

When recorded, mail to:

Brian D. Cunningham, Esq.  
SNELL & WILMER L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Sun Life Loan No.: 716943

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LANDMARK TITLE  
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## LEASEHOLD DEED OF TRUST AND SECURITY AGREEMENT

Cover Sheet

**Date:** September 29, 2014

**Borrower:** BOYER RED BUTTE CREEK 1, L.C., a Utah limited liability company

**Borrower's Notice Address:**

90 West 400 South, Suite 200  
Salt Lake City, Utah 84101

**Trustee:** LANDMARK TITLE COMPANY and all successors and assigns for the benefit of Lender (as determined below).

**Trustee's Notice Address:**

675 East 2100 South, Suite 200  
Salt Lake City, Utah 84106

**Lender:** Sun Life Assurance Company of Canada, a Canadian corporation, together with other holders from time to time of the Note (as herein defined).

**Lender's Notice Address:** c/o Sun Life Assurance Company of Canada  
One Sun Life Executive Park  
Wellesley Hills, Massachusetts 02481  
Attention: Mortgage Investments Group

**Note Amount:** \$8,000,000.00

**State:** Utah

**Borrower's Leasehold Interest in the Land (as defined herein):** Pursuant to that certain Enhanced-Use Ground Lease between The Secretary of Veterans Affairs, in Office of the United States, on behalf of the Department of Veterans Affairs and Borrower dated May 9, 2001 and amended by that certain First Amendment to Enhanced-Use Ground Lease dated October 28, 2004, 2004 [sic]

Exhibit A hereto is incorporated herein by reference.

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1. **DEFINITION OF TERMS.** As used herein, the terms defined on the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:
  - 1.1 *Commitment:* a certain mortgage loan commitment issued by Lender and accepted by Borrower for the loan secured by this Deed of Trust.
  - 1.2 *Casualty:* as defined in Paragraph 5.1.
  - 1.3 *Clean-Up:* removal and/or remediation of Contamination in accordance with Laws and good commercial practice.
  - 1.4 *Contamination:* the presence of, use, generation, manufacture, storage, treatment, disposal, discharge or release on, from or to the Property of Hazardous Substances in violation of Laws..
  - 1.5 *Contested Sum:* as defined in clause (f) of Paragraph 4.1.
  - 1.6 *Deed of Trust:* this Leasehold Deed of Trust and Security Agreement and all modifications or amendments thereto or extensions thereof.
  - 1.7 *Environmental Actions or Claims:* any claim, action or proceeding brought by a governmental authority in connection with Contamination or any claim or action brought by a third party relating to Contamination.
  - 1.8 *Event of Default:* as defined in Paragraph 8.1.
  - 1.9 *Ground Lease:* that certain Enhanced-Use Ground Lease between The Secretary of Veterans Affairs, in Office of the United States, on behalf of the Department of Veterans Affairs and Borrower dated May 9, 2001 and amended by that certain First Amendment to Enhanced-Use Ground Lease dated October 28, 2004.
  - 1.10 *Ground Lessor:* The Secretary of Veterans Affairs, in Office of the United States, on behalf of the Department of Veterans Affairs
  - 1.11 *Guaranty:* a certain Guaranty of Non-Recourse Carve-Outs of even date herewith, made by the Guarantor(s) named in the Note.
  - 1.12 *Hazardous Substances:* all substances and compounds prohibited or regulated under any Laws; materials containing asbestos or urea formaldehyde; gasoline and other petroleum products; flammable explosives; radon and other natural gases; radioactive materials; and polychlorinated biphenyls and similar solvents.
  - 1.13 *Improvements:* all buildings, structures and other improvements now or hereafter existing, erected or placed on or under the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the Realty.
  - 1.14 *In its sole unfettered discretion:* as defined in Paragraph 10.8.

- 1.15 *Insurance Premiums*: as defined in Paragraph 4.3.
- 1.16 *Insurance Proceeds*: as defined in clause (a) of Paragraph 5.3.
- 1.17 *Land*: the land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places, opened or proposed, now or hereafter used in connection with, existing, belonging or appertaining to the Land.
- 1.18 *Laws*: any and all Federal, regional, state or local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator whether now in force or as amended or enacted in the future, including, without limitation, the Americans with Disabilities Act of 1990, the Water Pollution Control Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, and all regulations thereunder.
- 1.19 *Leases*: all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenues, income and other benefits of the Property arising at any time (including, without limitation, after the filing of any petition under any present or future Federal or state bankruptcy or similar law) from the use or enjoyment thereof, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due, additional, percentage, participation and other rentals, fees and deposits.
- 1.20 *Assignment*: a certain Assignment of Leases and Rents of even date herewith from Borrower to Lender and all replacements, substitutions, modifications or amendments thereto or extensions thereof.
- 1.21 *Loan Documents*: this Deed of Trust, the Note, the Lease Assignment, the Guaranty, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower and the Guarantor(s) to or for the benefit of Lender.
- 1.22 *Net Proceeds*: as defined in Paragraph 5.3.

- 1.23 *Note:* a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all replacements, substitutions, modifications, renewals and extensions thereof, which Note is payable in Monthly Payments, until the Maturity Date (as each term is defined in the Note).
- 1.24 *Parties in Interest:* as defined in clause (d) of Paragraph 8.1.
- 1.25 *Permitted Encumbrances:* matters set forth or referred to in Schedule B Part 1 of Lender's title insurance policy issued in connection with the execution and recording of this Deed of Trust.
- 1.26 *Personalty:* all of Borrower's interest in personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy, or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, furniture, appliances, equipment, general intangibles and inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, security deposits, utility deposits, refunds of fees, Insurance Premiums, deposits paid to any governmental authority, letters of credit, insurance policies, Insurance Proceeds, Taking Proceeds, and escrowed funds together with all present and future attachments, accretions, accessions, replacements, and additions thereto and products and proceeds thereof.
- 1.27 *Property:* the leasehold interest in the Realty and Personalty or any portion thereof or interest therein, except as the context otherwise requires.
- 1.28 *Property Liabilities:* as defined in clause (e) of Paragraph 4.1.
- 1.29 *Property Taxes and Charges:* all real estate taxes, personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewage charges, any and all income, franchise, withholding, profits and gross receipts taxes, all other taxes and public charges, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits of use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed.

The term "real estate taxes" in the foregoing sentence shall include any form of assessment, license fee, license tax, business license fee or tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or Federal government, or any school, architectural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property, except general business taxes imposed on Lender other than taxes or other amounts referred to in Paragraph 4.1(d).



- 1.30 *Realty*: the Land and Improvements or any portion thereof or interest therein, as the context requires.
- 1.31 *Restoration*: as defined in clause (b)(i) of Paragraph 5.4.
- 1.32 *Secured Debt*: to the extent not prohibited by Laws, all principal, interest, late charges and other sums, charges, premiums, prepayment and other indemnification amounts or other amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by or on behalf of Lender under the Loan Documents or otherwise with respect to the care, maintenance or preservation of the Property or the enforcement of the Loan Documents.
- 1.33 *Taking*: as defined in Paragraph 5.1.
- 1.34 *Taking Proceeds*: as defined in clause (a) of Paragraph 5.3.
- 1.35 *Trustee*: as defined on the cover sheet hereof.

2. **GRANTING CLAUSES.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, and conveys in trust to Trustee for the benefit of Lender with all POWERS OF SALE AND STATUTORY RIGHTS AND COVENANTS in the State, all of Borrower's estate, right, title and interest in, to and under the Realty, and grants to Lender a first and prior security interest in the Personalty and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

- (a) all Leases;
- (b) all profits and sales proceeds including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property; and
- (c) all proceeds (including claims thereto or demands therefore) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (i) payment of the Secured Debt;
- (ii) payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender, even if the sum of the amounts outstanding at any time exceeds the Note Amount; and
- (iii) due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition,

warranty, agreement and representation contained in the Loan Documents.

This Deed of Trust is also intended to be a security agreement under the Uniform Commercial Code as in force from time to time in the State. This Deed of Trust is also intended to be a present assignment of rents and is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, § 57-26-101 et seq. Lender shall have all rights and remedies available under the Utah Uniform Assignment of Rents Act which rights and remedies shall be cumulative with all rights and remedies hereunder. For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, amounts owing under paragraphs 10 and 11 of the Note, and similar amounts and other amounts secured hereby as may be owing from time to time under the Note, or other Loan Documents shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the Property, and (ii) Lender may add all default interest, late charges, any prepayment premiums, amounts owing under paragraphs 10 and 11 of the Note, and similar amounts and other amounts secured hereby as may be owing from time to time to the principal balance of the Note in its sole discretion, and in either case Lender may include all such amounts in any credit which Lender may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust. For purposes of *Utah Code Annotated* § 57-1-25 and *Utah Code Annotated* § 78B-6-901.5, Borrower agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property. For purposes of *Utah Code Annotated* § 57-1-24.3, Borrower represents and warrants that the Property subject to the lien and charge hereof is not "Owner-occupied residential property" as defined therein.

3. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Lender that the following are true, correct and complete as of the date of this Deed of Trust.

3.1 *Due Organization; Authority.* Borrower is duly organized and validly existing and in good standing under the laws of the State and has power adequate to carry on its business as presently conducted, to lease the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein. Borrower's exact legal name is as set forth in the Cover Sheet of this Deed of Trust. Borrower's principal place of business is in the State of Utah at the address set forth in the introductory paragraph hereof. Borrower does not do business under any trade name except as previously disclosed in writing to Lender. Borrower will promptly notify Lender in writing of any change in its place of business, its state of formation, or the adoption or change of its legal name or any trade name or fictitious business name, and hereby authorizes Lender to prepare, file and record any additional financing statements or other certificates necessary to reflect the adoption or change in state of formation, legal name, trade name or fictitious business name.

3.2 *Execution, Delivery and Effect of Loan Documents.* The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity.

- 3.3 *Other Obligations.* Borrower is not in violation of any material term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to Borrower's business, Borrower's assets or the Property, except for such violations or defaults which have been cured. No party has asserted any material claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not materially violate or contravene or constitute a material default under any charter, certificate, by-laws, partnership agreement, trust declaration, contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Laws to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents. Borrower has filed all Federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any Federal, state or municipal or other governmental authority is necessary in connection with Borrower's authorization, execution and delivery of the Loan Documents.
- 3.4 *Construction and Completion of Improvements.* The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and any plans and specifications previously delivered to Lender. The Improvements do not contain any urea formaldehyde or asbestos. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, utility lines and off-site improvements, which provide access to the Property or are necessary for its present and contemplated uses, have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.
- 3.5 *Legal Actions.* There are no material actions suits or proceedings including, without limitation, any Environmental Actions or Claims (whether or not material), condemnation, insolvency or bankruptcy proceedings, pending or, to Borrower's knowledge, threatened against or affecting Borrower, its business or the Property; or investigations, at law or in equity before or by any court or governmental authority pending or, to Borrower's knowledge threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or, which if resolved adversely to Borrower, would not have a material, adverse effect on Borrower or the Property. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the knowledge of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect the validity or enforceability of the Loan Documents, or the condition of Borrower (financial or otherwise) or the ability of Borrower to meet Borrower's obligations under the Loan Documents.

- 3.6 *Financial Statements.* All statements, financial or otherwise, submitted to Lender in connection with the Commitment are true, correct and complete in all material respects, and such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statements in material respects as of the date thereof. Since the date thereof, neither Borrower nor any such party or entity has experienced any material adverse change in its finances, business, operations, affairs or prospects.
- 3.7 *Adverse Change to Property.* No event or series of events has occurred since the date of the Commitment which would, either individually or collectively, materially and adversely affect the Property.
- 3.8 *Title to Property.* Borrower has good and clear record and marketable leasehold title to the Realty and good and merchantable title to the Personalty, free of all liens, claims, encumbrances or restrictions other than the Permitted Encumbrances.
- 3.9 *Compliance with Laws and Private Covenants.* The Property complies in all material respects with all Laws. Borrower has examined and is familiar with all private covenants affecting the Property, including, without limitation, private covenants contained in the Permitted Encumbrances and there now exists no material violation thereof. Borrower has no notice that any of the Improvements encroach upon any easement over the Land or encroach upon adjacent property or that buildings or other structures on adjacent property encroach upon the Land.
- 3.10 *Independence of the Property.* The Land is a separate and distinct parcel for tax purposes and is not subject to Property Taxes and Charges against any other land. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Deed of Trust to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvement, and no Improvement on the Property relies on any property not covered by this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.
- 3.11 *Contamination.* To Borrower's knowledge, after due investigation and inquiry, except as disclosed in a phase I environmental site assessment dated August 19, 2014, prepared by AES Due Diligence, Inc., no Contamination has occurred.
- 3.12 *Anti-Terrorism Laws.* Borrower (in section 3.12, "Borrower" includes Borrower's officers, directors, shareholders, partners, indirect equity interest holders, members, and affiliates) has complied and will comply with Anti-Terrorism Laws.

Borrower is not and shall not be a Prohibited Person.

Borrower: (a) shall not conduct business, transactions, or dealings with a Prohibited Person; and (b) shall not engage in or conspire to engage in transactions violative of prohibitions of EO13224.

Upon Lender's request, Borrower shall promptly deliver to Lender certification or evidence confirming that Borrower: (a) is not a Prohibited Person; and (b) has not engaged in business, transactions, or dealings with a Prohibited Person, including contributing or receiving funds, goods, or services, to or for the benefit of a Prohibited Person.

Borrower has established policies and procedures to prevent and detect money laundering, including processes to meet all applicable anti-money laundering requirements of the USA Patriot Act.

"Anti-Terrorism Laws" are laws and regulations related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act.

"Executive Order 13224" is Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001.

"Prohibited Person" is any person (a) listed in the Annex to or subject to the provisions of Executive Order 13224; (b) whose name appears on the United States Treasury Department's Office of Foreign Assets Control's ("OFAC") current list of "Specifically Designated National and Blocked Persons" (published in various media, including on the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (c) who commits, threatens, or supports "terrorism," as defined in EO 13224; (iv) who violates laws and regulations related to terrorism or money laundering, including EO 13224 and the USA Patriot Act; or (d) who affiliates with any entity or person described above.

"USA Patriot Act" is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56.

- 3.13 *Related Parties.* Neither Borrower nor any beneficial owner of the Property securing the Loan is a Related Party of Lender. "Related Party" means an officer, director, employee, significant shareholder, or such person's spouse or minor child.
- 3.14 *Investment Activities in Iran Energy Sector.* Borrower (in Section 3.14 "Borrower" includes any successor, subunit, parent, subsidiary, or entity under common ownership or control with Borrower) shall not use any proceeds of the loan from Lender to provide goods or services in the Energy Sector in Iran. Upon Lender's request, Borrower shall deliver to Lender within five (5) business days certification or evidence confirming that Borrower: (a) is not providing goods or services in the Energy Section in Iran; and (b) has not been placed on a list (or notified that it may be placed on a list) by any state or governmental authority as providing goods or services in the Energy Sector in Iran.

Borrower has established policies and procedures to prevent it from providing goods or services in the Energy Sector in Iran,

"Energy Sector" shall mean activities to develop petroleum or natural gas resources or nuclear power in Iran, including, but not limited to, providing oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector in Iran.

"Iran" means the Government of Iran and any agency or instrumentality of the Government of Iran.

#### 4. COVENANTS.

##### 4.1 Payments.

- (a) *Secured Debt.* Borrower shall pay to Lender the Secured Debt at the times and in the manner provided in the Note and the other Loan Documents.
- (b) *Property Taxes and Charges.* Except as provided in Paragraph 4.1(c) and 4.1(f), Borrower shall pay, prior to delinquency, all Property Taxes and Charges. Upon Lender's written request, Borrower shall furnish to Lender, within 30 days after the date on which any such Property Taxes and Charges are due and payable, official receipts from the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.
- (c) *Escrow.* Borrower shall pay to Lender monthly, on each date on which a Monthly Payment (as defined in the Note) is due, 1/12 of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges when due. If the Property Taxes and Charges are due in less than twelve months from the First Payment Date (as defined in the Note), Borrower shall make equal monthly payments in amounts sufficient to pay the Property Taxes and Charges when due. Borrower shall also pay to Lender monthly, on each date on which a Monthly Payment is due under the Note, 1/12 of such amount as Lender from time to time estimates will be required to pay Insurance Premiums. If the Insurance Premiums are due in less than twelve months from the date of the first Monthly Payment, Borrower shall make equal monthly payments in amounts sufficient to pay the Insurance Premiums when due. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Borrower shall transmit to Lender bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received funds sufficient to pay the same, Lender shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Any deficiencies shall be paid by Borrower to Lender on demand. Payments for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of such funds and may commingle them with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

