damaged or destroyed; (v) not suffer violation in any material respect of any, and shall comply in all material respects with all: (a) laws, ordinances, regulations and standards; (b) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character; and, (c) requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Mortgaged Property and pertain to acts committed or conditions existing therein, including (but without limit) such work or alteration, improvement or demolition as laws, covenants or requirements mandate; (vi) not alter the occupancy or use of all

or any part of the Mortgaged Property without the prior written consent of Beneficiary; (vii) as required by Beneficiary, perform in all material respects the lessor's covenants under the leases affecting the Mortgaged Property in which Trustor holds the lessor's interest, and not to cause or permit a modification or termination of any lease that would materially impair the value of the leases to the lessor, or the interest of the lessor or Beneficiary in the leases; (viii) not commit or permit waste of the Mortgaged Property; (ix) do all other acts which from the character or use of the Mortgaged Property may be reasonably necessary to maintain and preserve its value; (x) make no further assignment of rents of the Mortgaged Property without Beneficiary's prior written consent; and, (xi) execute and, where appropriate, acknowledge all further documents, instruments and other papers as Beneficiary or Trustee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the security of this Deed of Trust and perform Trustor's obligations, including, without limit, statements of the amount secured hereby then owing and statements of no offset.

8. Construction of Improvements. Subject to the terms and conditions of the Loan Agreement, if Trustor shall commence any alteration or construction of improvements on the Mortgaged Property, Trustor agrees, anything in this Deed of Trust to the contrary notwithstanding: (i) to complete same in substantial accordance with the plans and specifications approved by Beneficiary; (ii) subject to reasonable prior notice as required under the Loan Agreement, to allow Beneficiary to inspect the Mortgaged Property at all times during construction; (iii) to replace any work or materials reasonably deemed unsatisfactory to Beneficiary within thirty (30) days after written notice from Beneficiary of such fact; (iv) subject to the provisions of the Loan Agreement, to immediately discharge or bond over any mechanic or materialman's lien; and (v) subject to the provisions of the Loan Agreement that work shall be diligently prosecuted (except for acts of God or force majeure). Trustor shall comply in all material respects with all laws affecting the Mortgaged Property and pertaining to any alterations or improvements to be made thereon.

9. Protection of Beneficiary's Security. If Trustor fails in any material respect to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Mortgaged Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary at its option, upon prior notice to Trustor, may make such appearances, disburse such sums and take such action as is necessary to protect Beneficiary's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Mortgaged Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Paragraph 9, or any other provision of this Deed of Trust, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the Default Rate set forth in the Note, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Trustor recognizes that its failure to pay such sums when due will require Beneficiary to incur additional expense in servicing the loan secured hereby, in loss to the Beneficiary in meeting its other financial commitments, and that damages caused thereby would be extremely difficult and impractical to ascertain. Trustor agrees

that the accrual of interest at the Default Rate on such sums is a reasonable estimate of the damage to Beneficiary in the event of Trustor's failure to pay such sums. Nothing contained in this Paragraph 9 shall require Beneficiary to incur any expense or take any action hereunder. Likewise, in the event that Trustee shall expend any amounts pursuant to any provision of this Deed of Trust, such amounts with interest shall be repaid and become additional indebtedness secured by this Deed of Trust, all in accordance with the foregoing.

10. **Protective Advances.** Trustor will pay to Trustee and Beneficiary, respectively, promptly and upon written demand, all sums of money that Beneficiary or Trustee may have advanced or paid pursuant to, or resulting from, any of the provisions of this Deed of Trust. All of these amounts (i.e., Protective Advances) must be paid with interest from the time of the advance or payment until paid at the applicable rate established in the Note. All protective advances are secured by (and are intended to be secured by) this Deed of Trust, shall be considered obligatory and not optional advances, and are accorded lien priority protection as of the date of recordation of the Deed of Trust.

11. **Use of Mortgaged Property.** Except as may be otherwise provided in the Loan Agreement of even date herewith or unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow material changes in the use for which the Mortgaged Property was intended at the time this Deed of Trust was executed, nor initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Beneficiary's written consent.

12. **Assignment of Rents, Issues and Profits.**

a. **Present Assignment.** Trustor hereby collaterally assigns to Beneficiary, and grants a security interest to Beneficiary in and to, all existing leases or other occupancy agreements pertaining to the Mortgaged Property now existing or hereafter entered into, and all of the rents (including all "Rents" as defined in the Utah Uniform Assignment of Rents Act, Utah Code Annotated, § 57-26-101 et seq. (the "Utah Rents Act"), royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property existing from the use or enjoyment of all or any portion thereof or from any lease or agreement pertaining to occupancy of any portion of the Mortgaged Property now existing or hereafter entered into (the "Rents and Profits"), whether now due, past due, or to become due, and including all prepaid rents and security deposits, to secure the Secured Obligations. To enforce Beneficiary's rights under this Deed of Trust, Trustor also assigns to Beneficiary all rights to exercise any landlord liens under Utah law and any other remedial rights to which a landlord may be entitled under Utah law. Nevertheless, subject to the terms of this Paragraph 12, Beneficiary grants to Trustor a the right to (i) collect, receive, use and enjoy the Rents and Profits, and Trustor shall hold such Rents and Profits received pursuant to any lease, or a portion thereof sufficient to discharge all current sums due on any indebtedness secured hereby, in trust for the benefit of Lender for use in the payment of such sums, and (ii) enforce the terms of the leases. During the existence of an Event of Default, the right granted to Trustor in this Paragraph 12 shall automatically be revoked, and Beneficiary or Beneficiary's agent, or a receiver (pursuant to the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated § 78B-21-101 et seq. (the "Utah Receivership Act") or otherwise) may, in Beneficiary's sole and absolute discretion at any time, without notice to Trustor except as required by law,

enforce the assignment of Rents and Profits contained in this Paragraph 12. It is understood and agreed that the foregoing assignment of Rents and Profits to Beneficiary shall not be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Beneficiary, in person or by agent, enters into actual possession of the Mortgaged Property. Likewise, appointment of a receiver for the Mortgaged Property or any part thereof shall not be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise responsible or liable in any manner with respect to the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and the expiration of any applicable cure period, and while such Event of Default continues, this shall constitute a direction to and full authority to each lessee under any lease to pay all Rents and Profits to Beneficiary without proof of the default. Trustor hereby irrevocably authorizes each lessee to rely on and comply with any written notice or demand by Beneficiary for the payment to Beneficiary of any Rents and Profits due or to become due. Beneficiary may, in its sole and absolute discretion, seek the appointment of a receiver solely to collect the Rents and Profits from the Mortgaged Property, or may seek the appointment of a receiver to operate the Mortgaged Property and collect the Rents and Profits. Trustor hereby stipulates to the court appointing a receiver its consent to such appointment, if at the time of Beneficiary’s request an Event of Default has occurred hereunder or any of the other Loan Documents. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents and Profits, the doing of other acts herein authorized and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. This Paragraph 12 is subject to the Utah Rents Act and in the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Utah Rents Act, the provisions of the Utah Rents Act shall control and Beneficiary shall have all rights and remedies available under the Utah Rents Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

b. Application of Rents and Profits. Trustor shall apply the Rents and Profits to the payment of all necessary and reasonable operating costs and expenses of the Mortgaged Property, and debt service on the indebtedness secured hereby, before using the Rents and Profits for Trustor’s personal use or any other purpose not for the direct benefit of the Mortgaged Property. Neither this assignment nor the receipt of Rents and Profits by Beneficiary (except to the extent, if any, that Beneficiary actually receives and applies such Rents and Profits to the indebtedness secured hereby) shall effect a pro tanto payment of the indebtedness secured hereby. Rents and Profits actually received by Beneficiary shall be applied by Beneficiary as provided in this Paragraph 12. Beneficiary shall not be deemed to have received Rents and Profits or to have applied Rents and Profits to the indebtedness secured hereby until the money is actually received by Beneficiary at its principal office in Phoenix, Arizona, or at such other place as Beneficiary shall designate in writing. Beneficiary shall not apply Rents and Profits to the indebtedness secured hereby after foreclosure or any other transfer of all or any part of the Mortgaged Property to Beneficiary or any third party.

