

Standard Plumbing (Salt Lake City, UT)

10257355  
10/24/2007 03:30 PM \$109.00  
Book - 9529 Pg - 5818-5866  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: SLR, DEPUTY - WI 49 P.

WHEN RECORDED RETURN TO:

Anthony A. Longnecker, Esq.  
Nyemaster Goode  
700 Walnut, Suite 1600  
Des Moines, IA 50309-3899

Tax Parcel No. 15-25-476-001 & 15-25-476-002 & 15-25-476-013

**DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT AND  
FIXTURE FILING WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES**

THIS DOCUMENT ALSO CONSTITUTES A FINANCING STATEMENT  
FILED AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL  
CODE.

THIS DEED OF TRUST, SECURITY AGREEMENT, FINANCING  
STATEMENT AND FIXTURE FILING WITH ABSOLUTE ASSIGNMENT OF RENTS AND  
LEASES ("Deed of Trust"), is made as of October 24, 2007 by RICHARD N. REESE FAMILY  
LIMITED LIABILITY COMPANY, L.L.C., a Utah limited liability company ("Trustor"), whose  
mailing address is 9150 South 300 West, Sandy, UT 84070 to Landmark Title Company  
("Trustee"), whose mailing address is 675 East 2100 South, Suite 200, Salt Lake City, UT 84106,  
for the benefit of EQUITRUST LIFE INSURANCE COMPANY, an Iowa corporation  
("Beneficiary"), whose mailing address is 5400 University Avenue, West Des Moines, Iowa  
50266, Attn: Real Estate and Commercial Mortgage Manager.

**ARTICLE I**

**DEFINITIONS**

In addition to any other terms defined herein, within this Deed of Trust, unless  
otherwise required by the context, the following terms shall have the meanings indicated:

1.01 Beneficiary means the specific Beneficiary named above and any subsequent owner  
and holder of the Note and the beneficial interest under this Deed of Trust.

1.02 Building means the existing retail and distribution building building(s) that  
comprise(s) a portion of the Improvements.

1.03 Collateral means, as the context requires, all or any of the Personalty, the Fixtures,

the Leases and the Rents.

1.04 Control means, when used with respect to any specific Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word "control" including "controlled," "controlling" or "controlled by."

1.05 Fixtures means all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements on the Property, including, but not limited to, any and all partitions; window screens and shades; drapes, carpeting and other floor coverings; awnings; pumps; motors; valves; elevators and escalators; engines; wire and wiring; boilers; furnaces; pipes; plumbing; sprinkler systems; irrigation systems; fire extinguishing apparatus and equipment; communication equipment; computers and computerized equipment; security systems and devices; water tanks; heating, ventilating, incinerating, air conditioning and air cooling equipment and systems; gas and electric machinery; disposals, dishwashers, refrigerators, ranges and other appliances; and equipment and facilities of all kinds which constitute fixtures under applicable law and all replacements and substitutions therefor.

1.06 Governmental Authority means any and all courts, boards, bureaus, agencies, commissions, departments, offices or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

1.07 Guarantor means (individually or collectively, or both, as the context may require) those persons or entities, if any, now or hereafter guaranteeing repayment of the Indebtedness Secured Hereby, or any portion thereof, and/or satisfaction of, or continued compliance with, the Obligations or any portion thereof.

1.08 Hazardous Materials has the meaning ascribed thereto in Section 3.19 of this Deed of Trust below.

1.09 Impositions means all real estate and personal property taxes, assessments, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Trust Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed against, or otherwise related to the Trust Property, the use, occupancy, operation or enjoyment thereof and/or the lien of this Deed of Trust on the Trust Property or the debt secured hereby.

1.10 Improvements means any and all buildings, sheds, storage areas, warehousing areas, open or covered parking areas, parking garages or structures, other structures, fences, curbs, walls, sidewalks, walkways, paved parking areas, pavement, recreational facilities, landscaping

and all other real property improvements, and any and all additions, alterations, or appurtenances thereto, now or at any time hereafter situated, placed, constructed upon or for the benefit of the Property or any part thereof, and shall include, unless the context otherwise requires, all Fixtures.

1.11 Indebtedness Secured Hereby means: (a) amounts due under that certain Secured Installment Note (the "Note") of even date herewith, executed by Trustor, as Maker, to the order of Beneficiary, as Holder, in the original principal amount of ONE MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,550,000.00), with interest thereon and all other sums payable thereunder according to the terms and conditions thereof, together with any replacements, substitutions, modifications, amendments, extensions or renewals thereof (the "Indebtedness") which matures the first day of November, 2022; and (b) amounts payable to Beneficiary, its successors and assigns, at the times demanded and with interest at the Default Rate (as defined in the Note), to accrue from the date of advance, of all sums advanced, if any, in protecting the interests of Beneficiary under this Deed of Trust and any and all other Loan Documents and payment of insurance premiums covering Improvements, and payment of principal and interest on prior liens, and payment of expenses and attorneys' fees and professionals' fees herein provided for and payment of any fees herein provided for and payment of any Trustee's fees herein provided for, and any and all sums advanced under this Deed of Trust from time to time.

1.12 Leases means any and all leases, subleases, licenses, concessions, occupancy, rental and use agreements, or other agreements (written or oral), now or hereafter in effect which grant a possessory interest in and to, or the right to use, occupy or generate income from, in or around the Property and/or the Improvements, or any portion thereof, if any, and all guarantees of, and security for the performance of any of the obligations and payments thereunder.

1.13 Legal Requirements means: (a) all judicial decisions, ordinances, orders, decrees, rules, regulations, permits, statutes or requirements of any court or Governmental Authority, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, zoning stipulations, subdivision plats or other instruments or documents affecting all or any portion of the Trust Property and/or the construction, development or use of the Trust Property, including, but not limited to, any of those relating to fire, safety, environmental protection, conservation, parking, or building and sign codes and the Americans with Disabilities Act ("ADA"); and (b) Trustor's or any Guarantor's presently or subsequently existing articles or certificate of incorporation, bylaws, partnership agreements, limited partnership certificates, joint venture agreements, limited liability company articles of organization and/or operating agreements, trust agreements or other form of business organization or entity documents.

1.14 Loan Documents means this Deed of Trust, financing statements, the Note, and any and all other documents and guarantees now or hereafter executed by Trustor, or by any other Person to evidence, secure or guaranty the payment of the Indebtedness Secured Hereby (or any part thereof) or the performance and discharge of the Obligations (or any portion thereof).

1.15 Obligations means any and all of the covenants, warranties, representations and

other obligations (other than to repay the Indebtedness Secured Hereby) made or undertaken by Trustor or any other Person to Beneficiary or the Trustee as set forth in the Loan Documents.

1.16 Person means any individual, corporation, trust, partnership, joint venture, limited liability company or any other entity, business entity or form of organization.

1.17 Personalty means all of the right, title and interest of Trustor now or hereafter existing in and to the following now or hereafter located in, upon, within or about, or used in connection with the construction, use, operation or occupancy of the Property and/or the Improvements and any business or activity conducted thereon or therein, together with all accessories, additions, accessions, renewals, replacements and substitutions thereto or therefor and the proceeds and products thereof: (a) all materials, supplies, furniture, furnishings, appliances, office supplies, equipment, construction materials, vehicles, machinery, computer hardware and software, maintenance equipment, window washing equipment, repair equipment and other equipment, tools, telephone and other communications equipment, food service preparation equipment and utensils, chinaware, glassware, silverware and hollowware, food and beverage service equipment, food items and food stuffs; (b) all books, ledgers, records, accounting records, files, tax records and returns, policy manuals, papers, correspondence, and electronically recorded data; (c) all general intangibles, instruments, money, accounts, accounts receivable, notes, certificates of deposit, chattel paper, letters of credit, choses in action, good will, rights to payment of money, rents, rental fees, equipment fees and other amounts payable by Persons who utilize the Property or any of the Improvements or paid by persons in order to obtain the right to use the Property and any of the Improvements, whether or not so used; trademarks, service marks, trade dress, tradenames, licenses, sales contracts, deposits, plans and specifications, drawings, working drawings, studies, maps, surveys, soil, environmental, engineering or other reports, architectural and engineering contracts, construction contracts, construction management contracts, surety bonds, feasibility and market studies, management and operating agreements, service agreements and contracts, landscape maintenance agreements, security service and other services agreements and vendors agreements; (d) all compensation, awards and other payments or relief (and claims therefor) made for a taking by eminent domain, or by any event in lieu thereof (including, without limitation, property and rights and interests in property received in lieu of any such taking), of all or any part of the Trust Property (including without limitation, awards for severance damages), together with interest thereon, and any and all proceeds (or claims for proceeds) of casualty, liability or other insurance pertaining to the Trust Property, together with interest thereon; (e) any and all claims or demands against any Person with respect to damage or diminution in value to the Trust Property or damage or diminution in value to any business or other activity conducted on the Property; (f) any and all security deposits, deposits of security or advance payments made to others with respect to: (i) insurance policies relating to the Trust Property; (ii) taxes or assessments of any kind or nature affecting the Trust Property; (iii) utility services for the Property and/or the Improvements; or (iv) maintenance, repair or similar services for the Trust Property or any other services or goods to be used in any business or other activity conducted on the Property; (g) any and all authorizations, consents, licenses, permits and approvals of and from all Persons required from time to time in connection with the construction, use, occupancy or operation of the Property, the Improvements, or any business or activity conducted thereon or therein or in connection with the operation, occupancy or use thereof; (h) all warranties, guaranties, utility or

street improvement bonds, utility contracts, telephone exchange numbers, yellow page or other directory advertising and the like; (i) all goods, contract rights, and inventory; (j) all leases and use agreements of machinery, equipment and other personal property; (k) all insurance policies covering all or any portion of the Property; (l) all Reserves and funds held in escrow by Beneficiary or other Person for Beneficiary's benefit; (m) all names by which the Property is now or hereafter known; (n) all interests in the security deposits of tenants; (o) all management agreements, blueprints, plans, maps, documents, books and records relating to the Property; (p) the proceeds from sale, assignment, conveyance or transfer of all or, any portion of the Trust Property or any interest therein, or from the sale of any goods, inventory or services from, upon or within the Property and/or the Improvements (but nothing contained herein shall be deemed a consent by Beneficiary to such sale, assignment, conveyance or transfer except as expressly provided in this Deed of Trust); (q) any property listed under the definition of "Fixtures" which are not fixtures under applicable law; (r) all other property (other than Fixtures) of any kind or character as defined in or subject to the provisions of the UCC and; (s) all proceeds of the conversions, voluntarily or involuntarily, of any of the foregoing into cash or liquidated claims.

1.18 Property means the real estate or interest therein described on Exhibit "A" attached hereto and incorporated herein by reference, together with all appurtenances and all estate and rights of Trustor thereto; all right, title and interest of Trustor in and to all streets, roads and public places, opened or proposed, all easements, rights of way and other appurtenances, public or private, now or hereafter used in connection therewith; all water stock, water and water rights, to the extent the same constitutes any interest in real property; all mineral, oil and gas rights pertaining thereto; all present and future rights under or with respect to: (a) any declarations or restrictions governing or imposing rights or responsibilities on or with respect to any subdivisions, horizontal property regimes, condominiums, planned area developments, planned unit developments or master plans which are partially or wholly located on or affect the real property described in Exhibit "A" attached hereto; (b) any design review or architectural review committee and any property owners' or similar association described in or created by the documents referred to in the foregoing clause (a), together with any voting rights therein; and (c) any and all other documents and instruments and any amendments relating to the operation, organization, control or development of the Property.

1.19 Rents means all of the rents, royalties, revenues, income, avails, proceeds, profits, fees, charges and other benefits paid or payable by parties to the Leases other than Trustor or otherwise paid by a Person for using, leasing, licensing, possessing, operating from, residing in, or otherwise enjoying or generating income from the Trust Property or any portion thereof, including but not limited to, liquidated or other damages following a default under any Lease, all proceeds payable under any policy of insurance covering loss of rents and all of Trustor's rights to recover monetary amounts from any tenant in bankruptcy, including rights of recovery for use and occupancy and damage claims arising out of lease defaults, and including those arising from lease rejections under any bankruptcy or debtor relief laws in all cases except to the extent that the same constitute personal property under applicable law.

1.20 Trust Property means, as required by the context, all or any of the Improvements, Fixtures, Personalty, Property, Leases or Rents.

1.21 Trustee means the specific Trustee named hereinabove and any successor or substitute trustee under this Deed of Trust.

1.22 Trustor's Business means the ownership, management, leasing, maintenance, repair, replacement and operation of the Trust Property as retail and distribution building.

1.23 Trustor means the Person named as the "Trustor" at the outset of this Deed of Trust ("Original Trustor"), until a successor or assign shall have become such pursuant to the applicable provisions of this Deed of Trust, and thereafter Trustor shall mean each such successor or assign and the Original Trustor, jointly and severally unless the Original Trustor or any such successor or assign is released from liability hereunder in writing by the Beneficiary.