- (d) *Taxes on Trustee or Lender.* If any Law imposes upon Trustee or Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way Laws for the taxation of deeds of trust or debts secured by mortgages or the manner of collection of any such taxes, so as to affect adversely this Deed of Trust or the Secured Debt, then Borrower shall pay such Property Taxes and Charges or reimburse Trustee and Lender immediately therefor, unless in the opinion of counsel to either Trustee or Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Laws. In such case, an Event of Default shall exist, but if Lender accelerates the Secured Debt solely because of such Event of Default, the Secured Debt shall not include the prepayment indemnification provided for in Paragraph 10 of the Note.
- (e) *Liabilities.* Except as provided in Paragraph 4.1(f), Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration, management and Clean-Up of the Property ("Property Liabilities") including without limitation, utility charges, sums due to mechanics and materialmen and other sums secured or which might be secured by liens on the Property.
- (f) *Right to Contest.* Borrower may, in good faith and by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges, Property Liabilities or liens, charges, attachments or lis pendens under Paragraph 4.2(b) ("Contested Sum") after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if: (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender, Lender's nominee or the appropriate governmental authority cash or other security, in form reasonably satisfactory to Lender, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower, Trustee or Lender therefor, together with interest, costs and penalties thereon; and (ii) Borrower promptly pays any amounts adjudged to be due, together with all costs, penalties and interest thereon, on or before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final and before any writ or order is issued under which the Property could be sold pursuant to such judgment.
- (g) *Expenses.* To the extent allowed by Laws, Borrower shall pay, on demand, but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction all fees (including, without limitation, reasonable attorneys' fees and disbursements) taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with: (i) the making or enforcement of the Loan Documents; (ii) Trustee's or Lender's exercise and enforcement of its rights and remedies under Paragraphs 7 and 8; (iii) Trustee's or Lender's protection of the Property and its interest therein; and (iv) any

amendments, consents, releases, or waivers if granted by Lender under the Loan Documents.

Borrower shall not be entitled to any credit on the Secured Debt by reason of its payment of any sums required to be paid under Paragraph 4.1(b) through (f) unless such sums are paid to reimburse Lender for amounts paid by Lender and added by Lender to the Secured Debt.

**4.2 Operation of the Property.**

(a) **Maintenance; Alterations.** Borrower shall maintain and preserve the Property in good repair and condition, normal wear and tear expected, and shall correct any material defects or faults in the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of the Property could reasonably be expected to be materially decreased. Borrower shall not make any material alterations, improvements, additions, utility installments or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may make replacements or substitutions of any item of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Deed of Trust.

(b) **Liens.**

(i) Except as provided in Paragraph 4.1(f) Borrower shall promptly discharge any mechanics, laborers', materialmens' or similar lien or any other lien, charge, attachment, or lis pendens filed or recorded against the Property which relates to Borrower, the Property or any Contamination.

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

(iii) Borrower represents and warrants to Lender that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Lender by Borrower in writing. Borrower further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens



or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

- (iv) If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Borrower covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to *Utah Code Annotated* § 38-1a-503(2)(b)(ii) and Borrower shall provide to Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction work that the claimant furnished before the recording of this Deed of Trust pursuant to *Utah Code Annotated* § 38-1a-503(2)(b)(i) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction lien or a construction lien dates immediately after the recording of this Deed of Trust.
- (v) Borrower shall cooperate with Lender and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by *Utah Code Annotated* § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Lender's name, address and telephone number, Borrower's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the County in which the Property is located.
- (vi) Borrower shall cause, as a condition precedent to the closing of the loan secured hereby, Lender's title insurer to insure in a manner acceptable to Lender in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Lender, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.
- (vii) Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on

the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Borrower shall have the right to contest any such claim or lien so long as Borrower previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Borrower may (A) with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Lender) for any such lien or claim, as determined in Lender's reasonable discretion.

- (viii) If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Borrower of and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all out of pocket costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.
- (c) ***Compliance with Laws and Private Covenants.*** Borrower shall keep, observe, and satisfy, and not suffer violations of, Laws and private covenants (whether or not listed as Permitted Encumbrances) materially affecting the Property.
- (d) ***Use.*** Borrower shall not permit the use or occupancy of the Property other than pursuant to Leases in effect as of the date hereof or subsequent approved Leases which shall have been approved in advance and in writing by Lender pursuant to the Lease Assignment or which require no approval thereunder. Borrower shall not use or permit the use or occupancy of the Property in a manner which will result in Contamination and Borrower shall take all steps reasonably necessary under the circumstances including, without limitation, periodic inspections and assessments of the Property, to determine whether Contamination has occurred.

- (e) *Inspection.* Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender and its agents and contractors, shall have the right, but not the duty or obligation, and subject to the rights of Tenants under the Leases, upon giving prior reasonable notice except in the case of emergency or Event of Default to enter upon the Property at reasonable times without delay, hindrance or restriction, in order to conduct appraisals and inspections of the Property, including, but not limited to environmental inspections. If, in the reasonable belief of Lender, Contamination has occurred or is likely to occur Lender shall have the right, but not the duty or obligation to conduct, or cause to be conducted, environmental inspections and testing including, but not limited to, soil, air and groundwater sampling, regarding such Contamination. Any environmental inspections or testing shall be paid for by Borrower. Lender shall have the right, but not the duty or obligation, to disclose the results of such inspections and testing as required by Laws or as deemed appropriate by Lender.
- (f) *Notification of Contamination; Clean-Up.* Borrower shall notify Lender promptly upon discovery of any Contamination. Borrower shall not, without Lender's prior consent, initiate Clean-Up of any Contamination, or enter into any settlement agreement, consent decree or other compromise with respect to any violation or alleged violation of any Laws concerning Hazardous Substances, if such Clean-up, settlement agreement, consent decree or other compromise might, in Lender's judgment, impair the value of Lender's security hereunder; provided, however, that Lender's prior consent shall not be required in the event the Contamination either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary, such that it is impossible to obtain Lender's consent before taking such remedial action; provided further, however, that in such event, Borrower shall notify Lender as soon as practicable of any remedial action so taken.

- 4.3 *Insurance.* Borrower shall obtain and keep in force, with one or more insurers with a Best's Rating of A-/VII or higher, such insurance as Lender may from time to time specify by notice to Borrower, including, as a minimum insurance providing: (i) commercial general liability and property damage coverage with a broad form coverage endorsement, with limits of liability determined to be acceptable by Lender from time to time; (ii) protection against fire, "extended coverage" and other "All Risk" perils, including, if specifically required by Lender, earthquake, to the full replacement cost of the Improvements and Personalty; (iii) rent loss insurance in an amount of not less than a sum equal to 12 months of rental income from all Leases; and (iv) flood insurance if the Property is located in an area identified by FEMA or any successor as an area having special flood hazards or in which flood insurance has been made available under applicable Laws. All property insurance policies shall include the standard mortgagee clause in the State naming Lender as the first mortgagee with all losses payable to Lender, and shall also include an agreed-amount endorsement sufficient to prevent Borrower from becoming a co-insurer. All liability policies shall name Lender as an additional insured. All insurance policies shall provide that the policy may not be cancelled without 30 days prior written notice to Lender or

otherwise modified without 10 days prior written notice to Lender, and that no act or thing done by Borrower shall invalidate the policy as against Lender, and that the deductible for any single Casualty shall not be more than \$25,000. At least 30 days prior to the expiration date of any policy required hereunder, Borrower shall provide Lender or Lender's designee with evidence of compliance with this Paragraph 4.3, in such form as required from time to time by Lender. Such form shall bear notations evidencing the prior payment of premiums ("Insurance Premiums") or shall be accompanied by other evidence satisfactory to Lender that such payment has been made. Borrower shall have the right to maintain insurance required hereunder under a blanket policy of insurance.

All property insurers shall agree not to acquire any rights of recovery against Lender by subrogation. Borrower, to the full extent permitted by Laws and to the full extent permitted without invalidating the insurance policies required above, shall obtain endorsements by all insurers waiving any right of subrogation against tenants under any Leases and shall require the same of such tenants. Lender shall not because of accepting, rejecting, approving or obtaining insurance, incur any liability for the existence, nonexistence, continuation, form or legal sufficiency of any insurance, the solvency of any insurer, or the payment of losses.

Borrower shall furnish to Lender or Lender's designee an original of all policies of insurance required under this Deed of Trust, provided, however, that if Lender consents to Borrower providing any of the insurance required under this Deed of Trust through blanket policies carried by Borrower and covering more than one location, Borrower shall furnish Lender or Lender's designee with a certificate of insurance for each such policy, setting forth the coverage, the limits of liability as to the Property, the name of the insurer, the policy number and the expiration date, or with a certified true copy of the original of each such policy.

Borrower shall keep, observe and satisfy, and not suffer violations of the requirements, including those requirements pertaining to acts committed or conditions existing on the Property, of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required by this Deed of Trust.