c. Performance by Trustor and Assignment of Leases. Trustor shall at all times perform in all material respects the obligations of lessor under all such leases. Trustor shall at any time or from time to time, upon request of Beneficiary, transfer and assign to Beneficiary in such form as may be reasonably satisfactory to Beneficiary, Trustor’s interest in any lease,

subject to and upon the condition that except upon any Event of Default and during the period that such Event of Default continues, Trustor shall have the right to collect and receive all Rents and Profits under such lease upon accrual, but not prior thereto, as set forth in Subparagraph (a) above. Whenever requested by Beneficiary (but not more frequently than twice per annum), Trustor shall furnish to Beneficiary, as to all tenancies of a term in excess of thirty (30) days: (i) a certificate of Trustor setting forth the names of all lessees under any leases, the terms of their respective leases, the space occupied, the rents payable thereunder, and the dates through which any and all rents have been paid; and, (ii) (upon a best efforts basis) duly executed estoppel certificates from any one or more leases as required by Beneficiary attesting to such facts as Beneficiary may reasonably require. Trustor shall not collect rents for more than one payment period in advance from any tenant without the written consent of Beneficiary.

d. Intentionally Omitted.

e. Direct Creditor. Beneficiary shall be deemed to be the creditor of each lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of Beneficiary, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein). Beneficiary, at its sole cost and expense, shall have the right to assign Trustor's right, title and interest in any leases to any subsequent holder of this Deed of Trust or any participating interest therein or to any person acquiring title to all or any part of the Mortgaged Property through foreclosure or otherwise. Any subsequent assignee shall have the rights and powers herein provided to Beneficiary. Upon an Event of Default and the expiration of any applicable cure period, and while such Event of Default continues, Beneficiary shall have the authority, as Trustor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Trustor and to bind Trustor on all papers and documents relating to the operation, leasing and maintenance of the Mortgaged Property.

f. Reliance Upon Lease Rent Notice. Upon the occurrence of an Event of Default and receipt from Beneficiary of a written notice (a "Lease Rent Notice"), each lessee is authorized and directed to pay directly to Beneficiary all Rents and Profits thereafter accruing, and the receipt of Rents and Profits by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents and Profits directly to Beneficiary and each such lessee shall be entitled to rely on the Lease Rent Notice and shall have no liability to Trustor for any Rents and Profits actually paid to Beneficiary after receipt of the Lease Rent Notice. Rents and Profits so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all operating expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rents and Profits as they becomes due and payable; and (c) the Secured Obligations. The Secured Obligations will not be reduced under this Paragraph except to the extent, if any, that Beneficiary actually receives and applies any Rents and Profits to the Secured Obligations in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Trustor any Rents and

Profits so received by Beneficiary. The Lease Rent Notice is intended solely for the benefit of the lessees and shall never inure to the benefit of Trustor or any person claiming through or under Trustor, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents and Profits.

13. Security Agreement.

a. Security Interest. This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of the UCC, and (c) until released, shall constitute a first and prior security interest under the UCC as to property within the scope thereof. To this end, Trustor GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS, and SETS OVER, unto Beneficiary, a first and prior security interest in all of Trustor's right, title, and interest in, to, under, and with respect to the Equipment, Personalty, Fixtures, Contracts, leases and Rents and Profits to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Trustor, Beneficiary, and Trustee that this Deed of Trust encumber all leases and that all items for leases that are governed by the UCC be covered by the security interest granted in this Paragraph; and all items in leases that are not governed by the UCC be covered by the paragraphs preceding Paragraph 1. Trustor shall cooperate with Beneficiary in obtaining control with respect to portions of the Personalty that are deposit accounts.

b. Financing Statements. Trustor shall deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest. Trustor irrevocably authorizes Beneficiary at any time and from time to time to file, without the signature of Trustor, in any jurisdiction, any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Mortgaged Property (i) as "all assets of Trustor and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Property falls within the scope of Article/Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by subchapter E of Article/Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Beneficiary in its discretion. Trustor waives any right under the UCC or any other applicable law to receive notice and/or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and releases and excuses Beneficiary from any obligation under the UCC or any other applicable law to provide notice or a copy of any such filed or recorded documents.

c. No Changes. Trustor shall not change its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without

the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Beneficiary's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements, and other instruments that may be reasonably necessary to effectively evidence or perfect Beneficiary's security interest in the Property as a result of such changes.

14. **Fixture Filing.** This Deed of Trust shall constitute a "fixture filing" under the UCC. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. All or part of the Property may be or become fixtures; information concerning the security interest herein granted may be obtained from the debtor (Trustor) at the address set forth in the first paragraph of this Deed of Trust and from the secured party (Beneficiary) at the address set forth on the first page of this Deed of Trust.

15. **Transfer Restrictions and Acceleration.** Subject to the provisions set forth herein or in the Loan Agreement, including without limitation the partial release provisions, if any, contained herein, or in connection with a Permitted Transfer, Trustor shall not sell, convey, transfer, encumber, pledge, assign or lease (except for the leases in effect as of the date of this Deed of Trust or otherwise as permitted pursuant to the Loan Agreement), whether directly or indirectly, the Mortgaged Property, or any interest therein, or agree or contract to do so, or suffer Trustor's title or any interest therein to be divested, whether voluntarily or involuntarily, or change, or permit to be changed, the character or the use of the Property, or drill or extract oil, gas or other hydrocarbon substances or any mineral of any kind or character on the Property, or if Trustor is a partnership and the interest of a general partner is assigned or transferred or, if Trustor is a corporation or limited liability company and more than twenty percent (20%) of the corporate stock or member interests thereof is sold, transferred or assigned, or cause a change in Control of Borrower (collectively, hereinafter "Sale" or "Transfer" and each a "Sale" or "Transfer" as the context requires), without the prior written consent of Beneficiary being first obtained (which consent may be withheld in Beneficiary's sole and absolute discretion), failing which Beneficiary shall have the right, at its option, subject to applicable law, to accelerate and declare the entire principal balance and all accrued and unpaid interest on the Note, and all other sums secured hereby, immediately due and payable. The provisions of this Paragraph 15 shall be fully applicable to any involuntary Sale and Sale by operation of law as well as any voluntary Sale by Trustor, but an agreement to sell subject to the consent of Beneficiary shall not be deemed to be a Sale.