1.24 UCC means the Uniform Commercial Code as in effect under the laws of Utah, as amended.

Trustor acknowledges that certain of the descriptions of items comprising the Trust Property in the preceding paragraphs may be duplicative or overlapping, and that it is the express intent and agreement of Trustor that all of such descriptions (including without limitation any descriptions within a single section or subsection) shall be construed as being cumulative and not limiting. The terms "goods," "equipment," "inventory," "accounts," "instruments," "chattel paper," "general intangibles," "proceeds" and "products" shall (unless the context clearly indicates otherwise) also have the meanings provided for those terms in the definitions contained in the UCC.

Trustor further specifically understands and agrees that all right, title and interest of Trustor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Trust Property, hereafter acquired by or released to Trustor, or constructed, assembled or placed by Trustor on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction assembly, placement or conversion, as the case may be, and in each such case, without any further grant, encumbrance, conveyance, assignment or other act by Trustor, shall become subject to the lien of this Deed of Trust as fully and completely and with the same effect as though now owned by Trustor and specifically described herein, but at any and all times Trustor will execute and deliver to Beneficiary, upon request, any and all such further assurances, deeds, conveyances, or assignments thereof or security interests therein as Beneficiary may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Deed of Trust.

## ARTICLE II

### GRANT

Trustor hereby irrevocably grants, warrants and conveys, transfers, and assigns to Trustee,

its successors and assigns, in trust, with power of sale and right of entry and possession to the extent that right of entry and possession is hereinafter provided, the Trust Property (other than the Personalty), and grants to Beneficiary a security interest in and to the Personalty, for the purpose of securing, in such order of priority as Beneficiary may elect, the Indebtedness Secured Hereby and the performance and payment in full when due of all the Obligations.

PROVIDED HOWEVER, that if Trustor shall pay, or cause to be paid, to Beneficiary the Indebtedness Secured Hereby at the time and in the manner stipulated herein, and in the Note, and shall pay and perform all of the Obligations, including, but not limited to payment of all sums under any of the Loan Documents, and no Event of Default hereunder shall then exist, then the estate, right, title and interest of the Trustee and Beneficiary in the Trust Property shall cease, terminate and become void, and upon proof being given to the satisfaction of Beneficiary that the Indebtedness Secured Hereby has been paid or satisfied, and all of the Obligations paid and performed, and upon payment of all other fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Trustee or Beneficiary, Trustee shall, upon receipt of the written request of Beneficiary, release and discharge this Deed of Trust of record (but the provisions of Section 3.19 below shall survive any such release or discharge).

### **ARTICLE III**

#### **COVENANTS**

Trustor warrants and represents to, and covenants and agrees with Beneficiary as follows:

##### 3.01 Title and Property.

(a) Trustor warrants that it has indefeasible fee simple title in and to the Trust Property, subject to no liens or encumbrances, except as set forth on Beneficiary's title insurance policy dated on or about even date herewith regarding the Trust Property. Trustor further warrants that it has good right and lawful authority to convey the Trust Property in the manner and form herein provided; that Trustor has full power and authority to convey the Trust Property in the manner and form herein provided or intended hereafter to be done; that Trustor fully and absolutely waives and releases all rights and claims it may have in or to said lands, tenements and property as a homestead declaration or exemption, or other exemption, under and by virtue of any statute or other law of the State of Utah now existing or which may hereafter be passed in relation thereto; that this Deed of Trust is and shall remain a valid and enforceable first lien on the Trust Property; that Trustor and its successors and assigns shall warrant and defend the same and the priority of the lien of this Deed of Trust forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof or Trustee sale hereunder but shall run with the land.

(b) Except as otherwise expressly provided herein, Trustor has and shall maintain title to the Collateral including any additions or replacements thereto free of all

security interests, liens and encumbrances, other than the security interest granted hereunder and other than referred to in paragraph (a) above, and has good right to subject the Collateral to the security interest granted hereunder.

(c) Trustor shall, at the cost of Trustor and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, UCC financing statements, notices of assignments, transfers, other documents or instruments and assurances as Beneficiary shall from time to time require, for the better assuring, conveying, assigning, creating, perfecting, renewing, transferring and confirming unto Beneficiary the Trust Property and rights hereby conveyed or assigned or intended now or hereafter to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention of facilitating the performance of the terms of this Deed of Trust and, on demand, shall execute and deliver one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Trust Property.

(d) Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter from time to time, shall cause this Deed of Trust, and any security instrument creating a lien or evidencing the lien hereof upon the Collateral, and each instrument of further assurance, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law or order to publish notice of and fully to protect the lien hereof upon the interest of Beneficiary in the Trust Property.

(e) Trustor shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Trust Property including the Collateral and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Trust Property, including the Collateral, or any instrument of further assurance.

(f) Trustor shall do all things necessary to preserve and keep in full force and effect its entity existence, franchises, rights and privileges under the laws of the state of its formation and under the laws of the state in which the Trust Property is located (in whole or in part) and shall comply with all Applicable Environmental Laws (as defined below) and Legal Requirements applicable to Trustor or to the Trust Property or any part thereof.

(g) Trustor shall not, without Beneficiary's prior written consent, change Trustor's name, identity or structure, or jurisdiction under which it is organized, or cause or permit to occur any other event that would require Beneficiary to file a new financing statement under the UCC.

(h) Trustor warrants that the Property is assessed for tax purposes as a separate



tax parcel that does not include any other property.

(i) The Building contains approximately 12,000 net rentable square feet.

(j) All utility services necessary for occupancy and operation of the Improvements for their intended purposes (including, without limitation, water, storm and sanitary sewer, electric and telephone facilities) are available to the Improvements. All consents, permits, variances or grants of any kind with respect to such utility services have been obtained.

3.02 Trustor's Business. Trustor shall continuously operate Trustor's Business on the Property in a first class, good and prudent manner.

3.03 Regarding Trustor.

(a) Trustor is a limited liability company duly organized under the laws of Utah. Trustor is qualified to do business and is duly authorized and empowered to do business in the State of Utah. Trustor has the requisite power and authority to (i) incur the Indebtedness Secured Hereby and the Obligations and to execute and deliver the Note, this Deed of Trust and the other Loan Documents; and (ii) bind the Trustor by entering into the Note, Deed of Trust and other Loan Documents. The execution and delivery of the Note, this Deed of Trust and the other Loan Documents and Trustor's performance of its obligations thereunder have been duly authorized by all requisite action of Trustor and each is the valid and legally enforceable obligation of Trustor, enforceable according to their respective terms.

(b) Trustor is not in default under any agreement to which it is a party, the effect of which will materially or adversely affect performance by Trustor of its obligations pursuant to and as contemplated by the terms and provisions of the Note, this Deed of Trust and the other Loan Documents. Neither the execution and delivery of this Deed of Trust nor compliance with and performance of the terms and provisions hereof, will: (i) violate any presently existing Legal Requirement applicable to Trustor, or any existing applicable order, writ, injunction or decree of any Governmental Authority, (ii) conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any indenture, mortgage, deed of trust, instrument, document, agreement, lease, promissory note, or contract of any kind which creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the assets of Trustor or to which Trustor is a party or by which Trustor or any of its assets may be bound, or in the event of any such violation, conflict, inconsistency, breach or default, the required consent or waiver of the other party or parties thereto has been validly granted, is in full force and effect and is valid and sufficient therefor.

(c) There are no actions, suits, investigations, or proceedings of any kind (including, without limitation, any condemnation or similar action) pending or, to the knowledge of Trustor, threatened against or affecting Trustor or the Trust Property before

any Governmental Authority.

(d) Trustor shall promptly notify Beneficiary of each and any action, suit or proceeding commenced as a result of injury, damage or liability occurring in, on or about the Property, and Trustor shall, upon Beneficiary's request, at Trustor's expense, resist and defend any action, suit or proceeding based thereon, or cause the same to be resisted and defended by counsel designated by Trustor and approved in writing by Beneficiary.

(e) Trustor shall promptly notify Beneficiary if Trustor learns of the existence of a state of facts that constitutes an Event of Default hereunder.

(f) Trustor shall promptly give written notice to Beneficiary of:

(i) all litigation affecting Trustor where the amount in controversy is \$25,000 or more;

(ii) any dispute that may exist between Trustor and any Governmental Authority that would have a material or adverse effect on Trustor or the Trust Property;

(iii) any other matter that has resulted or might result in a material or adverse change in Trustor's financial condition or operations or that will have a material or adverse impact on the Trust Property or any portion thereof or interest therein.

(g) Trustor shall obtain, preserve and keep in full force and effect all licenses, permits, approvals, certificates, Leases and agreements required by any Governmental Authority or otherwise required in order for Trustor to operate Trustor's Business in a first class and profitable condition. Except as specifically provided for in this Deed of Trust, Trustor shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Beneficiary.

(h) Trustor is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code of 1986 as amended and related Treasury Department regulations, including temporary regulations.

(i) Neither Trustor, nor any Guarantor, nor any Person who owns an equity interest in or controls Trustor or any Guarantor, nor any respective constituents or affiliates acting or benefiting in any capacity in connection with the Indebtedness Secured Hereby and/or the Loan Documents (individually a "Trustor Party" and collectively, the "Trustor Parties") is in violation of any law relating to terrorism or money laundering, including, but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 23, 2001 (the "Executive Order"), as amended from time to time, and the U.S. Bank Secrecy Act of 1970, as amended by the Uniting and Strengthening America and Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and as

otherwise amended from time to time (collectively, "Anti-Terrorism Law").

(j) No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against any Trustor Party alleging any violation of any Anti-Terrorism Law.

(k) No Trustor Party has, after due investigation and inquiry, knowledge or notice of any fact, event, circumstance, situation or condition which could reasonably be expected to result in:

(i) Any action, proceeding, investigation, charge, claim, report, or notice being filed, commenced, or threatened against any of them alleging any violation of, or failure to comply with, any Anti-Terrorism Law; or

(ii) The imposition of any civil or criminal penalty against any of them for any failure to so comply.

(l) No Trustor Party nor, to Trustor's knowledge, the seller of the Property (if any portion of the Property is being acquired with the proceeds of the Indebtedness Secured Hereby), nor to Trustor's knowledge, any tenant at the Property or Improvements, is owned or controlled by a "Prohibited Person," and Trustor has implemented procedures to ensure that no Person who now or hereafter owns an equity interest in Trustor is a Prohibited Person or controlled by a Prohibited Person. A "Prohibited Person" means any of the following:

(i) A person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) A person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) A person or entity with whom Beneficiary is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) A person or entity who or that commits, threatens, or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) A person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official web site or any replacement website or other official publication or replacement official publication of such list.

(m) No Trustor Party nor, to Trustor's knowledge, the seller of the Property (if

any portion of the Property is being acquired with proceeds from the Indebtedness Secured Hereby), nor, to Trustor's knowledge, any tenant at the Property or Improvements:

(i) Conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person;

(ii) Deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked under the Executive Order; or

(iii) Engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(n) Trustor has determined that the manager of the Property and Improvements has implemented procedures, approved by Trustor, to ensure that no tenant at the Property or Improvements is a Prohibited Person or owned or controlled by a Prohibited Person.

(o) Trustor shall not:

(i) Conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person;

(ii) Deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order of any other Anti-Terrorism Law; or

(iii) Engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(p) Before any changes in direct or indirect ownership of any Trustor Party, Trustor shall give a written notice to Beneficiary advising Beneficiary in reasonable detail as to the proposed ownership change, and reaffirming that the Anti-Terrorism Law representations and warranties herein contained will remain true and correct.

(q) Trustor agrees promptly to deliver to Beneficiary (but in any event within ten (10) days of Beneficiary's written request) any certification or other evidence requested from time to time by Beneficiary in its reasonable discretion, confirming Trustor's compliance with the foregoing Anti-Terrorism Law provisions.

#### 3.04 Note and Reserves.

(a) Trustor shall promptly and punctually pay all principal and interest and all

other sums to become due in respect of the Note, according to the terms thereof. Trustor shall also pay to Beneficiary on the date set forth therein for the making of monthly payments of principal and interest under the Note until the Indebtedness Secured Hereby has been fully paid and all Obligations have been fully paid and performed, a sum, as estimated by Beneficiary, equal to one twelfth (1/12) of the annual taxes and assessments on the Trust Property plus the premiums that will next become due and payable on insurance policies as may be required hereunder, Trustor agreeing to deliver promptly to Beneficiary all tax or assessment bills and notices thereof. In addition, Trustor shall pay to Beneficiary such additional sum as shall be necessary from time to time, if any, to assure that at all times there is the amount on deposit which, together with the monthly deposit amounts to be made hereunder, will be sufficient to pay the next installment of real estate taxes and assessments, and insurance premiums, at least thirty (30) days prior to the due date thereof. The foregoing payments are hereinafter referred to as "Reserves" and are to be held without any allowance of interest or dividend to Trustor and need not be kept separate and apart from other funds of Beneficiary. In lieu of monthly payment of Reserves hereunder, Beneficiary in its sole discretion may require Trustor to deliver to Beneficiary copies of paid insurance premium receipts not later than twenty-one (21) days prior to premium due dates and copies of paid tax and assessment receipts not later than ten (10) days prior to applicable delinquency dates. Beneficiary from time to time thereafter may require payment of Reserves upon ten (10) days' prior written notice to Trustor.