Upon foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.4 *Sales and Encumbrances.* Except as herein expressly provided, Borrower shall not, without the prior written consent of Lender, which consent, if given in Lender's sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, adjustment of the Maturity Date (as defined in the Note) or amortization period or one or more of the foregoing or other requirements of Lender:

(a) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or

otherwise, of record or not) all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein; or

- (b) directly or indirectly sell, assign or otherwise dispose of (whether or not of record or for consideration), or permit the sale, assignment or other disposition of; (i) any legal or beneficial interest in the stock of any corporation which is either Borrower or is a beneficial owner of all or part of Borrower or the Property; or (ii) any legal or beneficial interest in Borrower (or any trust of which Borrower is a trustee) if Borrower is a limited or general partnership, limited liability company, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership, except limited partnership interests if Borrower is a limited partnership.

4.5 *Permitted Sale of Property.* Notwithstanding the foregoing, the Property may be sold in its entirety one time only (and which shall not be conditioned upon a change in the interest rate under the Note, adjustment of the Maturity Date (as defined in the Note) or amortization period or one or more of the foregoing), subject to the following terms and conditions:

- (a) There shall not then be in existence either any Event of Default under this Deed of Trust or any event, condition, or state of fact which with the passage of time or the giving of notice or both would constitute an Event of Default under this Deed of Trust;
- (b) The proposed sale must be an arm's-length transaction between Borrower and an independent, non-related third party;
- (c) The proposed buyer shall be acceptable to Lender in its sole discretion as measured and judged by normal and ordinary standards of financial strength, credit history, real estate management ability and experience and professional character;
- (d) In the event Borrower's proposed buyer is acceptable to Lender, the Loan may be assumed by such buyer according to its terms by the execution of an assumption agreement in form acceptable to Lender providing among other things for endorsement(s) to Lender's original policy of title insurance, UCC financing statements, and that the proposed buyer pay all costs of Lender with respect to the assumption, including Lender's attorneys' fees and costs;
- (e) Lender shall be paid an assumption fee equal to 1% of the then outstanding principal balance under the Note; and
- (f) Following the one permitted sale of the Property pursuant hereto, no other sale shall be permitted during the remaining term of the Loan.

4.6 *Permitted Transfers of Interests in Borrower.* Notwithstanding the foregoing, interests in Borrower may be transferred among existing members of Borrower and to members of such existing members' immediate families for, or to entities

created for, estate planning purposes without the payment of a transfer fee, subject to the following terms and conditions:

- (a) No Event of Default shall have occurred or be continuing beyond the applicable grace period (if any).
- (b) Lender shall provide its prior written consent to such transfer.
- (c) Borrower shall be required to pay any legal fees and out-of-pocket costs incurred by Lender should a review of the transfer documentation be required by Lender's counsel.
- (d) Controlling interests of the Property cannot change as a result of the transfer.
- (e) Controlling interests of Borrower cannot change as a result of the transfer.

The parties responsible under the Guaranty of Non-Recourse Carve-Outs and Environmental Indemnity cannot be affected.

Notwithstanding the foregoing to the contrary, the following shall be deemed permitted transfers which shall not require the consent of Lender or payment of an assumption fee: (a) a transfer of direct and indirect interests in Borrower to any existing members of Borrower or among members of the immediate families of H. Roger Boyer or Kem C. Gardner or entities in which the majority ownership and voting interest are owned by H. Roger Boyer and Kem C. Gardner, their spousal or lineal descendants; (b) a transfer as a result of the death or incapacity of an individual, and (c) transfers for estate planning purposes provided (i) such transfer does not result in Borrower no longer being controlled by either H. Roger Boyer or Kem C. Gardner, and (ii) after giving effect to such transfer, results in H. Roger Boyer and/or Kem C. Gardner or entities in which the majority ownership and voting interest are owned by H. Roger Boyer or Kem C. Gardner, their spousal or lineal descendants owning less than 51% of all equity interests and voting interests in Borrower.

- 4.7 *Financial Records and Statements.* Borrower shall keep accurate books and records in accordance with generally accepted accounting principles (or substantially in accordance with generally accepted accounting principles) consistently applied (or other basis of accounting practices prescribed or permitted by Lender) in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designees or its representatives during customary business hours and upon prior reasonable notice. Borrower shall deliver to Lender within 90 days after the close of its financial year, and upon request by Lender at any time during the term of the loan secured by the Loan Documents, a statement of condition or balance sheet of Borrower relating solely to the Property as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy by either an independent certified public accountant acceptable to Lender (if requested by Lender following an Event of Default) or the senior financial officer

or partner of Borrower. Borrower shall also deliver to Lender within 90 days after the close of its financial year and upon request by Lender at any time during the year a current list of all persons then occupying portions of the Property under Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

4.8 *Indemnity.* Borrower shall indemnify, defend and hold harmless Trustee and Lender, its agents, employees and contractors from and against, and upon demand, reimburse Trustee and Lender for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable out of pocket attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by either Trustee or Lender by reason of, on account of or in connection with:

- (a) any violation of Laws relating to Property or Borrower;
- (b) any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever;
- (c) any Contamination, any Clean Up, any Environmental Actions or Claims, or the imposition or recording of a lien against the Property due to any Contamination;
- (d) any act performed or omitted to be performed under the Loan Documents by Borrower or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents;
- (e) any expenditures or amounts advanced (other than advances of principal under the Note) by Lender at any time under the Loan Documents; and
- (f) any act or omission of Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under Paragraph 8.2 or under any of the other Loan Documents.

The foregoing indemnification shall apply in all instances, unless the claim was directly caused by the gross negligence or intentional misconduct of Lender.

Borrower shall have the right to control any action for which an indemnity is required pursuant to this Paragraph 4.8 through counsel of its choice, subject to Lender's consent; however, at Lender's option, Lender may participate in such action through its own counsel at Borrower's expense. If Borrower does not notify Lender of its intent to control such action within the earlier of 30 days of notice of such claim or 5 days prior to the time required by Law to respond to such claims, Lender may control and settle such action, including a settlement for non-monetary relief such as Clean-Up, without Borrower's consent and at Borrower's expense.

If Borrower is a general or limited partnership, Borrower waives any rights it may have to require Lender to proceed against the assets of the partnership before

proceeding against the assets of individual general partners in the exercise of its rights under this Paragraph 4.8.

- 4.9 *Notices.* Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases, including, without limitation, those given in connection with Contamination or Environmental Actions or Claims.
- 4.10 *Estoppel Certificates.* Borrower shall promptly furnish to Lender from time to time, on the reasonable request of Lender, written certifications signed and, if so requested, acknowledged setting forth the then unpaid principal and interest under the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.
- 4.11 *Subordination, Non-Disturbance and Attornment Agreements.* Should a Tenant, under any present or future Lease at the Property, require Borrower to secure a Subordination, Non-Disturbance and Attornment Agreement from Lender, the document shall be satisfactory to Lender in its sole discretion.
- 4.12 *Legal Existence.* Borrower shall continuously maintain its existence as a legal entity and its right to lease the Property and to do business in the State.
- 4.13 *Defense and Notice of Actions.* Borrower shall, without liability, cost or expense to Trustee or Lender protect, preserve and defend title to the Property, the security hereof and the rights or powers of Trustee or Lender, against all adverse claimants to title or any possessory or non-possessory interests therein (other than pursuant to Permitted Encumbrances), whether or not such claimants or encumbrancers assert title paramount to that of Borrower, Trustee or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.
- 4.14 *Lost Note.* Borrower shall, if the Note is mutilated, destroyed, lost, or stolen, deliver to Lender a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, whereupon the prior note shall be void and of no further force and effect; provided, Lender shall provide Borrower with an affidavit of Lost Note and an indemnification relating to any losses, costs, expenses incurred by Borrower under such mutilated, destroyed, lost, or stolen Note. Any such new note shall be secured hereby and shall be deemed to be the "Note" referred to herein.
- 4.15 *Personalty.* Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.



- 4.16 *Further Assurances.* Borrower shall promptly upon request of Lender or Trustee: (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgement thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases); and (c) do such further acts as may be necessary, desirable or proper in Trustee's or Lender's opinion to: (i) protect and preserve the first and valid lien, title and security interest of this Deed of Trust on the Property, subject to Permitted Encumbrances, or subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto; or (ii) protect the interest and security interest of Trustee or Lender in the Property against the rights or interests of third parties other than pursuant to Permitted Encumbrances.

Borrower hereby appoints each of Trustee and Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply with this Paragraph 4.16 beyond all applicable notice and cure periods.