The foregoing right of acceleration is in addition to all other rights of acceleration which Beneficiary may have under this Deed of Trust or the Note. The foregoing shall not apply to the release of the Property under any provision in this Deed of Trust; furniture and fixtures, breakables and supplies, sold or exchanged in the ordinary course of business, provided that items of comparable value and quality are substituted as replacements. Except in connection with a Permitted Transfer or as otherwise permitted herein, upon the assignment, transfer or conveyance of the Property with Beneficiary's consent, Trustor shall pay to Beneficiary a fee in an amount equal to one percent of the unpaid principal balance of the loan ("Transfer Fee") at the time of the said assignment, transfer or conveyance. No Transfer Fee shall be due in connection with the granting of a consensual lien to a junior and subordinate Beneficiary on such terms as Beneficiary may approve, if at all, in its sole discretion.

16. Financial Statements; Offset Certificates.

a. Books and Records. Trustor shall keep accurate books and records in connection with the Mortgaged Property, as required by the Loan Agreement.

b. Offset Certificates. Trustor, within ten (10) days following written request, shall furnish a written statement duly acknowledged of all amounts due on any indebtedness secured hereby, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the indebtedness secured by this Deed of Trust and covering such other matters with respect to any such indebtedness as Beneficiary may reasonably require. If Trustor fails to furnish such a statement, Beneficiary may prepare and furnish such a statement which shall be deemed true and correct and may be relied on by third parties as such (Beneficiary shall promptly provide Trustor with a copy or any such statement).

17. Trustee's Costs and Expenses; Governmental Charges. Trustor shall pay all costs, fees and expenses of Trustee, its agents and counsel in connection with the performance of its duties under this Deed of Trust, including without limitation the cost of any trustee's sale guaranty or other title insurance coverage ordered in connection with any sale or foreclosure proceedings hereunder, and shall pay all taxes (except federal and state income taxes) or other governmental charges or impositions imposed by any governmental authority on Trustee or Beneficiary by reason of its interest in the Note or this Deed of Trust.

18. Notify Beneficiary of Default. Trustor shall notify Beneficiary in writing within five (5) days of the occurrence of any Event of Default or other event which, upon the giving of notice or the passage of time or both, would constitute an Event of Default.

EVENTS OF DEFAULT

19. Events of Default. The occurrence of any one of the following shall be a default under this Deed of Trust ("Event of Default")

a. The existence or occurrence of Event of Default as defined in the Loan Agreement, or the occurrence of an Event of Default under any other Loan Document, shall constitute an "Event of Default" under this Deed of Trust.

b. Any covenant, agreement or condition of this Deed of Trust is not fully and timely performed, observed or kept, and such failure is not cured within the applicable notice and cure period provided for in the Loan Agreement.

c. A default or event of default occurs under any other lien, security interest or assignment covering the Mortgaged Property or any part thereof (taking into account any applicable notice and cure period thereunder and under the Loan Agreement, and whether or not Beneficiary has consented, and without hereby implying any consent by Beneficiary, to any such lien, security interest or assignment not created hereunder), or the holder of any such other lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for

the enforcement of its remedies thereunder (taking into account any applicable notice and cure period thereunder and under the Loan Agreement).

d. The owner of the Mortgaged Property abandons any of the Mortgaged Property and such failure is not cured within the applicable notice and cure period provided for in the Loan Agreement.

e. Upon the filing or threat of filing by Trustor of a petition under Title 11 of the United States Bankruptcy Code or any other national or state bankruptcy statute, that may now be in effect or that in the future may be amended or enacted.

REMEDIES

20. **Beneficiary's Remedies Upon Default.** During the existence of an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself, or otherwise, pursue any and all rights and remedies at law or at equity, including, without limitation, those described in this Deed of Trust and those established under Utah Code Annotated Section 57, Part 1. and other provisions of Utah law (including the Utah Rules of Civil Procedure), including:

a. **Right to Perform Trustor's Covenants.** If Trustor has failed to keep or perform any covenant contained in the Loan Documents, Beneficiary may, but shall have no obligation to, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall constitute part of the Indebtedness, and Trustor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest at the Default Rate from the date when paid or incurred by Beneficiary. No performance or payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Beneficiary makes any payment or advance.

b. **Right of Entry.**

i. Beneficiary may, before or after the institution of any foreclosure proceedings, enter upon the Property and take exclusive possession of the Mortgaged Property and all related books, records, and accounts and may exercise, without interference from Trustor, all rights of Trustor regarding the management, possession, operation, protection, or preservation of the Mortgaged Property, including, without limitation, the rights to lease the same for the account of Trustor and to apply the Rents and Profits as set forth in this Deed of Trust. All costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and Profits and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents and Profits as set forth herein, shall be added to the Indebtedness and shall bear interest at the Default Rate from the date of expenditure until paid. To the extent permitted by applicable Utah law, if necessary to obtain the possession provided for above, Beneficiary may invoke all legal remedies to dispossess Trustor, including, without limitation, one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary

pursuant to this subparagraph, (i) Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to lease the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property, **REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF BENEFICIARY**, and (ii) Beneficiary shall not be obligated to perform or discharge any obligation, duty, or liability under any lease, any lease guaranty or this Deed of Trust, or to exercise any rights or remedies hereunder. **TRUSTOR SHALL INDEMNIFY BENEFICIARY FOR, AND DEFEND AND HOLD BENEFICIARY AND TRUSTEE HARMLESS FROM, ALL LIABILITY, LOSS, OR DAMAGE, THAT BENEFICIARY OR TRUSTEE MAY INCUR UNDER ANY SUCH LEASE FROM THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ALL CLAIMS AND DEMANDS THAT MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE OR ANY LEASE GUARANTY EVEN IF RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE OR ARISING IN STRICT LIABILITY, PROVIDED, HOWEVER, THAT SUCH INDEMNITY SHALL NOT APPLY TO ANY LIABILITY, EXPENSE, LOSS, DAMAGE, CLAIMS OR DEMANDS RESULTING SOLELY FROM BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, all costs, expenses, and reasonable attorneys' fees, together with interest at the Default Rate from the date of expenditure until paid, shall be added to the Secured Obligations, and Trustor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subparagraph shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the performance of any of the terms and conditions of any such lease or lease guaranty; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any Hazardous Material (as defined in the Environmental Indemnity Agreement) in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property **OR FOR ANY NEGLIGENCE OR STRICT LIABILITY IN THE MANAGEMENT, LEASING, UPKEEP, REPAIR, OR CONTROL OF THE MORTGAGED PROPERTY RESULTING IN LOSS, INJURY, OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE, OR STRANGER.**

ii. The remedies in this subparagraph are in addition to other remedies available to Beneficiary, including any and all remedies in the other Loan Documents, and the exercise of the remedies in this subparagraph shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to Beneficiary. The remedies in this Paragraph are available under and governed by the real property laws of Utah and are not governed by the personal property laws of Utah, including, without limitation, the power to dispose of personal property in a commercially reasonable manner under the UCC. No action by Beneficiary, taken pursuant to this subparagraph, shall be deemed to be an election to retain personal property under the UCC. Any receipt of consideration received by Beneficiary pursuant to this subparagraph shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

c. Right to Accelerate. Beneficiary may declare the entire unpaid balance of the Secured Obligations immediately due and payable, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Trustor and all other parties obligated in any manner on the Secured Obligations. Upon such declaration, the entire unpaid balance of the Secured Obligations shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law, or in equity. Notwithstanding the foregoing, in the case of an Event of Default, and notwithstanding the lack of any notice, demand or declaration by Beneficiary, the entire Secured Obligations remaining unpaid and outstanding shall automatically become due and payable in full, and any commitment by Beneficiary to make any further advances under the Loan Agreement shall be automatically and immediately terminated without any requirement of notice or demand by Beneficiary upon Trustor or any other person, all of which are expressly waived by Trustor.

d. Foreclosure-Power of Sale. Beneficiary may request Trustee to proceed with foreclosure under the power of sale as set forth below:

i. Public Sale / Power of Sale.