(b) The Reserves are solely for the added protection of Beneficiary and entail no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Deed of Trust by Beneficiary, any Reserves on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. When the Indebtedness Secured Hereby has been fully paid and all of the Obligations fully paid and performed, any remaining Reserves shall be paid to Trustor or to the then owner or owners of the Property as the case may be. The Reserves are hereby pledged as additional security for the payment of the Indebtedness Secured Hereby and the payment and performance of the Obligations and Trustor hereby grants to Beneficiary a security interest in the Reserves and agrees that the security interest granted to Beneficiary in this Deed of Trust covers the Reserves and that the Reserves are hereby made subject to the lien and terms of the security interest and security agreement. No portion of the Reserves shall be subject to the direction or control of Trustor and Beneficiary shall not be liable for any failure to apply the Reserves to the payment of taxes and assessments and insurance premiums unless Trustor (provided that no default or Event of Default then exists thereunder) shall have requested Beneficiary in writing to make application of such funds to the payment of the particular charge for payment of such charge.

(c) If the total of the Reserves shall exceed the amount of payments actually applied by Beneficiary, such excess may be credited by Beneficiary on subsequent payments to be made by Trustor. If, however, the Reserves shall not be sufficient to pay the sums required when the same shall become due and payable, Trustor shall immediately deposit with Beneficiary the full amount of any such deficiency. If there shall be a default

under any of the provisions of this Deed of Trust, Beneficiary may apply, at any time, the balance of the Reserves against such sums due and payable under the Note, or in connection with the Obligations, whether or not then due, in such order and in such manner as Beneficiary may determine.

(d) Beneficiary, in making any payment hereby authorized: (i) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office or Governmental Authority without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessments, sale, forfeiture, tax lien or title or claim thereof, or (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so upon any reasonable inquiry as to the validity or amount of any claim for lien which may be asserted.

3.05 Maintenance and Repair. Trustor shall keep the Trust Property in first-class operating order, repair and condition and shall not commit or permit any waste thereof or any destruction or disrepair to occur thereto. Trustor shall make all repairs, replacements, renewals, additions and improvements and complete and restore promptly and in good workmanlike manner any Improvements which may be constructed, placed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Trustor shall not remove any Improvements or, except as otherwise expressly provided in this Deed of Trust, the Collateral from the Property or demolish any of the Improvements, or materially alter any of the Trust Property without prior written consent of Beneficiary. Trustor shall permit Beneficiary, its agents and authorized representatives the opportunity to inspect the Trust Property, including the interior of any Improvements, at any reasonable times subject to the rights of lessees thereof.

3.06 Compliance With Laws/Maintenance of Permits. Trustor shall comply with all Legal Requirements affecting the Trust Property or the operation of Trustor's Business and shall pay all fees or charges of any kind in connection therewith. Trustor shall not by act or omission, permit any property or Person which is not subject to this Deed of Trust to rely on the Trust Property or any part thereof or any interest therein to fulfill any governmental requirement for the existence or use of such property or Person; and the Trust Property shall not rely on any property or Person which is not subject to this Deed of Trust to fulfill any governmental requirement for the existence or use of the Property. Trustor shall not by act or omission impair the integrity of the Property as a single separate zoning parcel separate and apart from all other parcels. Trustor warrants that the Trust Property presently substantially complies with all requirements of the ADA. Trustor shall in the future substantially comply with the requirements of the ADA and shall require all tenants of the Trust Property to substantially comply with the ADA when making leasehold improvements. The failure of Trustor or the Trust Property to comply with the requirements of the ADA shall be an Event of Default under this Deed of Trust.

3.07 Insurance.

(a) Trustor shall keep all Improvements now or hereafter existing insured against loss or damage by fire (with so-called extended coverage, vandalism and malicious mischief coverage), and other hazards as may reasonably be required by Beneficiary,

including, without limitation (i) rent loss or business interruption insurance; and (ii) flood and earthquake insurance. Trustor shall also provide commercial general liability insurance with such limits for personal injury and death and property damage as Beneficiary may require. Trustor shall not be required to obtain or maintain insurance coverage for loss or damage by earthquake, provided, however, if Trustor elects to obtain insurance for loss or damage by earthquake, such insurance policy shall: (x) be written by a company or companies having a Best's rating of at least A:VIII or such other rating as may be agreed to in writing and in advance by Beneficiary and (y) contain a standard loss payable clause in favor of and in form satisfactory to Beneficiary. The provisions of Section 3.07(c) and (d) and Section 3.08 shall apply to any insurance coverage obtained by Trustor for loss or damage by earthquake and to the proceeds payable pursuant to any such insurance policy.

(b) Trustor shall initially maintain, until Beneficiary shall otherwise indicate in writing, building and personal property coverage insurance in an amount of not less than the full insurable and replacement value of the Improvements now or hereafter located on the Property with "broad form" coverage, and "special perils," "agreed amount," "inflation guard," "replacement cost," "ordinance and law," "vandalism," "malicious mischief" and "waivers of subrogation" endorsements and with a deductible of not more than FIVE THOUSAND DOLLARS (\$5,000.00), which policy shall be written by a company or companies having a Best's rating of at least A:VIII or such other rating as may be agreed to in writing and in advance by Beneficiary; comprehensive commercial general liability insurance (with a broad form comprehensive general liability endorsement) in the amount of at least THREE MILLION DOLLARS (\$3,000,000.00) combined single limit for personal injury and property damage which shall have deleted therefrom any exclusion or restriction on coverage for contractual obligations; and rental or business interruption insurance in an amount sufficient to cover any loss of rents or income from the Trust Property (including expenses payable by tenants) suffered by Trustor for a period of at least twelve (12) months. Additionally: (i) during any period that alcoholic beverages are or may be served on the Property (provided that the foregoing shall not be deemed to be Beneficiary's consent to serving any alcoholic beverages thereon), Trustor shall procure and maintain in effect dram shop insurance in an amount that is of not less than \$3,000,000.00; and (ii) during any period that any construction, remodeling or renovation activities are being conducted on any portion of the Property or the Improvements (to the extent such activities are permitted under this Deed of Trust), builder's risk (course of construction) insurance with extended coverage and such other hazard insurance as Beneficiary may require. Such insurance shall be in an amount that is not less than the maximum insurable value of the work to be performed, as determined by a recognized appraiser or insurer approved by Beneficiary. Such coverage shall be kept in full force and effect at all times until the completion of any such construction, remodeling or renovation activities.

(c) All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Beneficiary, with standard mortgagee clauses or loss payable clause attached to all policies in favor of and in form satisfactory to Beneficiary, including a provision requiring that the coverage evidenced thereby shall not

be terminated or materially modified without at least thirty (30) days' prior written notice to Beneficiary. Trustor shall make all policies, including additional and renewal policies, available to Beneficiary, but Beneficiary may accept signed certificates of insurance evidencing the coverage in lieu of the original policies. In the case of insurance about to expire, Trustor shall deliver renewal policies or certificates of insurance not less than fifteen (15) days prior to their respective dates of expiration.

(d) Trustor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard mortgagee clause or loss payable clause acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is taken out and shall promptly deliver to Beneficiary the policy or policies of such insurance. In the event of a foreclosure or other transfer of title to the Property in lieu of foreclosure, or by purchase at a foreclosure sale or Trustee's Sale, all interest in any insurance policies in force shall pass to Beneficiary, transferee or purchaser as the case may be.

### 3.08 Casualty.

(a) Trustor shall promptly notify Beneficiary of any loss to the Trust Property or any portion thereof, whether covered by insurance or not. In case of loss or damage by fire or other casualty, Beneficiary, or after foreclosure or Trustee's sale, the holder of the certificate or certificates of purchase, or grantee under a Trustee's deed, as the case may be, is authorized (i) to settle and adjust any claim under insurance policies which insure against such risks, or (ii) to allow Trustor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Beneficiary is authorized to collect and receipt for any such insurance money. If insurance proceeds are made payable to both Beneficiary and Trustor, Trustor hereby authorizes Beneficiary, as Trustor's attorney, to endorse checks, sight drafts, and other instruments on behalf of Trustor.

(b) Beneficiary may release to Trustor any insurance proceeds received by Beneficiary as a result of any loss to the Property or Improvements as restoration progresses solely in payment of restoration costs, but in the event of such a release, the release of funds shall be subject to the following conditions: (1) there shall be no outstanding Event of Default hereunder, under the Note or under any other Loan Documents and no event shall have occurred and be continuing which, but for the giving of notice and passage of time, or both, would constitute such an Event of Default; (2) Beneficiary shall approve the plans and specifications for any such restoration in advance of commencement thereof; (3) there shall be sufficient funds upon deposit at all times with Beneficiary to complete the restoration, as certified by an architect approved by Beneficiary; (4) the insurer shall not have asserted any defense against Trustor or any tenant pursuant to the insurance policy covering the Improvements; (5) the restoration is commenced within 120 days after the date of the loss and is capable of being completed at least twelve (12) months prior to the Maturity Date (as defined in the Note); (6) Trustor



demonstrates to Beneficiary's satisfaction that Trustor has the financial ability to continue to pay the Indebtedness Secured Hereby during restoration; (7) the loss affects less than forty percent (40%) of the value of the Improvements; and (8) Trustor shall comply with such other conditions as would customarily be required by a prudent local construction lender, or are otherwise reasonable.

(c) Beneficiary may apply any insurance proceeds remaining after completion of restoration to the Indebtedness Secured Hereby, whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not), or if the conditions set forth in subsection (b) of this Section 3.08 are not met, Beneficiary may apply all insurance proceeds to the Indebtedness Secured Hereby, whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not) in such order and in such manner as Beneficiary may determine.

(d) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid (in Beneficiary's sole and absolute discretion) in rebuilding or restoring the Improvements, shall be used to pay the amount due Beneficiary and the balance, if any, shall be paid to the owner of the equity of redemption if the Person shall then be entitled to the same. In case of a judicial foreclosure of this Deed of Trust, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each such policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redemptioner may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemptioner. In the event of judicial foreclosure sale or Trustee's sale, Beneficiary is hereby authorized, without the consent of Trustor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Beneficiary may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

3.09 Condemnation Trustor, immediately upon obtaining knowledge of the commencement of any proceeding for the condemnation of the Property and/or Improvements or any portion thereof or interest therein, shall notify Beneficiary of the pendency thereof. Trustor hereby assigns, transfers and sets over unto Beneficiary all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Property or Improvements taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. Beneficiary may, at its option, commence, appear in and prosecute, in its own name or in the name of Trustor, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including attorneys' and other professionals' fees, Beneficiary may elect to apply the proceeds of the award upon or in reduction of the

Indebtedness Secured Hereby, whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not), or hold said proceeds without any allowance of interest and make same available for restoration or rebuilding of the Property or the Improvements. In the event that Beneficiary elects to make said proceeds available to reimburse Trustor for the cost of the rebuilding or restoration of the Property or the Improvements, such proceeds shall be made available in the manner and under the same conditions that Beneficiary may require in the manner provided under Section 3.08 above. If the proceeds are made available by Beneficiary to reimburse Trustor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Beneficiary be applied on account of the Indebtedness Secured Hereby, whether due or not, or, if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations, whether due or not, or be paid to Trustor. Trustor agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Beneficiary may require from time to time.

3.10 Liens and Encumbrances. Except as expressly provided in this Deed of Trust, Trustor shall not, without Beneficiary's express prior written consent, permit the creation of any liens or encumbrances on the Trust Property other than the lien of this Deed of Trust and any lien for real property taxes so long as they are not yet delinquent, and shall pay when due all Impositions, obligations, lawful claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Property or on the Rents, issues, income and profits arising therefrom, whether such lien would be senior or subordinate hereto, including, but without limiting the generality of the foregoing, all claims of mechanics, professionals, materialmen, laborers, and others for work, services or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Property. Trustor will do or cause to be done everything necessary so that the priority of the lien of this Deed of Trust shall be fully preserved, at the cost of Trustor, without expense to Beneficiary. Any lien or encumbrance on the Trust Property created hereafter shall contain, or shall by virtue hereof be deemed to contain, a provision subordinating such lien or encumbrance to all Leases then or in the future affecting the Trust Property but nothing in this sentence shall be deemed to be a consent by Beneficiary to any lien or encumbrance.