- 4.17 *Financing Statement.* Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (A) indicate the Personalty (1) as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the Personalty falls within the scope of Article 9 of the applicable Uniform Commercial Code of such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (B) contain any other information required by Part 5 of Article 9 of the applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower, and (2) in the case of a financing statement filed as a fixture filing or indicating Personalty as as-extracted collateral or timber to be cut, a sufficient description of real property to which the collateral relates. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower also ratifies its authorization for Lender to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Lender is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder.

Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender, subject to Borrower's rights under Section 9-509(4)(b) of the applicable Uniform Commercial Code.

- 4.18 *Replacement Guarantor.* Within thirty (30) days after the death of any guarantor or indemnitor of Borrower's obligations under the Loan Documents, Borrower shall secure a replacement guarantor or indemnitor, satisfactory to Lender in its

sole discretion, who, within the 30 day period, shall sign all documents required by lender to effectuate this intent.

4.19 *Investment Activities in Iran Energy Sector.* Borrower (i) shall not provide goods or services in the Energy Section in Iran and (ii) shall promptly notify Lender if it has been placed on a list (or has been notified that it may be placed on a list) by any state or governmental authority as a party providing goods or services in the Energy Sector in Iran.

4.20 *Ground Lease Provisions.*

(a) Borrower will pay or cause to be paid all rent and other charges required under the Ground Lease, as and when the same are due and Borrower will keep, observe and perform, or cause to be kept, observed and performed, all of the other terms, covenants, provisions and agreements of the Ground Lease on the part of the lessee thereunder to be kept, observed and performed, and will not in any manner cancel, terminate or surrender, or permit any cancellation, termination or surrender, of the Ground Lease that is not under the unilateral control of the Ground Lessor where Borrower is not in violation of the Ground Lease, in whole or in part, or, without the prior written consent of Lender, either orally or in writing, modify, amend or permit any modification or amendment of any of the terms thereof in any material respect, and any attempt on the part of Borrower to exercise any such right without such written consent of Lender shall be null and void and of no effect.

(b) Borrower will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Borrower as tenant under the Ground Lease, and to prevent any default under the Ground Lease, or any termination, surrender, cancellation, forfeiture or impairment thereof, and in the event of the failure of Borrower to make any payment required to be made by Borrower pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease in each case beyond all applicable notice and cure periods granted to Borrower under the Ground Lease, Borrower agrees that Lender may (but shall not be obligated to), after notice to Borrower (provided, however, that no such notice shall be required to be given after the occurrence of an Event of Default hereunder), take any action on behalf of Borrower, to make or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Property and take all such action thereof as may be necessary therefor, to the end that the rights of Borrower in and to the leasehold estate created by the Ground Lease shall be kept unimpaired and free from default, and all money so expended by Lender, with interest thereon at the default rate set forth in the Note from the date of each such expenditure, shall be paid by Borrower to Lender promptly upon demand by Lender and shall be added to the indebtedness and secured by this Deed of Trust and Lender shall have, in addition to any other remedy of Lender, the same rights and remedies in the event of non-payment of any

such sum by Borrower as in the case of a default by Borrower in the payment of any sums due under the Note.

- (c) Borrower will enforce in a commercially reasonable manner the obligations of the Ground Lessor under the Ground Lease to the end that Borrower may enjoy all of the rights granted to it under the Ground Lease, and will promptly notify Lender in writing of any material default by the Ground Lessor or by Borrower in the performance or observance of any of the terms, covenants and conditions on the part of the Ground Lessor or Borrower, as the case may be, to be performed or observed under the Ground Lease and Borrower will promptly advise Lender in writing of the occurrences of any of the events of default enumerated in the Ground Lease and of the giving of any notice by the Ground Lessor to Borrower of any default by Borrower in performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Borrower to be performed or observed and will deliver to Lender a true copy of each such notice. If, pursuant to the Ground Lease, the Ground Lessor shall deliver to Lender a copy of any notice of default given to Borrower, such notice shall constitute full authority and protection to Lender for any action taken or omitted to be taken by Lender in good faith in reliance thereon to cure such default.
- (d) If any action or proceeding shall be instituted to evict Borrower or to recover possession of the Property or for any other purpose affecting the Ground Lease or this Deed of Trust, Borrower will, immediately upon service thereof on or to Borrower, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.
- (e) Borrower covenants and agrees that unless Lender shall otherwise expressly consent in writing, the fee title to the property demised by the Ground Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the Ground Lessor, Borrower, or a third party by purchase or otherwise; and in case Borrower acquires the fee title or any other estate, title or interest in the Property, this Deed of Trust shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, deed of trust or conveyance, become and be subject to the lien of and covered by this Deed of Trust.
- (f) No release or forbearance of any of Borrower's obligations under the Ground Lease, pursuant to the Ground Lease, or otherwise, shall release Borrower from any of its obligations under this Deed of Trust, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the tenant therein (except to the extent Borrower is no longer required to perform such obligations under the Ground Lease as a result of such waiver or release).

- (g) Upon the occurrence of an Event of Default, and for so long as any Event of Default remains uncured, Borrower shall not make any election or give any consent or approval for which a right to do so is conferred upon Borrower as tenant under the Ground Lease without Lender's prior written consent. In case of any Event of Default under this Deed of Trust, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purpose to Lender, shall vest in and be exercisable solely by Lender.
- (h) Borrower will give Lender prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Ground Lease. Lender shall have the right to intervene and participate in any such proceeding and Borrower shall confer with Lender to the extent which Lender deems necessary for the protection of Lender. Upon the written request of Lender, if an Event of Default exists, Borrower will exercise all rights of arbitration conferred upon it by the Ground Lease. Borrower shall select an arbitrator who is approved in writing by Lender, provided, however, that if at the time any such proceeding shall be commenced, Borrower shall be in default in the performance or observance of any covenant, condition or other requirement of the Ground Lease, or of this Deed of Trust, on the part of Borrower to be performed or observed, Lender shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Borrower the arbitrator or arbitrators, or appraiser, in such proceeding.
- (i) The lien of this Deed of Trust shall attach to all of Borrower's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code (Title 11 of the United States Code, 11 U.S.C. § 101 et seq.), including, without limitation, all of Borrower's rights to remain in possession of the Property.
- (j) Borrower shall not, without Lender's prior written consent, elect to treat the Ground Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Lender's consent shall be void.
- (k) Borrower hereby unconditionally assigns, transfers and sets over to Lender all of Borrower's claims and rights to the payment of damages arising from any rejection of the Ground Lease by Ground Lessor or any other fee owner of the Property under the Bankruptcy Code. Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, either in its own name or in the name of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect to the Ground Lessor or any fee owner under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the obligations secured by this Deed of Trust shall have been satisfied and discharged in full. Any

amounts received by Lender as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all reasonable costs and expenses of Lender (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then in accordance with the provisions of this Deed of Trust.

- (l) If pursuant to Subsection 365(h)(2) of the Bankruptcy Code, Borrower shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the Ground Lessor or any fee owner of any of their obligations under the Ground Lease after the rejection by the Ground Lessor or any fee owner of the Ground Lease under the Bankruptcy Code, Borrower shall, prior to effecting such offset, notify Lender of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. Lender shall have the right to object to all or any part of such offset that, in the reasonable judgment of Lender, would constitute a breach of the Ground Lease, and in the event of such objection, Borrower shall not effect any offset of the amounts so objected to by Lender. Neither Lender's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Lender.
  
- (m) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Ground Lessor or any fee owner, the Property or the Ground Lease in connection with any case under the Bankruptcy Code, Lender shall have the option, exercisable upon notice from Lender to Borrower, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Lender in connection therewith; provided that, Borrower shall have the right to participate with Lender in such proceedings. Borrower shall, upon demand, pay to Lender all reasonable out of pocket costs and expenses (including attorneys' fees) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Borrower as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Borrower shall not commence any action, suit, proceeding or case, or file any application or make any motion (unless such motion is for the purpose of protecting the Ground Lease and its value as security for the obligations secured by this Deed of Trust), in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.
  
- (n) Borrower shall, after obtaining knowledge thereof, promptly notify Lender of any filing by or against the Ground Lessor or other fee owner of a petition under the Bankruptcy Code. Borrower shall promptly deliver to Lender, following receipt, copies of any and all notices, summonses,

pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating thereto.