(a) Upon request of Beneficiary, Trustee is authorized and empowered, to invoke the power of sale by recording and otherwise giving all written notices required by law to Trustee of an event of default and Beneficiary's election to cause the Mortgaged Property to be sold. Trustee shall record a Notice of Default and Election to Sell with the Office of the County Recorder of Utah County, Utah. Beneficiary shall deposit with Trustee this Deed of Trust and such additional instruments and documents as Trustee may require under applicable law. Trustee shall publish and post a notice for sale for the time and in the manner provided by applicable law and shall mail copies of the notice of sale in the manner prescribed by applicable law to Trustor and to other persons prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Trustor, shall sell the Mortgaged Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone the sale of any parcel of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27.

(b) Any person, including Trustor or Beneficiary, or its designee, may purchase the Mortgaged Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(c) Upon any sale made under or by virtue of this subsection, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Mortgaged Property, whether by payment of cash or by credit bid in accordance with Utah Code Ann. § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Mortgaged Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

(d) For purposes of Utah Code Ann. § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Mortgaged Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust.

(e) Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Mortgaged Property as determined and set forth in an FIRREA appraisal of the Mortgaged Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Mortgaged Property for purposes of Utah Code Ann. § 57-1-32.

(f) If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Mortgaged Property, reinstates this Deed of Trust with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31-(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

(g) In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(h) Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, trustee's fees and attorneys' fees actually

incurred not to exceed the amount which may be provided for in the Deed of Trust; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the persons or persons legally entitled to it, or Trustee, in Trustee's discretion, may deposit any excess with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law.

ii. Trustee's Deeds. After any sale under this Paragraph, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser(s) thereunder in the name of Trustor, conveying the Mortgaged Property or any part thereof so sold to the purchaser(s) with general warranty of title by Trustor. In any deeds, assignments, or other conveyances given by Trustee, all statements of fact or other recitals therein made regarding the identity of Beneficiary, the existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of default and election to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and any other action by or on behalf of Beneficiary or Trustee shall be taken by all courts of law and equity as *prima facie* evidence that such statements or recitals are true, correct, and complete and are to be accepted without further question, and Trustor does hereby ratify and confirm all acts that Trustee may lawfully do in the premises by virtue hereof.

e. Beneficiary's Judicial Remedies. Beneficiary, or Trustee, upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Secured Obligations and the performance and discharge of the Obligations pursuant to the Loan Documents, to foreclose the liens and security interests of this Deed of Trust as a mortgage in accordance with Beneficiary's right under Utah Code Ann. § 57-1-23, or other applicable law, against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Beneficiary.

f. Beneficiary's Right to Appointment of Receiver. Pursuant to the Utah Receivership Act and other applicable law, Beneficiary as a matter of right and without (a) notice to the Trustor or any other party, (b) a showing of insolvency of the Trustor, (c) a showing of fraud or mismanagement with respect to the Loan or the Mortgaged Property, (d) regard to the sufficiency of the security for the repayment of the Secured Obligations, or (e) the necessity of filing any proceeding other than a proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers for the Mortgaged Property or any part thereof (including without limitation the Rents and Profits of the Mortgaged Property). Trustor, for itself and any subsequent owner or owners, irrevocably consents to such appointment and waives any and all defenses to such application for a receiver. This paragraph will not deprive Beneficiary of any other right, remedy or privilege it may have under applicable law to have a receiver appointed for the Mortgaged Property. Additionally, during the pendency of a receivership for all or a portion of the Mortgaged Property, Trustor consents to any proceeding commenced by Beneficiary which seeks to enforce another right or remedy of Beneficiary under the Loan Documents or applicable law, including without limitation, the commencement of a foreclosure of the Mortgaged Property. Any money advanced by Beneficiary in connection with any such receivership will constitute a

demand obligation owing by Trustor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Secured Obligations. This paragraph is made an express condition upon which the Loan is made. Without limitation of the foregoing, Beneficiary will have all rights to seek and appoint a receiver described in the Utah Receivership Act.

g. Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the Utah Uniform Commercial Code (the "UCC"), and in conjunction with, in addition to, or in substitution for the rights and remedies under the UCC:

i. Beneficiary may, without demand or notice to Trustor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;

ii. Beneficiary may require Trustor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty;

iii. reasonable written notice shall be delivered to Trustor as provided herein at least 10 days before (A) the date of public sale of the Personalty or (B) the date after which a private sale of the Personalty will be made;

iv. any sale of Personalty made pursuant to this Paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty or Fixtures hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal Mortgaged Property under the UCC;

v. if a foreclosure sale occurs, whether made by Trustee under the power of sale, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Beneficiary, be sold as a whole;

vi. it shall not be necessary that Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subparagraph is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale;

vii. after notice to Trustor, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Trustor shall be liable for all expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Paragraph 22. Trustor shall remain

liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Trustor waives all rights of marshalling in respect of the Personalty;

viii. all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder regarding the nonpayment of the Indebtedness, the existence of any Event of Default, Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other action by Beneficiary, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited;

ix. Beneficiary may dispose of the Personalty or Fixtures “as-is”, has no duty to repair or clean the Personalty or Fixtures before sale, and may disclaim warranties of title, possession, quiet enjoyment, and the like with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale;

x. Beneficiary may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including sending notices and conducting the sale, but in the name and on behalf of Beneficiary; and

xi. Beneficiary shall have the right to enforce Trustor’s rights against account debtors and obligors.

In addition, it is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the UCC, Beneficiary, upon an Event of Default, may proceed under the UCC 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 of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

h. Rights Relating to Rents and Profits. Trustor has, pursuant to this Deed of Trust and the Utah Rents Act, assigned to Beneficiary, and granted a security interest to Beneficiary in and to, all existing and future Rents and Profits under each of the Leases covering all or any portion of the Mortgaged Property to secure the Indebtedness and Obligations. Trustor hereby agrees that Beneficiary shall have the right (in its sole discretion), upon the occurrence and during the continued existence of an Event of Default, to enforce the assignment of Rents and Profits in accordance with the Utah Rents Act and applicable law. Upon the occurrence of an Event of Default, the Trustor’s right to collect Rents and Profits shall automatically terminate without any further action by Beneficiary and Beneficiary may (in its sole discretion), direct the Lessees by written notice (the “Lease Rent Notice”) to pay directly to Beneficiary the Rents and Profits due and to become due under the Leases and attorn in respect of all other obligations thereunder directly to Beneficiary, or Trustee on Beneficiary’s behalf, without any obligation on the part of Lessee to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents and Profits collected by Beneficiary, or Trustee acting on Beneficiary’s behalf, shall be applied as provided for in Paragraph 12, *provided, however*, that if the costs, expenses, and attorneys’ fees shall exceed the amount of Rents and Profits collected, the excess shall be added

to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents and Profits by or on behalf of Beneficiary, and the application thereof as set forth above shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Beneficiary, at any time or from time to time, to collect said Rents and Profits shall not in any manner impair the subsequent enforcement by Beneficiary of the right, power, and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary shall be, or shall be construed to be, an affirmation by Beneficiary of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to leases or Rents and Profits, with respect to the Mortgaged Property or any collateral given by Trustor to Beneficiary. In addition, from time to time, Beneficiary may elect, and notice hereby is given to each lessee of such right, to subordinate the lien of this Deed of Trust to any lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; *provided, however*, in each instance, such subordination will not affect or be applicable to (and will expressly exclude) any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests, or estates of any nature regarding all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the lease identified in such instrument of subordination.