3.11 Impositions. Trustor shall pay in full when due, and in any event before any penalty or interest attaches, all Impositions (except those that may be paid by Beneficiary, in its sole discretion, from Reserves) and shall furnish to Beneficiary official receipts evidencing the payment thereof (including those required under Section 3.04 above). To prevent default hereunder, Trustor shall pay in full under protest, in the manner provided by statute, any Imposition, tax or assessment which Trustor may desire to contest.

3.12 Indemnification: Attorneys' Fees. Trustor shall appear in and defend any suit, hearing, action or proceeding that might in any way and in the sole judgment of Beneficiary affect the value of the Trust Property, the priority of this Deed of Trust or the rights and powers of Beneficiary or Trustee under this Deed of Trust. Trustor shall, at all times, indemnify, defend, hold harmless and on demand, reimburse Beneficiary for any and all loss, damage, liability, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in

connection with any such suit, hearing, action or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust and shall bear interest at the rate or rates provided in the Note and shall be due and payable on demand. Trustor shall pay the cost of suit, cost of evidence of title and attorneys' and other professionals' fees in any proceeding, suit, and foreclosure proceedings through the court or through Trustee's sale brought by the Beneficiary to foreclose this Deed of Trust.

3.13 Transfer of Title or Further Encumbrances.

(a) In order to induce Beneficiary to make the loan evidenced by the Note, Trustor agrees that if title to the Property or the Improvements or any part thereof or interest therein is sold or if the Property or the Improvements or any portion thereof are leased (except for a Lease of portions of the Property or the Improvements in the ordinary course of operating Trustor's Business), or if the Property or the Improvements or any portion thereof is assigned, transferred, conveyed, further mortgaged, encumbered, or otherwise changed (including any such changes as security for additional financing), whether voluntarily or involuntarily or by operation of law, without the prior written consent of Beneficiary, which consent may be given or withheld in Beneficiary's sole and absolute discretion, Beneficiary, at its option, may declare the Indebtedness Secured Hereby and all Obligations hereunder to be forthwith due, payable and performable. Without in any way limiting Beneficiary's rights of approval set forth above, Beneficiary may condition its consent, among other things, upon any one or more of: (1) approval of the financial condition and credit worthiness of the proposed transferee; (2) making such modifications to the Note, this Deed of Trust and other Loan Documents as Beneficiary may deem appropriate; (3) the execution and delivery of other documents as Beneficiary deems appropriate; (4) payment of a transfer fee not to exceed two percent (2%) of the then outstanding principal balance of the Note (or such lower fee as may be then required by law, if applicable); and (5) an increase in the interest rate under the Note, (but not in excess of the maximum rate increase then permitted by law, if applicable). If the interest rate is increased, any monthly installment payment under the Note shall be increased accordingly. In the event of any transfer under this Section 3.13, either Trustor or the new owner shall pay all fees and expenses incurred thereby, including any costs of amending the Note, this Deed of Trust any of the other Loan Documents, and of obtaining appropriate title insurance insuring and assuring the continued priority of the lien of this Deed of Trust. In addition, Beneficiary may charge an administrative fee for processing any application seeking the consent of Beneficiary.

(b) Any change in the legal or equitable title of the Property or the Improvements or in the beneficial ownership of the Property or the Improvements not expressly permitted herein, whether or not of record and whether or not for consideration, and any change of any ownership interests (whether direct or indirect, legal or equitable) in Trustor, shall be deemed a transfer of title to the Property or Improvements.

Notwithstanding the foregoing, changes of ownership interests in legal entities that (1) hold ownership interests in Trustor and are necessitated by devise or descent or (2) control Trustor, and which changes aggregate (cumulatively after the date hereof) less than voting control and are made for estate planning purposes only, shall not be considered a transfer of title. Trustor shall give prior written notice to Beneficiary of all proposed transfers of title to the Property or the Improvements or any portion thereof, and of all proposed changes in ownership interests.

(c) Except as otherwise expressly permitted herein, in the event ownership of the Property or the Improvements, or any part thereof, becomes vested in any person or entity other than Trustor, without the prior written approval of Beneficiary, Beneficiary may, without notice to Trustor, waive such default and deal with such successor or successors in interest with reference to this Deed of Trust, the Note and the other Loan Documents in the same manner as with Trustor, without prior approval or consent of Trustor and without in any way releasing, discharging or otherwise affecting the liability of Trustor hereunder for the Indebtedness Secured Hereby, or for payment or performance of any of the Obligations. No sale, transfer or conveyance of the Property or the Improvements, no forbearance on the part of Beneficiary, no extension of the time for the payment of the Indebtedness Secured Hereby or the performance or payment of the Obligations or any change in the terms thereof consented to by Beneficiary shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Trustor herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Any deed conveying the Property, or the Improvements or any part thereof, shall provide that the grantee thereunder assumes all of the grantor's obligations under this Deed of Trust, the Note and the other Loan Documents but nothing herein shall be deemed to be a consent to any transfer. In the event such deed shall not contain such assumption, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Property, the Improvements or such portion thereof subject to this Deed of Trust.

(d) Trustor shall not voluntarily, involuntarily or by operation of law, sell, assign, transfer or otherwise dispose of the Collateral or any interest therein and shall not otherwise do or permit anything to be done or occur that may impair the Collateral as security hereunder except so long as no Event of Default has occurred and is continuing hereunder or under the Note or under any other Loan Documents: (1) Trustor shall be permitted to sell or otherwise dispose of the Collateral consisting of equipment when absolutely worn out, inadequate, unserviceable or unnecessary for use in the operation of the Trust Property or in the conduct of the Trustor's Business upon the Property, replacing the same or substituting for the same other collateral at least equal in value, utility and quality to the initial value, utility and quality of that disposed of and in such a manner so that such replacement property shall be subject to the security interest created hereby and so that the security interest of Beneficiary hereunder shall be the first priority security interest therein; and (2) Trustor may sell items of inventory in the ordinary course of Trustor's Business. In the event the Collateral is sold in connection with the sale of the Property, Trustor shall require, as a condition of the sale, that the buyer specifically agree

to assume Trustor's obligations as to the security interest herein granted and to execute whatever agreements and filings deemed necessary by Beneficiary to maintain its perfected security interest in the Collateral but nothing herein shall be deemed to be a consent to any sale or transfer.

3.14 Advances. If Trustor shall fail to perform any of the covenants herein contained or contained in the Note or any other Loan Documents, Beneficiary may, but without obligation to do so, make advances to perform same in Trustor's or on its behalf, and all sums so advanced shall be a lien upon the Trust Property and shall be secured by this Deed of Trust. Trustor shall repay on demand all sums so advanced in its or Beneficiary's behalf with interest thereon at the Default Rate of interest under the Note from the time of such advance. Nothing herein contained shall prevent any such failure to perform on the part of Trustor from constituting an Event of Default as defined below or under the Note or any other Loan Documents.

3.15 Financial Statements/Records.

(a) In addition to any reports required to be delivered to Beneficiary under the Note or other Loan Documents, Trustor shall deliver to Beneficiary, within ninety (90) days after the end of each of Trustor's fiscal years: (i) (A) an annual operating statement for the Trust Property and all business activities conducted thereon or therefrom, (B) a current detailed rent roll listing each tenant, the space and amount of space occupied, the annual rental, the rental rate per rentable square foot, the term of such tenant's Lease and the amount thereof remaining, the lease term expiration and execution dates, and all reimbursements, operating costs, expenses, rent, taxes and other sums paid and payable by such tenant, (C) a report showing a breakdown of all items of revenue and expense, and (D) a balance sheet and statement of profit and loss with respect to the operation of the Trust Property, setting forth with each fiscal year beginning with the second fiscal year in comparative form the figures for the previous fiscal year; and (ii) satisfactory financial statements of Trustor, including without limitation an annual operating statement, a balance sheet, a statement of income, and a statement of cash flows; (iii) satisfactory financial statements of The Reese Family 101 Trust, including without limitation an annual operating statement, a balance sheet and statement of income / federal tax return; and (iv) satisfactory financial statements of Richard N. Reese, including without limitation an annual operating statement, a balance sheet and statement of income / federal tax return all in reasonable detail and in form satisfactory to Beneficiary, and certified as true, accurate, complete and correct by a duly authorized officer, general partner, or manager of Trustor (or the party to whom the financials relate) or a certified public accountant acceptable to and approved in advance and in writing by Beneficiary. Trustor agrees to keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied or in accordance with a cash basis accounting system or other accounting system acceptable to Beneficiary, that is consistent with prior years and to retain and hold such books and records for any given fiscal year for a period of at least six years after the expiration of such fiscal year. Trustor shall permit Beneficiary, and its agents, accountants and attorneys, to visit and inspect the Trust Property and examine its books and records of account (which shall all be located at the Trust Property), and to

discuss its affairs, finances and accounts with Trustor, at such reasonable times as Beneficiary may request.

(b) In addition to the reports and financial statements referred to in Section 3.15(a) above or in any other Loan Documents, upon or at any time after the occurrence or existence of any Event of Default under this Deed of Trust or under any other Loan Documents, and upon 30 days written demand from Beneficiary, Trustor shall cause to be delivered to Beneficiary along with the next reports and financial statements required above, consolidated audited financial statements of Trustor prepared and certified by an independent certified public accountant.

3.16 Time. Trustor agrees that time is of the essence hereof in connection with all obligations of Trustor herein or in the Note or any other Loan Documents.

3.17 Estoppel Certificates. Trustor, within ten days after written request from Beneficiary, shall furnish to Beneficiary a duly acknowledged and certified written statement setting forth the amount secured by this Deed of Trust, stating either that no setoffs or defenses exist against this Deed of Trust or the Indebtedness Secured Hereby or the Obligations or, if such setoffs or defenses are alleged to exist, the nature and description thereof and stating such other matters concerning the Note, this Deed of Trust, the other Loan Documents, the Trust Property and/or Trustor as Beneficiary may request.

3.18 Distributions to Equity Owners. Trustor shall not make any distributions to its equity owners at any time during which an Event of Default has occurred and is continuing or during which an event has occurred and is continuing which with the giving of notice or the passage of time, or both, would be or become an Event of Default.

3.19 Environmental Compliance.

(a) As used herein, the following terms shall have the following meanings:

(i) "Hazardous Materials" means any asbestos, PCB'S, formaldehyde, carcinogens, hydrocarbons and other petroleum products or by-products, harmful or toxic chemicals, pollutants, contaminants, flammables, explosives, asbestos-containing materials, radioactive or radon-containing materials, mold and mycotoxins, and other gases, substances, chemicals, and materials defined under federal, state or local laws and regulations (whether now existing or hereafter enacted, formulated or imposed) as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants" or "contaminants." The term "Permitted Hazardous Materials" means commercially sold products otherwise within the definition of the term "Hazardous Materials," but (1) which are used or disposed of by Trustor or used or sold by tenants of the Trust Property in the ordinary course of their respective businesses, (2) the presence of which product is not prohibited by Applicable Environmental Laws, and (3) the use and disposal of which are in all respects in accordance with Applicable Environmental Laws.

(ii) "Applicable Environmental Law(s)" means all statutes, laws, ordinances, acts, rules, regulations, decrees, and rulings of all Governmental Authorities which relate or pertain to health, safety, the environment or hazardous materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S. C.A. § 6901 et seq.; the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. § 5101 et seq.; the Toxic Substances Control Act, 15 U.S.C.A. § 2601 et seq.; the Clean Air Act, 42 U.S.C.A. § 7401 et seq.; the Clean Water Act, 33 U.S.C.A. § 1251 et seq.; and all similar or related laws of the State of Utah, and all environmental regulation, cleaning or control laws of the State of Utah, all as amended from time to time.

(iii) "Disposal," "release," "threatened release," "use," "storage," "disposition," and "manufacture" shall have the definitions assigned thereto by CERCLA or other Applicable Environmental Laws.

(b) Trustor hereby represents and warrants to Beneficiary that (i) the Trust Property does not contain or incorporate and is not threatened with contamination from Hazardous Materials; (ii) to the best of Trustor's knowledge after due investigation, the Trust Property has never been used in connection with the handling, generation, storage, disposal, manufacture or release of Hazardous Materials; (iii) there have been no releases and there are no threatened releases of Hazardous Materials on, onto, from, or under the Trust Property; (iv) all current, and to the best of Trustor's knowledge after due investigation, all past uses of the Trust Property comply with all Applicable Environmental Laws; (v) Trustor has never received notice of, and has no knowledge of a violation of any Applicable Environmental Law, and no action has been commenced or threatened for non-compliance with any such laws; (vi) Trustor has not obtained and is not required by any Applicable Environmental Law to obtain any permit or license to construct or use the Trust Property; (vii) the Trust Property does not contain and, to the best of Trustor's knowledge after due investigation, has never contained an underground storage tank (including without limitation, a tank for which a permit to operate was obtained under the Underground Storage of Hazardous Substances Act or other Applicable Environmental Law); (viii) no event has occurred which requires or required the owner of the Trust Property to give any Governmental Authority notice of any spill, release, threatened release, disposal, disposition or existence of Hazardous Materials on, around, under or from the Trust Property; and (ix) there has been no litigation brought or threatened against Trustor or to Trustor's knowledge after due investigation any prior owner of the Trust Property, nor have any settlements been reached by or with Trustor or to Trustor's knowledge any other party alleging the presence, generation, disposal, disposition, release, or threatened release of any Hazardous Materials on, onto, from, or under the Trust Property.