- (o) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Borrower shall give Lender not less than thirty (30) days' prior notice of the date on which Borrower shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such thirty (30) day period a notice stating that Lender demands that Borrower assume and assign the Ground Lease to Lender pursuant to Section 365 of the Bankruptcy Code. If Lender shall serve upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.
- (p) Borrower shall notify Lender in writing not later than three (3) days after receiving written notice from Ground Lessor of Ground Lessor's decision to dispose of its fee interest in the Property, which written notice from Ground Lessor triggers Borrower's right to purchase Ground Lessor's fee interest in the Property.
- (q) Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assignment of the Ground Lease and Lender shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust.

## 5. **CASUALTIES AND TAKINGS.**

- 5.1 *Notice to Lender.* In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property ("Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto ("Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.
- 5.2 *Repair and Replacement.* In case of a Casualty or Taking, Borrower shall promptly (at Borrower's sole cost and expense and regardless of whether the Insurance Proceeds or the Taking Proceeds, if any, shall be sufficient or made available by Lender for the purpose) restore, repair, replace and rebuild the Property as nearly as possible to its quality, utility, value, condition, and character immediately prior to the Casualty or the Taking, as the case may be. However, upon a Casualty or Taking resulting in a restoration cost that exceeds 25% of the then replacement value of the Improvements or a Taking of more than 25% of the area of the Land, and application by Lender of the Insurance Proceeds or the Taking Proceeds to reduction of the Secured Debt in accordance with this Deed of Trust, Borrower shall be obligated only to remove any debris from the Property

and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit insofar as it is possible under the circumstances.

**5.3 Insurance Proceeds and Taking Proceeds.**

- (a) *Collection.* Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award, payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, in its sole unfettered discretion, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.
- (b) *Assignment to Lender.* Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payment of such Insurance Proceeds and Taking Proceeds to be made directly to Lender. Lender shall apply the Insurance Proceeds and Taking Proceeds first to pay all expenses incurred by Lender in connection with the Casualty or Taking, including, without limitation, out of pocket attorney's fees and title fees.
- (c) *Application of Proceeds.* Unless the conditions set forth in Paragraph 5.4 for the application of Insurance Proceeds or Taking Proceeds to Restoration are satisfied, Lender may, in its sole unfettered discretion, apply the balance of the Insurance Proceeds or Taking Proceeds ("Net Proceeds") to either of the following, or any combination thereof:
  - (i) to the payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or
  - (ii) to repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of the Insurance Proceeds or Taking Proceeds as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstance, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

**5.4 Disbursement of Insurance Proceeds and Condemnation to Borrower.** Lender will disburse the Net Proceeds to Borrower, subject to and in accordance with the

terms and conditions of this Paragraph 5.4, provided that: (1) there exists no Event of Default or occurrence or facts which with the passage of time, the giving of notice, or both, will be an Event of Default which remains uncured at any time before or during the Restoration; (2) the Casualty or Condemnation does not occur within nine months of the Maturity Date (as defined in the Note); (3) Lender estimates that the loss or damage can be repaired for less than 75% of the then-existing Secured Debt; and (4) Borrower has submitted evidence satisfactory to Lender that Restoration can be completed within 270 days after the Casualty, subject to delay beyond Borrower's control, other than lack of funds.

- (a) As to any loss or damage which Lender estimates can be repaired for less than Two Hundred Thousand Dollars (\$200,000.00), Lender shall disburse to Borrower from the Net Proceeds the amount which it determines is necessary to repair the damage, which amounts shall be used by Borrower to restore the damage to the Property caused by the Casualty.
- (b) As to all other Casualties, if Lender determines to do so in its sole and absolute discretion, Lender shall disburse the Net Proceeds related thereto to Borrower on the following terms and conditions:
  - (i) Prior to the first and each subsequent disbursement, Borrower shall give proof satisfactory to Lender that:
    - (1) Lender is holding a fund comprised of the Net Proceeds and, if necessary, additional deposits made by Borrower or tenants of the Property, sufficient to restore the Property (x) in the case of a Casualty, to its condition and use immediately prior to such loss or damage, or (y) in the case of a Condemnation, as nearly as possible to its condition and use immediately prior to such taking ("Restoration"), together with a fund comprised of Net Proceeds or funds deposited by Borrower, sufficient to pay operating expenses, Property Taxes and Charges, the Monthly Payments (as defined in the Note) and other so-called "carrying costs" of the Property during the period of Restoration;
    - (2) there are no Laws preventing Restoration of the Property;
    - (3) immediately after Restoration, the Leases on the Property will produce sufficient income to provide a debt coverage ratio of at least 1.1 : 1. The debt coverage ratio shall be calculated by dividing the operating income (less operating expenses and Property Taxes and Charges) obtained from the Leases during the twelve month period immediately after the Restoration by the total principal and interest payments due on all indebtedness secured by the Property during the same period;



- (4) the Restoration will be conducted under the supervision of an architect, engineer and/or a general contractor selected by and paid by Borrower and approved by Lender;
  - (5) the Restoration will be performed pursuant to plans and specifications approved by Lender and by a contractor or contractors approved by Lender; and
  - (6) the Property, after such Restoration, shall be in compliance with Laws.
- (ii) With respect to each disbursement and accompanying each request therefor, there shall be delivered to Lender:
- (1) a certificate addressed to Lender and executed by Borrower and by the architect, engineer or general contractor supervising the Restoration that such disbursement is to pay for costs of the Restoration not paid previously by any other prior disbursement, that the amount of such disbursement does not exceed the aggregate of such costs incurred or paid on account of work, labor or services performed and materials installed in or stored upon the Property at the date of such certificate and that the disbursement requested, together with the disbursements made prior thereto, collectively, as a percentage of the total of the sum of Net Proceeds and any amounts deposited by Borrower, do not exceed the percentage of completion of the Restoration; and
  - (2) an endorsement to Lender's title insurance policy, in which the making of the disbursement is recognized and the effective date of coverage is changed to the date of disbursement.
- (iii) Each disbursement shall be in the of 95% of the costs described in the certificate referred to in Paragraph 5.4(b)(i). Disbursement of the final balance of the Net Proceeds, constituting five percent (5%) thereof, shall be disbursed only upon delivery to Lender of the following, in addition to the foregoing:
- (1) evidence satisfactory to Lender that all claims then existing for labor, services and materials enforceable by lien upon the Property have been paid in full or provision acceptable to Lender has been made therefor;
  - (2) a certificate of such architect, engineer or general contractor that the Restoration of the Property has been completed in a good workmanlike manner and in accordance with all Laws;

- (3) an estoppel affidavit in form satisfactory to Lender from each tenant occupying or leasing space in the Property affected by the Casualty; and
  - (4) an as-built survey of the Improvements certified to Lender and in form satisfactory to Lender.
- (iv) If the quality of the Restoration is at least equal to the quality of the Improvements before the Casualty, any Net Proceeds in excess of the amount used in payment of the Restoration shall be distributed to Borrower.

Lender shall not be a trustee with respect to any Insurance Proceeds, and may mingle Insurance Proceeds with its funds without obligation to pay interest thereon. Lender shall in no event be liable for the performance or observance of any covenant or condition arising under any Lease in connection with the Property nor obligated to take any action to restore the Property.

**6. CONCERNING TRUSTEE.**

- 6.1 **Trustee's Covenants.** Trustee, by its acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof.
- 6.2 **Resignation of Trustee.** Trustee may resign at any time upon giving 30 days' notice in writing to Borrower and to Lender.
- 6.3 **Substitution of Trustee.** In the event of the death, removal, resignation, refusal to act, or the inability to act of Trustee, or in Lender's sole unfettered discretion for any reason whatsoever, Lender may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor trustee. Such substitute trustee shall not be required to give bond for the faithful performance of its duties unless required by Lender. Such substitute trustee shall be appointed by written instrument duly recorded in the county where the Realty is located, which appointment may be executed by an authorized agent of Lender, and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors and any superior officer of Lender. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee or its successors or assigns in this trust shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of itself and its heirs, executors, administrators, legal representatives and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute trustee, acting under the provisions of this Deed of Trust, shall be *prima facie* evidence of the facts recited therein, and that it should not be necessary to prove in any court, otherwise than by such recitals, the existence of

the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

- 6.4 *Reconveyance and Agreements.* At any time, or from time to time, without liability therefor and without notice, upon written request of Lender and presentation of this Deed of Trust and the Note or notes secured hereby for endorsement, and without affecting the personal liability of any person for the payment of the Secured Debt or the effect of this Deed of Trust upon the remainder of the Property, Trustee may reconvey any part of the Property, consent in writing to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 6.5 *Release of Lien.* Upon written request of Lender stating that the Secured Debt has been paid and upon surrender to Trustee of this Deed of Trust and the Note or notes secured hereby for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- 6.6 *Exculpation and Indemnification of Trustee.* Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by Trustee in good faith to be genuine. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by it hereunder (except to the extent required by Law). Borrower will reimburse Trustee for, and indemnify, save harmless and defend Trustee against, any and all liability and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Trustee may incur in the performance of its duties under the Loan Documents.

Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel, including fees for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5, in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

7. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings including, without limitation, any eminent domain proceedings which affect the Property, the Leases or any of the rights created by the Loan Documents, but only after notice to Borrower and if permitted by Laws.
8. **DEFAULTS; REMEDIES OF LENDER.**

8.1 **Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

- (a) **Breach of Named Covenants.** Any breach by Borrower of the covenants in Paragraph 4.1(a) (Secured Debt), Paragraph 4.1(b) (Property Taxes and Charges), Paragraph 4.2(f) (Clean-Up) or Paragraph 4.3 (Insurance); provided, however, that a breach of the covenant in Paragraph 4.1(a) to pay the Secured Debt as and when due under the Note and the other Loan Documents shall not constitute an Event of Default unless it shall continue for 5 days after the date such payment is due; provided further, however, that such 5-day grace period shall not apply more than twice in any one period of 12 consecutive months, the third such breach in such 12-month period constituting an Event of Default without expiration of any grace period.
- (b) **Breach of Other Covenants.** Any breach by Borrower of any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents, which continues for 30 days after written notice thereof by Lender to Borrower; provided, however, that if the nature of Borrower's breach is such that more than 30 days is reasonably required to cure the same, then Borrower shall not be deemed to be in default if Borrower commences such cure as promptly as reasonably possible within such 30-day period, diligently prosecutes such cure to completion, and completes such cure within 90 days from the date of Lender's aforesaid notice to Borrower.
- (c) **Misrepresentations.** Any representation or warranty made by Borrower in the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled, in any material way.
- (d) **Bankruptcy.** Immediately upon the occurrence of any of the following: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor or indemnitor pursuant to any guaranty or indemnity) or, if Borrower is a partnership, any general partner or joint venturer (collectively "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or an assignment for the benefit of, creditors, or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver, custodian, liquidator or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and such appointment is not promptly contested or is not dismissed or discharged within 120 days after such appointment, or a Party in Interest consents or acquiesces in such appointment, or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or (iv) a petition against a Party in Interest is filed commencing an involuntary case under any present or

future Federal or state bankruptcy or similar law and such petition is not dismissed or discharged within 120 days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest.

- (e) *Adverse Court Action.* A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of the Property or the Property is taken on execution or by other process of law.
- (f) *Ground Lease Default.* A default, which is not cured within any grace or cure period applicable thereto, occurs under the Ground Lease, or a termination of the Ground Lease occurs.

8.2 *Remedies.* In case of an Event of Default which has not been cured, Lender and, to the extent authorized by Lender, Trustee may, at any time thereafter, at its option, without notice, and without bringing any legal action or proceeding unless expressly required by law, exercise any or all of the following remedies:

- (a) *Acceleration.* Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable.
- (b) *Foreclosure.* Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Lender's rights under *Utah Code Annotated* § 57-1-23, or other applicable law.
- (c) *Offset Rights.* Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.1(c).
- (d) *Cure Rights.* Without releasing Borrower from any obligation hereunder or under the Loan Documents, perform any of Borrower's obligations. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance (including, without limitation, any junior debt outstanding), charge, lien, claim of lien, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums; (iii) employing counsel, accountants, contractors and other persons to assist Lender in the foregoing; and (iv) undertaking the Clean-Up of any Contamination.
- (e) *Possession of Property.* Take physical possession of the Property and of all books, records, and documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the Property, to collect

rents, issues and profits, to hire a professional property manager for the Property, to Clean-Up any Contamination and to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender. Nothing in this Paragraph 8.2 shall impose any duty, obligation or responsibility upon Lender for the control, care, management, repair or Clean-Up of the Property. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. Lender shall not be deemed a mortgagee in possession unless and until Lender enters into actual possession of the Property.

- (f) *Receiver.* Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment.
- (g) *Uniform Commercial Code Remedies.* Exercise any and all rights of a secured party with respect to the Personalty under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for, those rights and remedies:
  - (i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and
  - (ii) require Borrower to assemble the Personalty and make it available at any place Lender may designate so as to allow Lender to take possession of or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, 15 days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall constitute reasonable notice. Any sale made pursuant to the provisions of this Paragraph 8.2(g) shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with the sale of the Property as provided in Paragraph 8.2(j) of this Deed of Trust. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personalty prior to the time that any sale pursuant to the provisions of this Paragraph 8.2(g) is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS DEED OF TRUST OR ANY FINANCING STATEMENT RELATING TO THIS DEED OF TRUST SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS DEED OF TRUST IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, ARE SET FORTH ON THE COVER SHEET HEREOF.

- (h) *Judicial Actions.* Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy.
- (i) *Subrogation.* Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust liens encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record.
- (j) *Sale.* Sell the Property in accordance with Laws. Specifically, after the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the leasehold interest in the Realty on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and

deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the interest in the Realty so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

**FIRST:** To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

**SECOND:** To payment of the obligations secured by the trust deed.

**THIRD:** The balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Paragraph 8.2(j), whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the leasehold interest in the Realty, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting upon the obligations of Borrower secured by this Deed of Trust such credit bid amount. Lender, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premium, and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the leasehold interest in the Realty, and (ii) Lender may add all default interest, late charges, any prepayment premium, and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all unpaid late charges in any credit bid Lender may make at a foreclosure sale of the leasehold interest in the Realty pursuant to this Deed of Trust.

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

Borrower agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any sale, any



Lender may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

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

Borrower agrees that (i) all unpaid default interest, late charges, any prepayment premiums, amounts owing under paragraphs 10 and 11 of the Note, and other fees, expenses and costs and other amounts secured hereby shall constitute a part of and be entitled to the benefits of Lender's lien upon the leasehold interest in the Realty, and (ii) Lender may add all unpaid late charges, and other fees, expenses and costs to the principal balance of the Note, and in either case Lender may include the amount of all unpaid default interest, late charges, any prepayment premiums, amounts owing under paragraphs 10 and 11 of the Note, and other fees, expenses and costs and other amounts secured hereby in any credit bid Lender may make at a foreclosure sale of the leasehold interest in the Realty pursuant to the Deed of Trust. Further, Lender shall have the right to credit bid and purchase at any foreclosure, UCC, bankruptcy, Sheriff's or other sale or auction, including any sale under Section 363 of Title 11 United States Code and any successor or replacement statute (the US Bankruptcy Code).

- (k) *Other.* Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws.

Any sums advanced by Lender under this Paragraph 8.2 shall bear interest at the lesser of (i) the Default Rate specified in the Note or (ii) the maximum nonusurious interest rate permitted by applicable law, and shall be payable by Borrower on demand. Such sums together with such interest shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 8.2, less all costs and expenses incurred by Lender under this Paragraph 8.2, including, without limitation, reasonable out of pocket attorneys' fees and disbursements, property management fees, costs of title commitments, inspections, environmental site assessments and testing, engineering reports, alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

8.3 *Holding Over.* Should Borrower, after Lender has obtained title to the Property, continue in possession of any part of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, such rental to be due and payable daily to Lender.

8.4 *General Provisions.*

- (a) *Multiple Sales.* Several sales may be made pursuant to Paragraph 8.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 8.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.
- (b) *Cumulative Remedies.* All of the rights, remedies and options set forth in Paragraph 8.2 or otherwise available at law or in equity, are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.
- (c) *Right to Purchase.* At any sale of the Property pursuant to Paragraph 8.2, Lender shall have the right to purchase the Property being sold, and in such case the right to credit against the amount of the bid made therefor (to the extent necessary) all or any of the Secured Debt then due.
- (d) *Right to Terminate Proceedings.* Lender may, in its sole unfettered discretion, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 8.2, terminate, without prejudice to Lender, such proceedings or actions.
- (e) *No Waiver or Release.* Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property, or the liability of Borrower to pay the Secured Debt, except to the extent that such liability shall be reduced by proceeds of sale of all or any of the Property received by Lender.

- (f) *Waivers and Agreements Regarding Remedies.* To the full extent Borrower may do so and with respect to Lender's exercise of its remedies hereunder, Borrower hereby:
- (i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any Laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;
  - (ii) waives all rights to marshalling of the assets of Borrower, Borrower's partners, members and shareholders, and others with interests in Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Laws pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of the proceeds of sale of the Property in preference to every other claimant whatsoever;
  - (iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damages (unless such claim is required by Laws or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender) but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's foreclosure action;
  - (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and
  - (v) waives the defense of laches and any applicable statutes of limitation.