i. Other Rights. Beneficiary (i) may surrender the insurance policies, or any part thereof, maintained pursuant to the Loan Agreement, and upon receipt shall apply the unearned premiums as a credit on the Secured Obligations, in accordance with the provisions of Paragraph 23, and, in connection therewith, Trustor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Trustor to collect such premiums; (ii) may apply the reserve for impositions and insurance premiums, if any, required under the Loan Agreement, toward payment of the Secured Obligations; and (iii) shall have and may exercise all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the UCC, or otherwise. In lieu of the power of sale, this Deed of Trust, at the option of Beneficiary, may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property.

j. Beneficiary as Purchaser. Beneficiary may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under Trustee's power of sale, upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the purchased Mortgaged Property, free of the liens and security interests hereof, unless the sale was made subject to an unmaturing portion of the Indebtedness. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied to the Secured Obligations pursuant to Paragraph 23. Beneficiary shall have the right to become the purchaser at any sale held by any trustee or substitute or successor or by any receiver or public officer, and if Beneficiary purchases at any such sale Beneficiary shall have the right to credit upon the amount of bid made therefor, to the extent necessary to satisfy such bid, the Secured Obligations owing to Beneficiary.

21. **Other Rights of Beneficiary.** Should any part of the Mortgaged Property come into the possession of Beneficiary, Beneficiary may (for itself or by or through other persons), after the occurrence and during the continuation of an Event of Default, hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making any repairs, alterations, additions, and improvements thereto and taking any other action that Beneficiary may from time to time deem necessary) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of competent jurisdiction, or pursuant to any other rights held by Beneficiary regarding the Mortgaged Property. Trustor covenants to promptly reimburse and pay to Beneficiary on demand, at the place where the Note is payable, the amount of all reasonable out-of-pocket expenses (including without limitation the cost of any insurance, impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Mortgaged Property, together with interest at the Default Rate from the date incurred by Beneficiary; and all such expenses, costs, taxes, interest, and other charges shall constitute a part of the Secured Obligations. The risk of loss or damage to the Mortgaged Property, however, is on Trustor, and Beneficiary shall have no liability for a decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether the insurance in force is adequate in amount or for the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, regarding any Mortgaged Property or collateral not in Beneficiary's possession.

22. **Possession After Foreclosure.** If the liens or security interests in this Deed of Trust are foreclosed by Trustee's power of sale, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the purchased property, and if Trustor or Trustor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Trustor and Trustor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

23. **Application of Proceeds.** After deducting all costs, fees, and expenses of Trustee, including costs to insure or obtain evidence of title in connection with the sale, or permitted under Utah Code Annotated, Title 57, Part 1, Trustee will apply the proceeds of any non-judicial foreclosure sale to payment in accordance with Section 20(d)(i)(h) above. Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any non-judicial foreclosure sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

24. **Abandonment of Sale; Dismissal of Suit; Reinstatement.** If Trustee commences a foreclosure sale pursuant to Paragraph 20(d), then Trustee may, at any time before completion of the sale, abandon such sale and Beneficiary may then institute a suit for the collection of the Secured Obligations and for the foreclosure of the liens and security interests in the Loan Documents. Alternatively, if Beneficiary institutes a suit for the collection of the Secured Obligations and for a foreclosure of the liens and security interests, then Beneficiary may, at any

time before the entry of a final judgment, dismiss the suit and require Trustee to sell all or any part of the Mortgaged Property in accordance with the terms of this Deed of Trust. If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Mortgaged Property, reinstates this Deed of Trust with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31-(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

25. **Payment of Fees.** If the Note or any other part of the Secured Obligations is collected by, or if any of the Secured Obligations are enforced by, legal proceedings in a probate or bankruptcy court or otherwise, or is placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit in which this Deed of Trust or the Mortgaged Property or any part thereof is involved, then Trustor shall pay Beneficiary's reasonable attorneys' fees and expenses incurred, and such fees shall be added to the Secured Obligations and shall bear interest at the Default Rate from the date such costs are incurred.

26. **Miscellaneous.**

a. Discontinuance of Remedies. If Beneficiary invokes any right, remedy, or recourse permitted under the Loan Documents, then Beneficiary may discontinue or abandon same for any reason and Trustor and Beneficiary shall be restored to their former positions regarding the Secured Obligations, the Loan Documents, the Mortgaged Property, or otherwise, and the rights, remedies, recourses, and powers of Beneficiary shall continue as if they had never been invoked.

b. Other Remedies. In addition to the remedies set forth in Paragraphs 20-26, during the existence of an Event of Default, Beneficiary and Trustee shall have all other remedies available at law or in equity.

c. Remedies Cumulative; Non-Exclusive; Etc. Subject to applicable Utah law, all rights, remedies, and recourses of Beneficiary granted in the Loan Documents, any other pledge of collateral, or otherwise available at law or equity (including, without limitation, those granted by the UCC and applicable to the Mortgaged Property or any portion thereof): (i) are cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Trustor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of same shall not be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) are nonexclusive; (v) are not conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property before bringing suit to recover the Secured Obligations or suit on the Secured Obligations; and (vi) if Beneficiary elects to bring suit on the Secured Obligations and obtains a judgment against Trustor before exercising any remedies in relation to the Mortgaged Property, then all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Beneficiary's option.

d. Partial Release; Change of Security; Etc. Beneficiary may release from time to time any part of the Mortgaged Property, regardless of consideration, without impairing,

subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder of the Mortgaged Property, and without affecting the obligations of Trustor or any other party to perform and discharge the Obligations. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Secured Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted in this Deed of Trust, or affect the liability of any endorser or guarantor, or improve the right of any junior lien holder, and all collateral shall be considered taken and held as cumulative. This Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Secured Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Secured Obligations are paid in full and the Secured Obligations are fully performed and discharged. Beneficiary may resort to any collateral, in such order and manner as Beneficiary may elect, for payment of the Secured Obligations.

e. Waiver and Release by Trustor. Trustor waives the pleading of any statute of limitations as a defense to any of the Obligations to the fullest extent permissible by law. Trustor waives the benefit of all laws related to marshalling of assets, notice of election to mature, or notice of election to declare due with respect to the Loan (as defined in the Loan Agreement) and the Trust Property. Any person or entity that has signed this Deed of Trust as an accommodation party or as a surety or that has subjected its property to this Deed of Trust to secure the debt of another expressly waives the benefits of any applicable statute or rule that may act to waive or limit the rights of Beneficiary, as a creditor, to seek performance from or collect from any surety or accommodation party. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Note after a foreclosure of this Deed of Trust or in any action to recover or compel the performance of the Obligations, Trustor acknowledges and agrees that the successful bid amount made at any judicial or non-judicial foreclosure sale, if any, will be deemed conclusively to constitute a good faith estimate of the fair market value of the Trust Property, will be binding against Trustor in any proceeding seeking to determine or contest the fair market value of the Trust Property, and will be the preferred alternative means of determining and establishing the fair market value of the Trust Property.