(c) Trustor shall not use or permit the use (by lease or otherwise) of the Trust Property for the generation, manufacture, release, transportation, treatment, handling, storage, or disposal of Hazardous Materials, other than Permitted Hazardous Materials.

(d) Trustor shall keep and maintain the Trust Property and require all tenants, occupants, licensees and users of any portion of the Trust Property to keep and maintain the Trust Property in compliance with all Applicable Environmental Laws.

(e) Trustor shall clean up and lawfully dispose of all Hazardous Materials promptly upon discovery thereof.

(f) Trustor shall provide Beneficiary with immediate written notice: (i) of Trustor's obtaining knowledge of any potential or known release, spill or threatened release of Hazardous Materials on, onto, from or under the Trust Property, whether from a federal, state or other Governmental Authority, or otherwise; or (ii) of all claims made or threatened by any third party relating to any loss or injury from Hazardous Materials in, on, from, or under the Trust Property.

(g) Trustor shall report any release or spill of Hazardous Materials in accordance with Applicable Environmental Laws.

(h) Trustor shall promptly deliver to Beneficiary copies of any documents relating to any governmental proceedings relating to Hazardous Materials and all engineering reports, test reports and laboratory analyses concerning the Hazardous Materials affecting the Trust Property.

(i) If any Governmental Authority requires the investigation of the Trust Property and/or groundwater for the existence of Hazardous Materials, or Beneficiary reasonably suspects or believes that there exists the threat of or there has been Hazardous Materials contamination of the Trust Property and/or groundwater, Trustor, at its expense, shall promptly and thoroughly investigate the Trust Property and/or groundwater for Hazardous Materials contamination. The professionals retained by Trustor and the scope of any such investigation shall be subject to Beneficiary's reasonable approval. In the event Trustor fails to complete an investigation for Hazardous Materials when required by this Section, or if an Event of Default hereunder or under any other Loan Documents (or an event which but for the passage of time or giving of notice would constitute an "Event of Default") occurs, Beneficiary may, in its sole and absolute discretion, enter the Trust Property and conduct the investigation at the expense of Trustor, after giving not less than five days written notice to Trustor. Such investigation may include obtaining one or more environmental assessments of the Trust Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert evaluating or confirming (i) whether any Hazardous Materials are present in, on, under or adjacent to the Trust Property and (ii) whether the use and operation of the Trust Property comply with Applicable Environmental Laws. Environmental assessments may include detailed visual inspections of the Trust Property including, without limitation, any and all storage areas, storage tanks,



drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and groundwater samples, as well as such other investigations, tests or analyses as are necessary or appropriate for a complete determination of the compliance of the Trust Property and the use and operation thereof with all Applicable Environmental Laws.

(j) In the event of any change in the laws governing the assessment, existence, release or removal of Hazardous Materials, such as but not limited to, the identification of a new hazardous substance to be included in the definition of Hazardous Materials, which change would lead a prudent lender to require additional testing to avail itself of any statutory insurance or limited liability, Trustor shall take all such action (including, without limitation, the conducting of engineering tests at the sole expense of Trustor) to confirm that no Hazardous Materials are present on the Trust Property.

(k) Trustor hereby agrees unconditionally that (i) absent an Event of Default, Beneficiary or its agents shall have the right to enter upon and inspect the Property at any reasonable time upon five days' written notice; and (ii) while an Event of Default exists, Beneficiary or its agents shall have the right to enter upon and inspect the Property at any time without notice.

(l) Trustor hereby agrees unconditionally and absolutely to defend, indemnify and hold harmless Beneficiary and its directors, officers, employees, and agents from and against any and all damages, diminution in value, penalties, fines, losses, liabilities, causes of action, suits, claims, demands, costs, investigatory costs, expert witness fees and costs, and expenses (including all out-of-pocket litigation costs and the fees and expenses of counsel and the costs and related expense of any clean-up or remediation) of any nature, directly or indirectly arising out of or in connection with: (i) the inaccuracy or incompleteness of any representation or warranty provided in this Section 3.19; (ii) the existence, use, generation, manufacture, migration, storage, spillage, release, threatened release, or disposal of Hazardous Materials on, onto, from or under the Trust Property; or (iii) any failure by Trustor to comply with the terms of any order of any federal, state or local authority or Governmental Authority having regulatory authority over environmental matters. Trustor's obligations under this Section shall survive the closing and disbursement of the funds evidenced by the Note, payment of the Note, payment and performance of the Obligations, any release, reconveyance, discharge or foreclosure of this Deed of Trust, conveyance by deed in lieu of foreclosure, transfer by Trustee's sale, and any subsequent conveyance of the Trust Property.

3.20 Maintenance of Parking and Access. Trustor shall construct, keep and constantly maintain, as the case may be, all curbs, drives, parking lots or areas and the number of parking spaces previously approved by Beneficiary or required by any Governmental Authority or other body, agency or authority having jurisdiction over Trustor or any of the Trust Property.

3.21 Property Manager. The exclusive manager of the Trust Property shall be Trustor or such other manager as may be obtained by Trustor and approved in advance and in writing by Beneficiary, which approval shall not be unreasonably withheld. At any time an Event of Default

occurs or exists, Beneficiary shall have the right, but not the obligation, to select the manager of the Trust Property, such selection to be made at Beneficiary's sole and absolute discretion. The exclusive leasing agent of the Property and the Improvements, if other than the foregoing party, shall be first approved in writing by Beneficiary, which approval shall not be unreasonably withheld. The management and leasing contracts for the Trust Property shall be satisfactory to and subject to the written approval of Beneficiary, which approval shall not be unreasonably withheld, and shall be subordinate to this Deed of Trust. Upon default in any of these requirements, which is not cured within the applicable cure period, if any, then the whole of the Indebtedness Secured Hereby and the payment of the Obligations shall, at the election of Beneficiary, become immediately due and payable, together with any default interest and late payment charges required by the Note, and Beneficiary shall be entitled to exercise any or all remedies provided for or referenced in this Deed of Trust or any other Loan Documents.

3.22 Payment of Junior Encumbrances. Trustor shall not permit any default or delinquency under any other lien, Imposition, charge or encumbrance against the Trust Property, even though junior and inferior to the lien of this Deed of Trust; provided, however, the foregoing shall not be construed to permit or to be Beneficiary's consent to any other liens or encumbrances against the Trust Property, except as specifically permitted in this Deed of Trust.

3.23 Alteration, Removal and Change in Use of Property Prohibited. Trustor agrees not to permit or suffer any of the following without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld:

- (a) Any structural alteration of, or addition to, the Property or the Improvements as now or hereafter situated upon the Property or the addition of any new Improvements thereto, except for the erection of non load-bearing interior walls; or
- (b) The use of any of the Trust Property other than for the operation of Trustor's Business; or
- (c) Any change in the present zoning classification of the Property.

3.24 Conveyance of Mineral Rights Prohibited. Trustor agrees that the making of any oil, gas or mineral lease or the sale or conveyance of any oil, gas or mineral lease or the sale or conveyance of any mineral interest or right to explore for minerals under, through or upon the Property would impair the value of the Property; and that Trustor shall have no right, power or authority to lease the Property, or any part thereof, for oil, gas or other mineral purposes, or to grant, assign or convey any mineral interest of any nature, or the right to explore for oil, gas and other minerals, without first obtaining from Beneficiary express written permission therefor (which permission may be given or withheld in Beneficiary's sole and absolute discretion), which permission shall not be valid until recorded among the real property records of the County in which the Property is situated. Trustor further agrees that if Trustor shall make, execute, or enter into any such lease or attempt to grant any such mineral rights without the prior written consent of Beneficiary, then Beneficiary shall have the option, without notice, to declare the same to be a default hereunder and to declare the Indebtedness Secured Hereby and all Obligations immediately

due and payable. Whether Beneficiary shall consent to such lease or grant of mineral rights, Beneficiary shall receive the entire consideration to be paid for such lease or grant of mineral rights, with the same to be applied to the Indebtedness Secured Hereby, the Obligations or either of them, in such manner as Beneficiary may designate, notwithstanding the fact that the amount owing thereon may not then be due and payable or the said amounts are otherwise adequately secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Deed of Trust on the Trust Property.

#### ARTICLE IV

#### **SECURITY AGREEMENT AND FINANCING STATEMENT UNDER UNIFORM COMMERCIAL CODE**

4.01 Security Agreement and Financing Statement. To the extent any Collateral covered by this Deed of Trust consists of rights in action or personal property covered by the Uniform Commercial Code - Secured Transactions, this Deed of Trust constitutes a security agreement and financing statement as defined thereunder and Trustor hereby grants to both Trustee (for the benefit of Beneficiary) and Beneficiary a security interest in the Collateral.

THIS DEED OF TRUST SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING A PART OF THE COLLATERAL WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PROPERTY. FOR PURPOSES OF THE UCC THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the record fee owner of the real estate described in this instrument is the Trustor, and the Trustor's full legal name and address are exactly as set forth in the preamble on page one of this Deed of Trust and are incorporated herein by this reference;
- (b) The name and address of the debtor is that of the Trustor, the full legal name and address of which are exactly as set forth in the preamble on page one of this Deed of Trust and are incorporated herein by this reference;
- (c) The Trustor is an organization organized and registered under the laws of the State of Utah, and Trustor's organizational identification number is 2113499-0160;
- (d) The Trustor has not changed its legal name or its organizational status in the five-year period preceding the date hereof;
- (e) The name and address of the secured party is that of the Beneficiary, whose full name and address are set forth in the preamble on page one of this Deed of Trust and are incorporated herein by this reference;

(f) Information concerning the security interest evidenced by this instrument may be obtained from the secured party at its address above; and

(g) This document also covers goods that are or are to become Fixtures.

This Deed of Trust shall be self-operative with respect to any Collateral covered by this Deed of Trust which consists of rights in action or personal property covered by the UCC, but Trustor agrees to execute and deliver on demand such security agreements, financing statements or other instruments as Beneficiary may request to impose the lien hereof more specifically upon any of such property and to pay the recording and/or filing fees associated therewith. Trustor hereby (i) authorizes Beneficiary to file all financing statements, amendments and continuations as may be required from time to time to establish, maintain and/or continue the perfection of the security interest granted under the Deed of Trust and (ii) expressly waives any right the Trustor may have to require that the Trustee or the Beneficiary comply with the UCC counterparts of the provisions of section 9-610 or 9-615 of the Uniform Commercial Code.

4.02 Purchase Money Security Interests, Leases. If the lien of this Deed of Trust on any such property is now, or shall hereafter be, subject to a prior security interest covering such property, by reason of a purchase money security interest or otherwise, then in the event of any default hereunder, all the right, title and interest of Trustor in and to any and all deposits thereon is hereby assigned to Beneficiary, together with the benefit of any payments now or hereafter made thereon but nothing herein shall be deemed to be a consent to any prior security interest.

In the event Trustor owns or acquires only a lessee's interest in any Personalty or Fixtures, then, in addition to the foregoing requirements, before any of such property is placed in, on or about the Property:

(a) The written approval of Beneficiary to the leasing agreements under which Trustor owns or acquires such lessee's interest shall first be obtained, and

(b) All consents of the lessor under any such leasing agreements to such security interest of Beneficiary, and all agreements of such lessor in favor of Beneficiary deemed necessary by Beneficiary, shall first be obtained to the satisfaction of Beneficiary.

It is understood and agreed that, in order to protect Beneficiary from the effect of the UCC counterpart of section 9-334 of the Uniform Commercial Code, as amended from time to time, in the event that Trustor intends to purchase any goods which may become Fixtures attached to the Property or the Improvements, or any part thereof, and such goods will be subject to a purchase money security interest held by a seller or any other Person:

(i) Trustor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Beneficiary, and all requests for such written approval shall be in writing and contain the following information:

- (A) a description of the property to be replaced, added to, installed or substituted; and
- (B) the name and address of the proposed holder and proposed amount of the security interest.

Trustor's execution of any such security agreement or other document evidencing such security interest without Beneficiary's prior written approval shall constitute an Event of Default hereunder and an Event of Default under the Note and other Loan Documents. No consent by Beneficiary pursuant to this subsection shall be deemed to constitute an agreement to subordinate any right of Beneficiary in Fixtures or other property covered by this Deed of Trust.

(ii) If at any time Trustor fails to make any payment on an obligation secured by a purchase money security interest in any Personalty or any Fixtures, Beneficiary, at its option, may at any time pay the amount secured by such security interest. Any money paid by Beneficiary under this subsection, including any expenses, costs, charges and attorneys' fees incurred by Beneficiary shall be reimbursed to Beneficiary upon demand, shall be secured by this Deed of Trust and shall bear interest at the Default Rate (as defined under the Note) from the date advanced until paid. Beneficiary shall be subrogated to the rights of the holder of any such purchase money security interest in such Personalty or Fixtures.

(iii) Beneficiary shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Trustor's indebtedness for such Personalty or Fixtures, and, upon acquiring such interest as assignee thereof, to enforce same in accordance with the terms and provisions of the UCC and in accordance with any other provisions of law.

(iv) Whether or not Beneficiary has paid the Indebtedness Secured Hereby or taken an assignment of such security interest, Trustor covenants to pay all sums and perform all obligations secured thereby, and if Trustor at any time shall be in default under such security agreement, it shall constitute an Event of Default under this Deed of Trust.

(v) The provisions of sub-subsections (i), (ii), (iii), and (iv) above shall not apply if the goods which may become Fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Beneficiary, to the lien and security interest of this Deed of Trust in a manner satisfactory to Beneficiary.

4.03 General. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all personal property in which

Beneficiary has a security interest by reason of a separate agreement or instrument, are encumbered as one unit, and that, upon the occurrence of any Event of Default under this Deed of Trust or under the Note or other Loan Documents, Beneficiary may, at Beneficiary's option, pursuant to the UCC counterpart of section 9-610 of the Uniform Commercial Code, foreclose and sell all such property in the same proceeding, and all such property may, at Beneficiary's option, be sold as such in one unit as a going business. The filing or recording of any financing statement relating to the Fixtures, the Personalty or any other rights or interests generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

Trustor and Beneficiary agree that nothing herein contained shall be construed as in any way derogating from or impairing the hereby stated intention of the parties that to the maximum extent permitted by law, everything used in connection with the production of income from the Trust Property and/or adapted for the use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be regarded as, part of the real estate irrespective of whether (a) any such item is physically attached to the Improvements, (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained therein or in any list filed with the Beneficiary, or (c) any such item is referred to or reflected in any financing statement filed at any time. Similarly, the mention in any financing statement of (i) the rights in or the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) the Trustor's interest as lessor in any present or future Lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to a Lease or otherwise shall never be construed as in anywise altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document, but such mention in said financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to (a), (b) and (c) above that notice of Beneficiary's priority of interest to be effective against a particular class of person, including, but not limited to, the federal government, must be filed in the UCC records. For purposes of treating this Deed of Trust as a security agreement and financing statement, Beneficiary shall be deemed to be the secured party and Trustor shall be deemed to be the debtor.

## ARTICLE V

### LEASES AND RENTS

5.01 Trustor to Comply with Leases. Trustor will, at its sole cost and expense:

(a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Leases.

(b) Enforce or secure the performance of each and every obligation, covenant, condition and agreement of each Lease by the tenants thereunder to be performed.

(c) Not borrow against, pledge or further assign any Rents due under any Leases.

(d) Not permit the prepayment of any Rents due under any Lease more than thirty (30) days in advance nor anticipate, discount, compromise, forgive or waive any such Rents.

(e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases.

(f) Not enter into, materially modify, alter or waive any Lease or any part or provision thereof, or terminate or cancel any Lease, or any part or provision thereof, except as approved in advance and in writing from time to time by Beneficiary.

(g) Promptly provide to Beneficiary executed copies of any Leases, and amendments, renewals or modifications to Leases, entered into by Trustor from and after the date of this Deed of Trust.

(h) Submit to Beneficiary for Beneficiary's prior written approval any standard lease forms that Trustor uses or intends to use in connection with the Property or Improvements.

(i) Deliver to Beneficiary a copy of each notice of default or breach given to Trustor, at the same time as such notice is given to Trustor, regarding any Trustor default or breach under any Lease.

5.02 Beneficiary's Right to Perform under Leases. Should Trustor fail to perform, comply with, or discharge any obligations of Trustor under any Lease or should Beneficiary become aware of or be notified of a failure on the part of Trustor to so perform, comply with, or discharge its obligations under said Lease, Beneficiary may, but shall not be obligated to, and without further demand upon Trustor, and without waiving or releasing Trustor from any obligation contained in this Deed of Trust, remedy such failure, and Trustor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with interest at the Default Rate (as defined under the Note). All such sums, together with interest as aforesaid shall become additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Trustor from any default hereunder.

5.03 Absolute Assignment of Rents. Trustor does hereby absolutely and unconditionally assign and transfer unto Beneficiary all of its right, title and interest in and to all existing and future Leases and all of the Rents now due and which may hereafter become due, it being the intention of this Deed of Trust to establish an absolute transfer and assignment of all such right, title and interest under the Leases and all of the Rents unto the Beneficiary. The foregoing assignment shall extend to and cover any and all extensions and renewals of existing and future

Leases and to any and all present and future rights against any guarantors of any such obligations. Notwithstanding the foregoing assignment, Beneficiary shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of the foregoing assignment, and Trustor shall and does hereby agree to indemnify, defend and to hold Beneficiary harmless for, from and against any liability, loss or damage which it might incur under any Lease or under or by reason of the foregoing assignment and from any claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases; provided, however, that Trustor shall not be obligated to indemnify and hold harmless Beneficiary from any demands or claims caused solely by the gross negligence or willful misconduct of Beneficiary. In pursuance of the foregoing assignment, and not in lieu thereof, Trustor shall, on demand, give Beneficiary separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. Trustor does hereby irrevocably appoint Beneficiary its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all Rents; provided, Beneficiary grants Trustor the revocable license and privilege to collect the Rents unless and until an Event of Default occurs or exists under this Deed of Trust or under the Note or any other Loan Document. During any period that Trustor's license to collect the Rents is in effect, Trustor shall hold all Rents collected by it in trust for the benefit of Beneficiary and shall use them in the following order of priority:

- (a) To payment of all attorney's fees and professional fees incurred by Beneficiary and to the reasonable fees of the independent contractor or receiver, if any, selected by Beneficiary or approved by a court;
- (b) To payment of all delinquent or current real estate taxes and special assessments payable with respect to the Property, or if the Deed of Trust requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
- (c) To payment of all premiums then due for the insurance required by the provisions of this Deed of Trust, or if the Deed of Trust requires periodic escrow payments for such premiums to the escrow payments then due;
- (d) To pay the costs of maintaining the Trust Property in the condition required under Section 3.05 of this Deed of Trust;
- (e) To pay the principal of (including prepayment premiums and late charges, if any) and interest on the Indebtedness Secured Hereby and any other sums then due and owing under the Note, this Deed of Trust or any of the other Loan Documents; and
- (f) To pay the costs of performing or discharging any of Trustor's other obligations under this Deed of Trust.

Provided that no Event of Default then exists under the Note, this Deed of Trust or any of the other Loan Documents (and no event has occurred that, with the giving of notice or the passage of



time would constitute such an Event of Default) after application of the Rents as provided in (a) through (f) above, Trustor may retain any remaining Rents for its account. Upon an Event of Default under this Deed of Trust or under the Note or any other Loan Documents, and whether before or after the institution of proceedings to sell the Trust Property or foreclose this Deed of Trust or during any period of redemption or reinstatement and without regard to waste, adequacy of the security or solvency of the Trustor, Beneficiary may revoke the revocable license and privilege granted Trustor hereunder to collect the Rents, and may, at its option, without notice in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding or by a receiver duly appointed, give, or require Trustor to give, notice to any or all tenants under any Lease authorizing and directing the tenant to pay such Rents to Beneficiary, such agent, or receiver as the case may be; collect all of the Rents; enforce the payment thereof and exercise all of the rights of the landlord under any Lease and all of the rights of Beneficiary hereunder; enter upon, take possession of, manage and operate the Trust Property, or any part thereof; cancel, enforce or modify any Leases; fix or modify Rents; and do any acts which the Beneficiary deems proper to protect the security hereof. Trustor hereby expressly consents in advance to the appointment of a receiver applied for and selected by or for Beneficiary at any time upon or after an Event of Default under this Deed of Trust, under the Note or under any other Loan Documents whether or not foreclosure proceedings have been commenced or concluded and whether or not a foreclosure sale has occurred. Any Rents collected shall be applied to the costs and expenses of operation, management and collection, including attorneys' fees, to the payment of the fees and expenses of any agent or receiver so acting, to the costs incurred by the Beneficiary, including attorneys' fees, to the payment of taxes, assessments, insurance premiums and expenditures for the management, repair and upkeep of the Trust Property, to the performance of landlord's obligations under any Leases and to the Indebtedness Secured Hereby and the Obligations all in such order, amounts and manner as the Beneficiary may require. The entering upon and taking possession of the Trust Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default under this Deed of Trust or affect any notice of default or invalidate any act done pursuant to such notice nor in any way operate to prevent Beneficiary from pursuing any other remedy which it may now or hereafter have under the terms of this Deed of Trust or any other security given for the Indebtedness Secured Hereby nor shall it in any way be deemed to constitute Beneficiary to be a "mortgagee-in-possession." Each Lease shall at Beneficiary's option be filed for record in the local recording office of the county where the Property is located. Also, to the extent required by the Beneficiary, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its Lease, all satisfactory in form and content to the Beneficiary.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

6.01 Events of Default. The occurrence of any of the following shall be an event of default hereunder ("Event of Default"):

- (a) Failure to pay the Indebtedness Secured Hereby or to make any payment of

money or to pay, perform or discharge any monetary or financial obligation or any other Obligation on the date when the same is due in accordance with the terms of the Note, this Deed of Trust or any other Loan Documents.

(b) Failure to deliver to Beneficiary any financial statements or reports as required hereunder or under the Note or any other Loan Documents where such failure is not remedied within five (5) days after written notice of such failure.

(c) A default or an event of default under any other document or instrument that now or hereafter evidences or secures payment of the Note, and the expiration of any applicable cure period provided for therein.

(d) Transfer of title to the Property or Improvements or of any interest therein, or any encumbrance thereof, without the prior written consent of Beneficiary, as provided for in Section 3.13 above.

(e) Breach, incorrectness or untruth of any warranties or representations contained herein, in the Note or any of the other Loan Documents where either: (i) such breach, incorrectness or untruth is intentional or fraudulent; or (ii) whether or not such breach, incorrectness or untruth is intentional or fraudulent, where such breach, incorrectness or untruth of such representation or warranty would have a material adverse impact on Beneficiary, Trustor, Trustor's Business, the Trust Property, the ability of Trustor to pay or perform the Indebtedness Secured Hereby or to pay or perform the Obligations, the ability of Trustor to perform under the Loan Documents, or any rights, benefits, powers or privileges of Beneficiary under this Deed of Trust, the Note or any of the other Loan Documents.

(f) A default or event of default under, or institution of foreclosure or other proceedings to enforce, any second deed of trust or junior security interest, lien or encumbrance of any kind upon the Property or any portion thereof but nothing herein shall be deemed to consent to or approve of any second or junior deed of trust, security interest, lien or encumbrance.

(g) Should Trustor, any other Person who is or may become liable for all or any part of the Indebtedness Secured Hereby, or any of their successors and assigns, including, without limitation, the then current owners of any interest in the Property:

(i) File a petition under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding"); or

(ii) File or issue any answer or document admitting insolvency or inability to pay its debts; or

(iii) Fail to obtain a vacation or stay of any involuntary Bankruptcy

Proceeding within 60 days after the date filed, as hereinafter provided; or

(iv) Be the subject of an order for relief against it in any Bankruptcy Proceeding; or

(v) Have a custodian or trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation if such trustee or receiver shall not be discharged or if such jurisdiction shall not be relinquished, vacated or stayed on appeal or otherwise within 60 days; or

(vi) Make an assignment for the benefit of its creditors; or

(vii) Admit its inability to pay its debts generally as they become due; or

(viii) Consent to an appointment of a custodian, receiver or trustee of all of its property, or the major part thereof.

(h) Should Trustor or any obligated Person take action to authorize any actions set forth in (g) above.

(i) Any written representation or disclosure (excluding any financial projections) made to Beneficiary by Trustor or any Guarantor in connection with or as an inducement to the making of the loan evidenced by the Note shall prove to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Deed of Trust.

(j) The abandonment of the Property by Trustor.

(k) Changing Trustor's name, identity, structure or the jurisdiction under which Trustor is organized without Beneficiary's prior written consent, or causing or permitting to occur any other event that would require Beneficiary to file a new financing statement under the UCC.

(l) Failure to procure and maintain insurance as provided herein or in any of the other Loan Documents.