f. No Implied Covenants. There are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

g. Real Property Laws Govern. If Beneficiary elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property, then the remedies in Paragraphs 20-26 with respect to such Fixtures and Personalty shall be available under and governed by the real property laws of Utah and not the personal property laws of Utah.

h. Other Security. If the indebtedness secured by this Deed of Trust is now or in the future further secured by chattel mortgages, security interests, mortgages, deeds of trust, pledges, contracts of guaranty, or other additional securities, Beneficiary may, at its option, exhaust its security under this Deed of Trust or any future security either concurrently or independently and in the order as it may determine. Subject to Utah Code Annotated, Section 57-1-29, Beneficiary may apply any proceeds received to the amounts secured by this Deed of Trust without affecting

the status of, or waiving any right to exhaust, all or any other security, and without waiving any breach or default or any right of power, whether contained in this Deed of Trust or in any other security. Trustor waives any right or privilege that it or its creditors might otherwise have to require Trustee and/or Beneficiary to proceed against the assets encumbered by this Deed of Trust or by any other security documents in any particular order or fashion under any legal or equitable doctrines or principles, and Trustor further agrees that upon a default, Trustee and/or Beneficiary may proceed to exercise any or all remedies with regard to any or all assets encumbered by this Deed of Trust or by any other security documents in the manner and order as Beneficiary in its sole discretion may determine.

i. Security Intended. Notwithstanding any provision of this Deed of Trust to the contrary, the parties intend that this document is security for the payment and performance of the Secured Obligations and will be a “deed of trust” as defined in Utah Code Annotated, Section 57-1-1 et seq. and shall be entitled to all benefits thereof.

27. **Waiver of Benefits of Deficiency Statute.** [Intentionally Omitted]

CONCERNING TRUSTEE

28. **No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust created in this Deed of Trust or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee’s opinion, such action would be likely to involve Trustee in expense or liability, unless requested to do so by a written instrument signed by Beneficiary unless Trustee is tendered security and indemnity satisfactory to Trustee against all cost, expense, and liability arising therefrom. Trustee is not responsible for the execution, acknowledgment, or validity of the Loan Documents, for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation regarding such matters or regarding the rights, remedies, and recourses of Beneficiary.

29. **Certain Rights.** With the approval of Beneficiary and subject to the limitations of Utah Code Annotated, Section 57-1-21.5, Trustee may take any or all of the following actions: (a) select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and Trustee shall be fully protected in relying on the advice of counsel regarding such legal matters; (b) execute any of the trusts and powers hereof and perform any duty hereunder either directly or through its agents or attorneys; (c) select and employ, regarding the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances; and (d) all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary’s rights hereunder. If Trustee, or anyone under Trustee’s powers, enters upon the Mortgaged Property, then Trustee shall not be personally liable for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee may rely on any instrument, document, or signature authorizing or supporting any action

taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for services rendered by Trustee. Trustor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

30. **Retention of Money.** Until used or applied as herein provided, all moneys received by Trustee shall be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except as required by applicable law) and Trustee has no liability for interest on any moneys received by Trustee hereunder.

31. **Successor Trustees.** Trustee may resign by giving written notice of resignation to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of Trustee, then Beneficiary has the full power to appoint any such substitute trustees that shall succeed to all the estates, rights, powers, and duties of Trustee in accordance with Utah Code Annotated, Section 57-1-22. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustee is requested or required pursuant to this Deed of Trust or applicable law.

32. **Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Trustor by Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates, rights, powers, and duties of Trustee, then, upon request by Trustee or substitute trustee, Trustor shall make, execute, acknowledge, deliver, and cause to be recorded and/or filed all such deeds, conveyances, and instruments.

33. **Succession Instruments.** Any substitute trustee appointed as Trustee pursuant to any of the provisions hereof shall, upon recordation of the substitution in accordance with Utah Code Annotated, Section 57-1-22 and without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or the substitute trustee, the trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the trustee so ceasing to act, and shall duly assign, transfer, and deliver any of the property and moneys held by such trustee to the substitute trustee so appointed in such trustee's place.

34. **No Representation by Trustee or Beneficiary.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

35. **Indemnity of Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (**INCLUDING TRUSTEE'S NEGLIGENCE OR STRICT LIABILITY**). Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder. Trustor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses (including reasonable attorneys' fees and legal expenses) which may be incurred by Trustee in the performance of Trustee's duties hereunder or on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against Trustee on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or with any Loan Document (**INCLUDING ANY LIABILITY AND EXPENSES RESULTING FROM TRUSTEE'S OWN NEGLIGENCE OR STRICT LIABILITY**), **PROVIDED, HOWEVER, THAT SUCH INDEMNITY SHALL NOT APPLY TO ANY LIABILITY, EXPENSE, LOSS, DAMAGE, CLAIMS OR DEMANDS RESULTING SOLELY FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust.

MISCELLANEOUS

36. **Severability.** In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

37. **Certain Charges.** To the fullest extent permitted by applicable law, Trustor agrees to pay Beneficiary or Trustee, within ten (10) days of Beneficiary's request, for each statement of Beneficiary or Trustee (other than for the standard periodic statement of Beneficiary) as to the obligations secured hereby, furnished at Trustor's request, the fees, costs and expenses incurred by Beneficiary or Trustee in connection with each statement. Trustor further agrees to pay, within ten (10) days of Beneficiary's request, the charges of Beneficiary or Trustee for any other service rendered Trustor, or on its behalf, connected with this Deed of Trust or the indebtedness secured

hereby, including without limitation the delivery to an escrow holder of a request for full or partial reconveyance of this Deed of Trust, transmitting to an escrow holder moneys secured hereby, changing its records pertaining to this Deed of Trust and indebtedness secured hereby to show a new owner of the Mortgaged Property, and replacing an existing policy of insurance held hereunder with another such policy.

38. **Notices.** All notices expressly provided hereunder to be given by Beneficiary to Trustor and all notices and demands of any kind or nature whatsoever which Trustor may be required or may desire to give to or serve on Beneficiary shall be in writing and shall be (i) hand-delivered, effective upon receipt, (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, (iii) served by certified mail, postage prepaid, return receipt requested, effective upon receipt or (iv) by confirmed facsimile transmission with acknowledged receipt, effective upon confirmation of receipt, and in each instance addressed to such party at the address set forth on the first page of this Deed of Trust (and with copies to each recipient listed below; it being understood and agreed that the notices sent to the recipients listed below is a courtesy only and the delivery or non-delivery to such address shall have no effect on the determination of whether a notice has been given hereunder), or to such other address(es) or addressee(s) as the party to be served with notice may have furnished in writing to the other party, effective three (3) days after mailing.