(m) An event that is specified in any provision of this Deed of Trust as constituting an Event of Default.

(n) Failure to perform any of the other terms, covenants and conditions of the Note, this Deed of Trust or any of the other Loan Documents, provided that such default shall have continued for a period of 20 days after written notice of such default from Beneficiary, or, in the event such performance cannot reasonably be completed within 20

days, for a period reasonably necessary to complete such performance not exceeding a total of 60 days.

(o) Any other event not described above shall occur which, under this Deed of Trust, or under the Note, or any other Loan Documents constitutes a default by Trustor hereunder or thereunder or gives Beneficiary the right to declare the Indebtedness Secured Hereby or the payment or performance of any of the Obligations, or any part thereof, to be immediately due and payable.

6.02 Remedies. Upon or following the occurrence of any Event of Default Beneficiary shall have, at a minimum, the following rights and remedies:

(a) Acceleration. Beneficiary may declare the entire Indebtedness Secured Hereby (if not then due and payable) and the Obligations to be due and payable immediately, and notwithstanding the stated maturity in the Note, or any of the Loan Documents, the Indebtedness Secured Hereby and the Obligations, shall thereupon become and be immediately due and payable.

(b) Entry. Without regard to the value of the security, Beneficiary in person or by agent or by court-appointed receiver may enter upon, take possession of, manage and operate the Trust Property or any part thereof and do all things necessary or appropriate in Beneficiary's sole, absolute, and uncontrolled discretion in connection therewith, including without limitation making and enforcing, and if the same are subject to modification or cancellation, modifying or canceling Leases upon such terms or conditions as Beneficiary deems proper, obtaining and evicting tenants, and fixing or modifying Rents, contracting for and making repairs and alterations, and doing any and all other acts which Beneficiary deems proper to protect the security hereof; and either with or without so taking possession, in its own name or in the name of Trustor, suing for or otherwise collecting and receiving the Rents, including those past due and unpaid, and applying the balance after paying costs and expenses of operation and collection, including attorneys' fees, upon any Indebtedness Secured Hereby or the Obligations, and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the site of the Property any of the Trust Property which has been removed therefrom. The entering upon and taking possession of the Trust Property, or any part thereof, or the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice and, notwithstanding continuance in possession of the Property or any part thereof by Beneficiary, Trustor or a receiver, and the collection, receipt and application of the Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust and/or the other Loan Documents or by law or in equity. Subject to any notice provisions and other provisions affording Trustor an opportunity to cure defaults hereunder, any and all such actions may be taken by Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the Indebtedness Secured Hereby. The exercise by Beneficiary

of any of the remedies provided herein shall be deemed an acceleration pursuant to subsection (a) of this Section 6.02.

(c) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust as a realty mortgage or to enforce any of the covenants and agreements hereof which are specifically enforceable, and seek damages for the breach of other covenants and agreements.

(d) Power of Sale. Beneficiary may elect to cause the Trust Property or any part thereof to be sold as follows:

(i) Beneficiary may proceed as if all of the Trust Property were real property, in accordance with sub-subsection (iii) below, or Beneficiary may elect to dispose of the Personalty in accordance with sub-subsection (ii) below, separate and apart from the sale of the remainder of the Trust Property.

(ii) Beneficiary may dispose of any of the Personalty in any manner now or hereafter permitted by the UCC, or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall be eligible to purchase any part or all of such Personalty at any such disposition. Any such disposition may be either public or private, as Beneficiary may so elect, subject to the provisions of the UCC. Beneficiary shall give Trustor at least ten days prior written notice of the time and place of any public sale or other disposition of the Personalty or of the time at or after which any private sale or any other intended disposition is to be made, and such notice shall constitute commercially reasonable notice to Trustor.

(iii) Beneficiary may elect to sell the Property, Fixtures, Improvements, Rents and Leases and any Personalty Beneficiary has elected to treat as real property pursuant to the UCC, or any part thereof under the power of sale herein granted in any manner permitted by applicable law. Upon such election, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell such property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor. If the Trust Property consists of several lots, parcels or items of property, Beneficiary may designate the order in which such lots, parcels or items shall be offered for sale or sold. Any person, including Trustor, Trustee or Beneficiary, may purchase at any public sale hereunder, and Beneficiary shall have the right to purchase at any public sale hereunder by crediting upon the bid price the amount of all or any part of the Indebtedness Secured Hereby and any other amounts permitted by law. Should Beneficiary desire that more than one sale or other disposition of the Trust Property

be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Trust Property not sold until all Indebtedness Secured Hereby has been fully paid. Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts, and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

6.03 Proceeds of Sale. Unless otherwise required by applicable law (Trustor hereby waives any contrary provisions of Utah law), the proceeds of any sale made under or by virtue of Section 6.02, together with all other sums which then may be held by Trustee or Beneficiary under this Deed of Trust whether under the provisions of this Article VI or otherwise, shall be applied as follows:

FIRST: To the payment of the costs and expenses of any such sale, including the payment of the Trustee's and attorney's fees, actually incurred; to the payment of all expenses, liabilities and advances made or incurred by Trustee under this Deed of Trust, together with interest on all advances made by Trustee at the Default Rate (as defined in the Note).

SECOND: To the payment of any and all sums expended by Beneficiary under the terms of the Loan Documents, not then repaid, and all other sums (except advances of principal and interest thereon) required to be paid by Trustor pursuant to any provisions of this Deed of Trust, the Note or any of the other Loan Documents, together with interest thereon at the Default Rate (as defined under the Note).

THIRD: To the payment of the entire Indebtedness Secured Hereby and the amount of the Obligations with interest thereon at the Default Rate (as defined under the Note) until the same is paid in full.

FOURTH: The remainder, if any, to the Person or Persons legally entitled thereto.

6.04 Waiver of Marshaling. Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights (except as may be granted by the statutes of the State of Utah and that cannot be waived by Trustor) to direct the order in which any of the Trust Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Trust Property and/or any other property now or hereafter constituting security for any of the Indebtedness Secured Hereby or the Obligations marshaled upon any foreclosure of this Deed of Trust or the holding of a Trustee's sale hereunder, or of any other security for any of said

indebtedness.

6.05 Remedies Cumulative. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Trustee or Beneficiary may be exercised from time to time as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the payment of the Indebtedness Secured Hereby or the payment or performance of the Obligations, Beneficiary at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Beneficiary at any time as additional security hereunder, to any of the Indebtedness Secured Hereby or any of the Obligations shall not extend or postpone the due dates of any payments due from Trustor to Beneficiary hereunder or under the Note or any of the other Loan Documents, or change the amounts of any such payments or otherwise be construed to cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice.

6.06 Waiver by Trustor. Except as otherwise expressly set forth herein, Trustor and all Persons who are or may be or become liable to pay all or any part of the Indebtedness Secured Hereby waive any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor and all other formalities. Trustor and all Persons who are or may become liable to pay all or any part of the Indebtedness Secured Hereby waive all rights and/or privileges it or they might otherwise have for redemption or reinstatement, or to require Trustee and/or Beneficiary to proceed against or exhaust the assets encumbered hereby or by any other Loan Document or instrument securing the Note or the Obligations or to proceed against any Person who is or may become liable to pay all or any part of the Indebtedness Secured Hereby, or to pursue any other remedy available to Beneficiary in any particular manner or order under the legal or equitable doctrine or principle of marshalling and/or suretyship, and further agree that Trustee and/or Beneficiary may proceed against any or all of the assets encumbered hereby or by any other Loan Document, in such order and manner as Beneficiary in its sole discretion may determine.

6.07 Additional Rights and Remedies. In the event Trustor fails or refuses to surrender possession of the Trust Property after any Trustee's sale, Trustor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Beneficiary.

## ARTICLE VII

### MISCELLANEOUS

7.01 Taxation of Note and Deed of Trust. If at any time before the Indebtedness Secured Hereby is fully paid and the Obligations fully paid and performed, any law be enacted, deducting from the value of real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of deeds of trust or bonds, or the debts secured hereby, for state or local purposes, or the manner of collection of such taxes, so as to affect adversely this Deed of Trust or the Indebtedness Secured Hereby, or the owner and holder thereof in respect thereto, then this Deed of Trust and the Indebtedness Secured Hereby and the Obligations shall at the option of Beneficiary without notice to any party, become immediately due and payable. If any such law should be enacted and to the extent permitted by such law, Trustor shall have the opportunity of paying to Beneficiary the amount of any additional cost or taxes to Beneficiary from such law. Trustor, upon demand by the Beneficiary, shall pay such taxes or assessments, or reimburse Beneficiary therefor, in which case Beneficiary shall not have the right to declare the Indebtedness Secured Hereby and the Obligations to be immediately due and payable; provided, however, that Trustor shall not have the right to pay to or reimburse Beneficiary for such taxes or assessments if in the opinion of counsel for Beneficiary: (a) it might be unlawful to require Trustor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law. In such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the Indebtedness Secured Hereby and the Obligations to be and become due and payable sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Trustor shall not be obligated to pay any portion of Beneficiary's state and/or federal income tax.

7.02 Non-Waiver.

(a) By accepting payment of any sum secured hereby after its due date or altered performance of the Indebtedness Secured Hereby or any of the Obligations, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any Indebtedness Secured Hereby or any Obligations, either to require prompt payment when due of all other sums so secured or to take remedy for failure to make such prompt payment or full or unaltered performance. No exercise of any right or remedy by Trustor or Beneficiary hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

(b) No delay or omission of Trustor or Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

(c) Receipt of Rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Deed of Trust and any disposition of the same by Trustee or Beneficiary shall not constitute a waiver of the right of foreclosure or a Trustee's sale by



Trustee or Beneficiary upon the occurrence of an Event of Default or failure of performance by Trustor of any covenant or agreement contained herein, in the Note, or in any of the other Loan Documents.

7.03 Protection of Security. Should Trustor fail to make any payment or to perform any covenant as herein provided, Beneficiary (but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereon) may: (a) make or do the same in the manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Trust Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the reasonable judgment of Beneficiary is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its reasonable discretion may deem necessary therefor, including cost of evidence of title and reasonable counsel fees. Any expenditures in connection herewith shall constitute an advance hereunder and shall be immediately due and payable upon demand and shall bear interest from the date made until paid at the Default Rate (as defined under the Note).

7.04 Rule of Construction. When the identity of the parties hereto or other circumstances make it appropriate, as used in this Deed of Trust, any gender shall include any other gender, and the singular number shall include the plural. The headings of each article, section or subsection herein are for information and convenience only and do not limit or construe the contents of any provision hereof. The language in all parts of this Deed of Trust shall be in all cases construed simply, according to its fair meaning and not for or against Trustor or Beneficiary, regardless of which party drafted the particular language that is being construed, both parties having been represented by adequate counsel.

7.05 Severability. If any term of this Deed of Trust or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust or the application of such term to Persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the full extent permitted by law.

7.06 Successors In Interest. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but also on their heirs, executors, administrators, successors and assigns (but nothing herein shall be construed as or deemed to constitute Beneficiary's consent to any sale, transfer or conveyance of the Trust Property or any interest in Trustor). All obligations of Trustor hereunder and any Persons who are or may become liable to pay the Indebtedness Secured Hereby or any portion thereof are joint and several.

7.07 Notices. All notices to be given by Beneficiary or by Trustee to Trustor or by Trustor to Beneficiary pursuant to this Deed of Trust shall be sufficient if delivered to a nationally recognized overnight delivery service, addressed to the following described addresses of the parties hereto, or to such other address as a party may request in writing: (1) If to Trustor, then at its address first set forth above in this Deed of Trust; and (2) if to Beneficiary, then to 5400

University Avenue, West Des Moines, Iowa 50266, Attn: Real Estate and Commercial Mortgage Manager; with a copy to Morain & Pugh, P.L.C., 5400 University Avenue, West Des Moines, Iowa 50266. Any time period provided in the giving of any notice hereunder shall commence upon, and any notice given in accordance herewith shall be effective upon, the date delivered to said overnight delivery service.

7.08 Modifications. This Deed of Trust may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

7.09 Governing Law. This Deed of Trust shall be construed according to and governed by the laws of the State of Utah (excluding conflicts of law rules).

7.10 Future Advances. This Deed of Trust is given to secure not only the existing indebtedness of the Trustor to the Beneficiary evidenced by the Note secured hereby, but also such future advances up to an additional amount equal to twice the original principal balance of the Note as are made within 20 years from date hereof, plus interest thereon, and any disbursements made by Beneficiary for the payment of taxes, insurance or other liens on the property encumbered by this Deed of Trust, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date. The total amount of indebtedness secured hereby may increase or decrease from time to time. The provisions of this paragraph shall not be construed to imply any obligation on Beneficiary to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of the Beneficiary. Any reference to "Note" in this Deed of Trust shall be construed to include any future advances made pursuant to this paragraph.