A copy of all notices sent to Trustor shall be sent to the following:

WPC-H STORAGE JV, LLC
 c/o Wentworth Property Company, LLC
 802 North 3rd Avenue
 Phoenix, Arizona 85003
 Attn: James R. Wentworth

And additional copies at the same time to:

c/o Hartford Investment Management Company
 One Hartford Plaza
 Hartford, CT 06155
 Attention: Private Real Estate Asset Management

And:

Mast Law Firm, P.C.
 2415 E. Camelback Road, Suite 455
 Phoenix, Arizona 85016
 Attn: Trevor Chait

A copy of all notices sent to Beneficiary shall be sent to the following:

Bankers Trust Company
 2525 E. Camelback Rd., Suite 100
 Phoenix, Arizona 85016

Attention: Justin Lutz

And an additional copy at the same time to:

Salmon, Lewis & Weldon P.L.C.
 2850 East Camelback Road, Suite 200
 Phoenix, AZ 85016
 Attention: Ben Thinnes

Notwithstanding the foregoing, notices in connection with posting for foreclosure delivered pursuant to Paragraph 20(d) of this Deed of Trust shall be effective when given in accordance with the requirements of applicable law.

39. **Trustor Not Released.** Extension of the time for payment or modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by the Deed of Trust by reason of any demand made by the original Trustor. Without affecting the liability of any person, including Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Mortgaged Property for the full amount of any such indebtedness and liability unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice: (i) release any person liable for the payment of any of the indebtedness; (ii) extend the time or otherwise alter the terms of payment of any of the indebtedness; (iii) accept additional real or personal property of any kind as security thereof, whether evidenced by deeds of trust, mortgages, security agreement or any other instrument of security; or, (iv) alter, substitute or release any property securing the indebtedness. Trustee may, at any time, and from time to time, upon the written request of Beneficiary: (i) consent to the making of any map or plat of the Mortgaged Property or any part thereof; (ii) join in granting any easement or creating any restriction thereon; (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof; or, (iv) reconvey, without any warranty, all or part of the Mortgaged Property.

40. **Reconveyance.** Upon the payment in full of all sums secured by this Deed of Trust, Beneficiary shall, in the form of a written request complying with Utah Code Annotated, Section 57-1-33.1, request Trustee to release the Mortgaged Property and shall surrender this Deed of Trust, the Note, any amendments thereto and all other notes evidencing indebtedness secured by this Deed of Trust to Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust and compliance with the other requirements of Utah Code Annotated, Section 57-1-33.1, Trustee shall release the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

41. **Statute of Limitations; Waiver.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the fullest

extent permitted by law. Trustor also waives, to the fullest extent permitted by applicable law, all right of redemption on behalf of all other persons acquiring an interest or title in the Mortgaged Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustee.

42. **Effect as Deed of Trust.** Trustor will, promptly on request of Beneficiary, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Deed of Trust or any other Loan Document; and (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including further deeds of trust, security agreements, and assignments of rents or leases) and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property) or as deemed reasonably advisable by Beneficiary to protect the lien or the security interest hereunder against the rights or interests of third persons. Trustor shall pay all reasonable costs connected with any of the foregoing, which shall be a demand obligation owing by Trustor (which Trustor hereby promises to pay) to Beneficiary pursuant to this Deed of Trust.

43. **Interpretation.** Wherever used in this Deed of Trust, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include Trustor and any subsequent owner or owners of the Mortgaged Property, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owners and holders, whether in whole or in part, including pledgees, of the Note secured hereby. In this Deed of Trust whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Deed of Trust, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which is has reference, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather could reasonably fall within the broadest scope of such general statement, term or matter. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret, define or limit the provisions of this Deed of Trust.

44. **Consent; Delegation to Sub-Agents.** The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Beneficiary hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Beneficiary may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

45. **Successors and Assigns.** All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Trustor and the successors in trust of Trustee and the endorsees, transferees, successors and assigns of Beneficiary. In the event there is more than one Trustor, the obligations, covenants,

agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

46. **Governing Law.** THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARIZONA (WITHOUT GIVING EFFECT TO ARIZONA'S PRINCIPLES OF CONFLICTS OF LAW), EXCEPT TO THE EXTENT (a) OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, PERFECTION, FORECLOSURE AND ENFORCEMENT OF RIGHTS AND REMEDIES AGAINST THE PROPERTY, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF UTAH, AND (b) THAT THE LAWS OF THE UNITED STATES OF AMERICA AND ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY BENEFICIARY PARTIES, OTHERWISE PREEMPT ARIZONA OR UTAH LAW; IN WHICH EVENT FEDERAL LAW SHALL CONTROL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE UNDERSIGNED WAIVES, AND, BY ACCEPTING THIS DEED OF TRUST, THE BENEFICIARY SHALL BE DEEMED TO WAIVE, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (aa) UNDER THIS DEED OF TRUST OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR (bb) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST. THE BENEFICIARY SHALL BE DEEMED TO AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

47. **Substitution of Trustee.** Beneficiary may remove Trustee at any time or from time to time and appoint a successor trustee, and upon such appointment pursuant to applicable Utah law, all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the real property covered hereby is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

48. **No Waiver.** No failure or delay by Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver, consent or approval of any kind by Beneficiary shall be effective unless contained in writing, signed and delivered by Beneficiary. No notice to or demand on Trustor in any case shall entitle Trustor to any other notice or demand in similar or other circumstances, nor shall such notice or demand constitute a waiver of the rights of Beneficiary to any other or further actions.

49. **Beneficiary Not Partner of Trustor; Trustor to Indemnify Beneficiary.** The exercise by Beneficiary of any of its rights, privileges or remedies conferred hereunder or under the Note or under applicable law, shall not be deemed to render Beneficiary a partner or a co-venturer with the Trustor or with any other person. Trustor shall indemnify Beneficiary against any claim by any third party for any injury, damage or liability of any kind arising out of any failure of Trustor to perform its obligations in this transaction, shall notify Beneficiary of any lawsuit based on such claim, and at Beneficiary's election, shall defend Beneficiary therein at Trustor's own expense by counsel satisfactory to Beneficiary or shall pay the Beneficiary's cost and attorneys' fees if Beneficiary chooses to defend itself on any such claim, excepting, in all cases, any matter arising from Beneficiary's gross negligence or willful misconduct. This paragraph shall not apply to any claim caused by the gross negligence or willful misconduct of Beneficiary.

50. **Time of Essence.** Time is of the essence of this Deed of Trust and each and all of its terms and provisions.

51. **Entire Agreement.** **THIS DEED OF TRUST, NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS DEED OF TRUST CANNOT BE CHANGED OR MODIFIED EXCEPT BY WRITTEN AGREEMENT SIGNED BY BOTH TRUSTOR AND BENEFICIARY.**

52. **Waiver of Fraudulent Inducement.** Neither Beneficiary nor any affiliate of Beneficiary has made any representation, warranty, or statement to Trustor to induce Trustor to execute this Deed of Trust. Trustor expressly waives any claim of fraudulent inducement to execute this Deed of Trust and further disclaims any reliance on statements or representations of Beneficiary in waiving such claim.