7.11 Captions. The captions set forth at the beginning of the various Sections of this Deed of Trust are for convenience only and shall not be used to interpret or construe the provisions of this Deed of Trust.

7.12 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 this 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 Trust Property for the full amount of any such indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice: (a) release any person liable for the payment of any of the Indebtedness Secured Hereby or the Obligations, (b) extend the time or, with the consent of Trustor, otherwise alter the terms of payment of any of the Indebtedness Secured Hereby or the Obligations, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust,

mortgages, security agreements or any other instruments of security, or (d) alter, substitute or release any property securing the Indebtedness Secured Hereby or the Obligations. 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 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 any part of the Trust Property.

7.13 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived by Trustor to the full extent permitted by law.

7.14 Consent. Wherever any consent or approval of Beneficiary is required hereunder, then, unless otherwise specifically provided herein, such consent or approval may be given or withheld in Beneficiary's sole and absolute discretion. 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.

7.15 Substitution of Trustee. Beneficiary may at Beneficiary's sole cost and expense remove Trustee at any time or from time to time and appoint a successor trustee, and upon such appointment, 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 Property is located, namely Salt Lake County, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

7.16 Concerning Information Supplied, Representations and Warranties. Trustor warrants that all documents and all information supplied or hereafter supplied to Beneficiary and/or Trustee concerning Trustor or the Trust Property are and will continue to be true, correct, complete and without material adverse change until the Indebtedness Secured Hereby and all Obligations have been paid and performed in full. Trustor agrees to promptly notify Beneficiary in writing of any material adverse changes in any of the foregoing. All representations, warranties, covenants and agreements of Trustor made herein or in any certificate or other documents delivered to Beneficiary by or on behalf of Trustor or any Guarantor shall be deemed to have been relied upon by Beneficiary notwithstanding any investigation heretofore or hereafter made by Beneficiary or on its behalf, and shall continue in full force and effect as long as any of the Indebtedness Secured Hereby remains unpaid or any of the Obligations remain unpaid or unperformed.

7.17 Further Assurances. Trustor will, upon request of Beneficiary, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interests covered or

intended to be covered hereby, and to perfect and maintain such lien and security interest.

7.18 Attorneys' Fees. In the event that it becomes necessary for Beneficiary to employ legal counsel or to take legal action to collect the Indebtedness Secured Hereby or the Obligations or otherwise to enforce any provision hereof, or to protect any of Beneficiary's rights hereunder, Trustor and all Persons who are or may become liable to pay or perform all or part of the Indebtedness Secured Hereby and/or any one or more of the Obligations agree to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, attorneys' fees actually incurred by Beneficiary, and all costs of preparation and conduct of such proceedings, including costs of title searches, trustee sale guaranties and title policy commitments, all of which shall be a lien upon the Trust Property, secured by this Deed of Trust and shall bear interest from the date of expenditure by Beneficiary until paid at the Default Rate (as defined under the Note).

7.19 Subrogation. Beneficiary shall be subrogated to the lien notwithstanding its release of record, of any prior mortgage, deed of trust or other lien or encumbrance paid or discharged from the proceeds of the Note or from any other advance made by Beneficiary.

7.20 No Merger. It being the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Trust Property, it is hereby understood and agreed that should the Beneficiary or the Trustee acquire an additional or other interests in or to the Trust Property or the ownership thereof, then, unless a contrary intent is manifested by the Beneficiary or the Trustee as evidenced by an express statement to that effect in appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title, toward the end that this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title. Further, it is not the intention of the parties that any obligation of Trustor to pay or to reimburse Beneficiary for costs and expenses, including attorneys' fees and costs, be merged in any foreclosure judgment or the conclusion of any other enforcement action, and all such obligations shall survive the entry of any foreclosure judgment or the conclusion of any other enforcement action.

7.21 Beneficiary Not a Joint Venturer or Partner. Trustor and Beneficiary acknowledge and agree that in no event shall Beneficiary be deemed to be a partner or joint venturer or member of a joint enterprise with Trustor. Without limitation of the foregoing, Beneficiary shall not be deemed to be such partner or joint venturer on account of its becoming a mortgagee-in-possession or exercising any rights pursuant to this Deed of Trust, the Note or any of the other Loan Documents.

7.22 No Third Party Benefits. This Deed of Trust, the Note and the other Loan Documents are made for the sole benefit of Trustor and Beneficiary, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Beneficiary elects to employ any or all of the rights, powers or remedies available to it under any of the foregoing, Beneficiary shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Beneficiary's actions or omissions pursuant thereto or otherwise in connection with this Deed of Trust.

7.23 No Offset. All sums comprising the Indebtedness Secured Hereby or the Obligations payable by Trustor shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Trust Property or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Trust Property or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Trust Property or any portion thereof by the holder of superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary, or by any court, in any such proceeding; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other agreement with Trustor; or (g) any other similar occurrence.

7.24 Maximum Interest Payable. Notwithstanding anything to the contrary contained in this Deed of Trust, the Note, or any other Loan Document, Trustor shall not be obligated to pay, and Beneficiary shall not be entitled to charge, collect, receive, reserve, or take, interest (it being understood that "interest" shall be calculated as the aggregate of all charges which constitute interest under applicable law that are contracted for, charged, reserved, received, or paid) in excess of the maximum non-usurious interest rate, as in effect from time to time, which may be charged, contracted for, reserved, received, or collected by Beneficiary in connection with this Deed of Trust, the Note and the other Loan Documents (such rate, the "Highest Lawful Rate"). During any period of time in which the interest rates specified herein exceed the Highest Lawful Rate, interest shall accrue and be payable at the Highest Lawful Rate; provided that, if the interest rates decline below the Highest Lawful Rate, interest shall continue to accrue and be payable at the Highest Lawful Rate (so long as there remains any unpaid principal with respect to the loan evidenced hereby) until the interest that has been paid equals the amount of interest that would have been paid if interest had at all times accrued and been payable at the applicable interest rates specified herein. If, for any reason, the Beneficiary receives anything of value as interest or anything deemed interest by applicable law under this Deed of Trust, the Note, any of the other Loan Documents, or otherwise that results in Beneficiary receiving interest in an amount in excess of the Highest Lawful Rate, then the amount of such excess shall be applied to the reduction of the principal amount owing hereunder or on account of any other indebtedness of Trustor to Beneficiary, and not to the payment of interest. If, however, the amount of such excess exceeds the unpaid principal balance of all indebtedness of Trustor to Beneficiary such amount shall be refunded to Trustor. In determining whether or not the interest paid or payable with respect to any indebtedness of Trustor to Beneficiary exceeds the Highest Lawful Rate, Trustor and Beneficiary shall: (i) characterize any non-principal payment as an expense, fee or premium rather than as interest; (ii) exclude voluntary prepayments and the effects thereof; (iii) amortize, prorate, allocate and spread the total amount of interest throughout the actual term of such indebtedness so that it does not exceed the maximum amount permitted by applicable law; or (iv) allocate interest between portions of such indebtedness so that, to the greatest extent possible, no such portion shall bear interest at a rate greater than the maximum rate permitted by applicable law. For purposes of this Section, the term "applicable law" means the internal laws of the State of Utah, but, to the

extent, contrary to the express intent of the parties, such choice of law is found to be inapplicable to this Deed of Trust, then "applicable law" shall mean that law in effect from time to time and applicable to this loan transaction which lawfully permits the charging and collection of the highest permissible, lawful, non-usurious rate of interest on such loan transaction and this Deed of Trust, and, to the extent controlling, laws of the United States of America.

7.25 Participation. Trustor acknowledges that Beneficiary may wish, and shall have the right, to have one or more participants (and to sell participation interests) in the rights of Beneficiary under the Note, this Deed of Trust and the other Loan Documents or any one or more of them. Trustor agrees that, if so requested by Beneficiary, it will cause all insurance policies, bonds, binders and commitments (including, without limitation, casualty insurance and title insurance) required by this Deed of Trust to be delivered to Beneficiary to name as additional insureds or obligees such participants as Beneficiary may request. Unless Trustor consents in writing to the contrary, despite any participation in the Notes, this Deed of Trust or the other Loan Documents, or any one or more of them, Trustor shall be entitled to deal directly with the Beneficiary and need not deal directly with any participant of Beneficiary in all matters relating to the foregoing.

7.26 Accounts. To the extent that the Uniform Commercial Code - Secured Transactions does not apply to the Reserves or the proceeds thereof, Trustor hereby pledges and assigns to Beneficiary all of its right, title and interest in and to the Reserves and the proceeds thereof as additional security for the payment of the Indebtedness Secured Hereby and the payment and performance of the Obligations.

7.27 Integration. This Deed of Trust (and, to the extent referred to herein, the Note and the other Loan Documents) constitutes the full and complete integrated agreement with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements, including, but not limited to, that certain commitment letter dated July 17, 2007 from Beneficiary to The Clawson Group, Inc. as modified and supplemented (the "Commitment Letter"). Trustor acknowledges that the Commitment Letter may contain terms and provisions different than or in addition to those set forth in this Deed of Trust, the Note or the other Loan Documents and that this Deed of Trust, the Note or the other Loan Documents may contain provisions not set forth in the Commitment Letter. By signing this Deed of Trust, Trustor agrees that any such different or additional terms or provisions are superseded by the provisions of this Deed of Trust, the Note and the other Loan Documents (except that nothing in the foregoing shall supersede any provisions of the Commitment Letter obligating Trustor to pay or reimburse to Beneficiary any fees, deposits, costs or expenses in connection with the loan made by Beneficiary to Trustor that is evidenced by the Note and such provisions shall remain binding on Trustor).

7.28 Waiver of Co-Tenancy Rights. In the event the Property is held in a joint tenancy or a tenancy in common, Trustor, and each party comprising Trustor, hereby waives all of their respective co-tenancy rights provided at law or in equity for tenants in common between, among or against each other, including, without limitation, any right to partition the Trust Property.

7.29 Counterparts. This instrument may be executed in several counterparts, which

together shall constitute one and the same instrument.

**7.30 Waiver of Jury Trial THE PARTIES HERETO, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS AGREEMENT OR INSTRUMENT, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.**

[Remainder of page intentionally left blank, signature page follows]

IN WITNESS WHEREOF, Trustor has caused this instrument to be executed and delivered as of the date first written above.

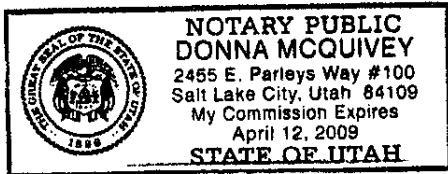
RICHARD N. REESE FAMILY LIMITED LIABILITY COMPANY, L.L.C., a Utah limited liability company

By: [Signature]  
Name: Richard N. Reese  
Title: Manager

STATE OF UTAH )  
COUNTY OF SALT LAKE )

ss.

The foregoing instrument was acknowledged before me this 19th day of October 2007, by Richard N. Reese, the Manager of RICHARD N. REESE FAMILY LIMITED LIABILITY COMPANY, L.L.C., a Utah limited liability company, on behalf of said limited liability company.



[Signature]  
Name: Donna McQuivey  
Notary Public  
My Commission Expires: 4-12-09

[SIGNATURE PAGE TO DEED OF TRUST]



**EXHIBIT "A"**

Legal Description

**PARCEL 1:**

Beginning at the Northwest corner of Lot 10, Block 15, Ten Acre Plat "A", Big Field Survey and running thence East 158.68 feet, thence South 185.20 feet; thence West 159.68 feet; thence North 185.20 feet to the point of beginning.

**LESS AND EXCEPTING therefrom the following:**

A parcel of land in fee for highway known as Project No. 032-1, being part of an entire tract of property, in Lot 10, Block 15, Ten Acre Plat "A" Big Field Survey. The boundaries of said parcel are described as follows:

Beginning at a point that is the Northeast corner of said entire tract, said point being East 158.68 feet from the Northwest corner of Lot 10, Block 15, Ten Acre Plat "A", Big Field Survey and running thence South 25.00 feet; thence North 88°26'30" West 158.74 feet to the Easterly right of way line of the Union Pacific Railroad; thence North 20.68 feet along said railroad right of way to the Southerly right of way line of existing 3300 South Street; thence Easterly 158.68 feet along said Southerly right of way line to the point of beginning.

**PARCEL 2:**

Beginning at a point that is 185.20 feet South from the Northwest corner of Lot 10, Block 15, Ten Acre Plat "A", Big Field Survey and running thence East 158.68 feet; thence South 158.00 feet; thence West 158.68 feet; thence North 158.00 feet to the point of beginning.

**PARCEL 3:**

Beginning at a point that is 31.00 feet North and 590.00 feet West of the Southeast corner of Lot 10, Block 15, Ten Acre Plat "A", Big Field Survey and running thence North 200.00 feet; thence West 48.00 feet; thence South 200.00 feet; thence East 48.00 feet to the point of beginning.