53. **Exceptions to Covenants.** Trustor shall not be permitted to take any action or to fail to take any action with regard to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Secured Obligations as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

54. **Reliance.** Trustor acknowledges (a) that Beneficiary, by entering into the loan transaction evidenced by the Loan Documents and by accepting this Deed of Trust, is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in the Loan Documents, without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Property that may have been conducted by Beneficiary; (b) that Beneficiary has relied on such warranties and representations before entering into this

Deed of Trust; (c) that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and accepting this Deed of Trust; and (d) that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

55. **No Third Party Benefits.** This Deed of Trust and the Note are made for the sole benefit of Trustor, Trustee and Beneficiary and their successors and assigns, and convey no other legal interest to any party under or by reason of any of the foregoing.

56. **No Merger.** Absent an express written declaration executed by Beneficiary, the interest granted Beneficiary herein is not intended, and shall not be construed, to constitute a consolidation or merger of any other interest or estate in the Mortgaged Property Beneficiary may now have or may acquire at any time in the future.

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

58. **Assignment.** This Deed of Trust is assignable by Beneficiary, and any assignment hereof by Beneficiary in accordance with applicable law shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Beneficiary.

59. **Covenants Running with the Land.** All Secured Obligations contained in this Deed of Trust and the other Loan Documents are intended by Trustor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Beneficiary.

60. **Waiver of Consequential, Punitive and Speculative Damages.** Neither Beneficiary nor any affiliate, officer, director, employee, attorney, or agent of Beneficiary shall have any liability with respect to any claim for any special, indirect, incidental, or consequential damages (including any claim for loss of profits, revenue or business) suffered or incurred by Trustor or Guarantor or any other loan party however caused and based on any theory of liability arising out of, or in any way related to, this Deed of Trust or any of the other Loan Documents, or any of the transactions contemplated by this Deed of Trust or any of the other Loan Documents, or the conduct, acts, or omissions of Beneficiary or any of its agents in the negotiation, administration, or enforcement thereof. **TRUSTOR HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE BENEFICIARY OR ANY OF BENEFICIARY'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, OR AGENTS FOR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO, THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS, OR THE CONDUCT, ACTS OR OMISSIONS OF BENEFICIARY OR ANY OF ITS AGENTS IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT OF THIS DEED OF TRUST OR ANY OF THE LOAN DOCUMENTS.**

61. **Further Assurances.** Trustor shall, at Trustor's sole cost and expense: (a) execute and deliver to Beneficiary such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Secured Obligations of Holding Company under the Loan Documents, as Beneficiary may reasonably require; and (b) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Deed of Trust and the other Loan Documents, as Lender shall reasonably require from time to time; provided no act or document required under this Section shall: (x) materially modify any of the economic and material business terms and provision of the Loan Documents; (y) materially increase any obligation of Holding Company or Trustor under the Loan Documents; or (z) materially modify any right of Holding Company or Trustor under the Loan Documents.

62. **Single Asset Entity.** Trustor shall be used for the sole purpose of owning, developing, operating, maintaining and leasing the Mortgaged Property, and Trustor shall not own any other assets unless they relate directly to this single purpose of Trustor. At all times until the indebtedness evidenced by the Note is repaid in full, Trustor will not: (a) acquire any material assets other than such incidental personal property as may be necessary for the operation of the Mortgaged Property and other assets upon approval of Beneficiary; (b) own any subsidiary or make any investment in, any person or entity without the consent of Beneficiary; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure (other than changes permitted under this Deed of Trust), without in each case Beneficiary's written consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the state of its formation; or (e) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any manager, member, general partner or affiliate of Trustor, or any general partner, manager, member, shareholder, principal or affiliate thereof or any other person.

63. **Representations and Warranties of Trustor; Acknowledgements.** The representations and warranties set forth in Section 5.13 of the Loan Agreement are hereby incorporated herein by this reference and remade by Trustor (with the understanding that all references to "Borrower" and/or "Project Owner" therein are hereby replaced with "Trustor"). Trustor hereby represents and warrants to Beneficiary that, as of the date of this Deed of Trust and as of the various other dates specified in the Loan Agreement and the other Loan Documents on which such representations and warranties are to be accurate, such representations are true, accurate and complete; provided, however, that: (a) any representations and warranties expressly made solely as of a prior date are true and correct in all material respects as of that specific date; and (b) all representations or warranties in Section 5.13 of the Loan Agreement shall be deemed updated to reflect any changes of facts or circumstances which: (i) have been disclosed to Beneficiary in writing; or (ii) which result from acts or events that do not constitute an Event of Default.. Trustor acknowledges and agrees that: (a) it will receive substantial economic and other benefits from Beneficiary's making the Loan to Holding Company and advancing proceeds of the Loan to Holding Company for purposes of enabling Trustor to acquire and/or refinance the Mortgaged Property, (b) there is a direct and tangible benefit to Trustor by executing this Deed of

Trust; (c) the Loan proceeds will be used solely in connection with the business purposes and the business operations of Trustor; and (d) Trustor shall not use the Loan proceeds to make distributions or pay dividends to its members, shareholders, owners, or otherwise. The representations, acknowledgements and agreements made by Trustor in this Paragraph 63 are material and integral to the Loan. Trustor acknowledge that Beneficiary is relying materially on such representations, acknowledgments, and agreements made by Trustor and without such representations, acknowledgments, and agreements, Lender would not advance funds under the Loan to Holding Company.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Deed of Trust as of the date set forth above.

TRUSTOR:

WPC-H 321 SOUTH VINEYARD ROAD OREM STORAGE, LLC, a Delaware limited liability company

By: WPC-H STORAGE JV, LLC, a Delaware limited liability company, its Sole Member

By: Wentworth Storage HJV, LLC, a Delaware limited liability company, its Manager

By: *James R. Wentworth*
Name: James R. Wentworth
Title: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 26 day of January, 2022 by James R. Wentworth, as the President of Wentworth Storage HJV, LLC, a Delaware limited liability company, in its capacity as manager of WPC-H Storage JV, LLC, a Delaware limited liability company, in its capacity as the sole member of WPC-H 321 SOUTH VINEYARD ROAD OREM STORAGE, LLC, a Delaware limited liability company, on behalf of the company.

[S E A L]



Calin R. Galla
Notary Public, State of Arizona

My Commission Expires:
02 / 02 / 2024

EXHIBIT A**(Legal Description of Property)**

Lot 2, PLAT "E", LAKE PARK SUBDIVISION, Orem, Utah, according to the official plat thereof on file in the office of the County Recorder, Utah County, Utah recorded January 8, 2002 as Entry No. 2100:2002.

LESS AND EXCEPTING THEREFROM the following:

A parcel of land in fee, for the widening of the existing Highway State Route 114 known as Project No. F-0114(21)0, being part of an entire tract of property, situate in Lot 2, Lake Park Subdivision Plat "E", situate in the Southeast quarter of Southeast quarter of Section 17, Township 6 South, Range 2 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at the Southeast corner of said Lot 2; and running thence West 59.89 feet along the Southerly boundary line of said Lot 2 to a point 41.00 feet perpendicularly distant Westerly from the right of way control line of State Route 114 of said project opposite approximately Engineers Station 584+05.77; thence North 01°48'43" West 231.94 feet parallel with said right of way control line to a point in the Northeasterly boundary line of said Lot 2, opposite approximate Engineers Station 586+37.54; thence South 30°03'34" East 131.32 feet along said Northeasterly boundary line to the Northeast corner of said Lot 2; thence South 00°42'01" East 118.17 feet along the Easterly boundary line of said Lot 2 to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.