- (g) **WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, ON OR IN RESPECT OF ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS, OR THE RELATIONSHIP OF BORROWER AND LENDER HEREUNDER OR THEREUNDER.
- (h) *Lender's Discretion.* Unless specifically stated otherwise, Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.
- (i) *Sales.* In the event of the sale or other disposition of the Property pursuant to Paragraph 8.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase price and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement, rental agreement or Lease.

## 9. **POSSESSION AND DEFEASANCE.**

- 9.1 *Possession.* Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary in any of the Loan Documents, Borrower shall retain full possession of the Property with full right to use the Property and to collect the rents, issues and profits therefrom, subject, however, to all of the terms and provisions of the Loan Documents.
- 9.2 *Defeasance.* If the Secured Debt is paid in full and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then, in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Deed of Trust shall be void.

To the extent permitted by Laws such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

Notwithstanding the foregoing, Borrower's obligation under Paragraph 4.8(c) (environmental indemnity) shall not terminate and shall survive the discharge of the Loan Documents, whether through full payment of the Secured Debt, foreclosure, deed in lieu of foreclosure or otherwise, for the benefit of Lender and its successors and assigns, including without limitation, any purchaser at a foreclosure sale.

10. **GENERAL.**

10.1 *Lender's Right to Waive, Consent or Release.* Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Deed of Trust and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender except to the extent specifically agreed to by Lender in such writing.

10.2 *No Impairment.* The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation: (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein; or (c) any release or indulgence granted to any maker, endorser, guarantor, indemnitor or surety of any of the Secured Debt.

10.3 *Amendments.* The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Any waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

10.4 *No Usury.* Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on any of the Secured Debt in excess of the maximum rate of interest permitted by Laws, and if any provisions of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 10.4 shall control unless contrary or inconsistent with any provisions of the Note, in which case the provisions of the Note shall control. Borrower and Lender intend to conform strictly to the usury Laws now in force, and the Loan Documents evidencing or relating to any of the

Secured Debt shall be held subject to modification to conform to said Laws as now or hereafter construed.

10.5 *Notices.* Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail postage prepaid sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by courier service with guaranteed next day delivery, the next day or the day designated for delivery, or in the case of delivery by certified United States Mail, 2 days after deposit therein. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

10.6 *Successors and Assigns.* The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Deed of Trust to Borrower, Lender or Trustee shall be deemed to include all such successors, substitutes

If in contravention of the provisions of this Deed of Trust or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Lender's remedies or Borrower's liability under the Loan Documents or on the Secured Debt.

10.7 *Severability.* A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

10.8 *Gender and Construction.* Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Deed of Trust to "herein", "hereunder" or "hereby" shall refer to this entire Deed of Trust, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria (without allowance for reasonableness) as it chooses in approving or disapproving the requested or pending action.

- 10.9 *Joint and Several Liability.* If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained in the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.
- 10.10 *Modifications.* References to any of the Loan Documents in this Deed of Trust shall include all amendments, modifications, extensions and renewals thereof.
- 10.11 *Governing Law.* This Deed of Trust shall be construed according to and governed by the laws of the State.
- 10.12 *Captions.* All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.
- 10.13 *Nonrecourse.* Borrower shall be liable upon the indebtedness evidenced by the Note, for all sums to accrue or to become payable thereon and for performance of all covenants contained in the Note or in any of the other Loan Documents, to the extent, but only to the extent, of Lender's security for the same, including, without limitation, all properties, rights, estates and interests covered by this Deed of Trust and the other Loan Documents. No attachment, execution or other writ or process shall be sought, issued or levied upon any assets, properties or funds of Borrower other than the properties, rights, estates and interests described in this Deed of Trust and the other Loan Documents. In the event of foreclosure of such liens, mortgages or security interests, by private power of sale or otherwise, no judgment for any deficiency upon such indebtedness, sums and amounts shall be sought or obtained by Lender against Borrower. Subject to the foregoing, nothing herein contained shall be construed to prevent Lender from exercising and enforcing any other remedy relating to the Property allowed at law or in equity or by any statute or by the terms of any of the Loan Documents.

Notwithstanding the foregoing, Borrower shall be personally liable to Lender for:

- (a) damages, losses, liabilities, costs or expenses (including, without limitation, attorneys' fees) incurred by Lender due to any of the following: (i) security deposits of tenants of the Property (not previously applied to remedy tenant defaults) which have not been paid over to Lender following an Event of Default; (ii) any rents prepaid by any tenant of the Property more than one (1) month in advance; (iii) any insurance proceeds or condemnation awards received by Borrower and not applied according to the terms of this Deed of Trust; (iv) accepting Lease termination payments without Lender's prior written consent and direction as to use; (v) repairs to the Property resulting from a casualty not reimbursed by insurance, to the extent insurance coverage for such repairs was required by the Loan Documents; (vi) fraud, material misrepresentation or bad faith on the part of Borrower; (vii) any event or circumstance for which Borrower is obligated to indemnify Lender under the provisions of this Deed of Trust respecting Hazardous Substances, Contamination or Clean-Up; (viii) waste of the Property by Borrower; (ix) Borrower's failure to pay real estate taxes or other assessments against the Property, except to the extent Borrower has deposited amounts with

Lender for payment of the same; or (x) Borrower's failure to comply with the Americans with Disabilities Act of 1990, as amended, or any other Laws; and

- (b) all rents, issues and profits from the Property collected by Borrower after an Event of Default has occurred and is continuing or after an event or circumstance has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute an Event of Default, unless such rents, issues and profits are applied to the normal operating expenses of the Property or to the Secured Debt.

Additionally, notwithstanding other provisions of this paragraph 10, the loan evidenced by the Note and other Loan Documents shall become fully recourse debt to Borrower and Guarantor(s) if any of the following occur:

- (a) Borrower secures either junior financing secured by the Property or mezzanine financing secured by interests in Borrower (collectively, "Junior Loan") without written authorization from Lender;
- (b) Borrower pays any amount toward a Junior Loan at a time when there is an Event of Default under Lender's loan, regardless of whether the Junior Loan was authorized or unauthorized by Lender; or
- (c) Borrower becomes a voluntary debtor either under Chapter 7 or 11 of the United States Bankruptcy Code or under any other form of insolvency law or any petition seeking any liquidation, dissolution or similar relief under any present or future federal or state bankruptcy, insolvency or debtor relief acts or laws; or
- (d) Borrower becomes a debtor either under Chapter 11 of the United States Bankruptcy Code or under any other form of insolvency law, or any petition seeking any liquidation, dissolution, or similar relief under any present or future federal or state bankruptcy, insolvency or debtor relief acts or laws, or any such petition is filed against Borrower and is not dismissed within sixty (60) days and Borrower resists or opposes the lifting of the automatic stay by the bankruptcy court to permit Lender to foreclose the Deed of Trust.

Lender shall not be limited in any way in enforcing the personal liability and obligations of Borrower under the Loan Documents against Borrower, nor shall Lender be limited in any way in enforcing the personal liability and obligations of any guarantor or indemnitor in accordance with the terms of the instruments creating such liabilities and obligations. The personal liability and obligations of Borrower under the Loan Documents shall survive the discharge of this Deed of Trust, whether through full payment of the Note, foreclosure, deed in lieu of foreclosure or otherwise.

- 10.14 *Sale, Assignment or Conversion of Secured Debt.* Borrower hereby agrees that Lender may (i) sell all or any portion of the Secured Debt or securitize all or a portion of the Secured Debt in one or more transactions through the issuance of pass-through certificates or other securities evidencing ownership of a portion of



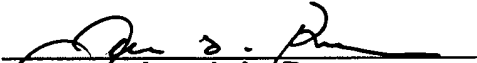
the Secured Debt or beneficial interest therein, in one or more rated or unrated public or private transactions; (ii) assign servicing rights with respect to the Secured Debt; or (iii) convert the Note and this Deed of Trust to registered form (each such transaction as described in the preceding clauses (i), (ii) and (iii) being referred to as a "Covered Transaction"), without the consent of or notice to Borrower. Borrower hereby agrees that, if requested, it will, at Lender's expense, reasonably cooperate with Lender and use its commercially reasonable efforts to facilitate the consummation of a Covered Transaction, including, without limitation, by: (a) delivering estoppels, opinions, tax certificates or any other documents, each in form and substance reasonably acceptable to Lender or any rating agency; (b) providing such additional information as may reasonably be required by Lender, or granting reasonable access to Lender in order to obtain such information, including, without limitation, updated environmental information and appraisals; and (c) appointing as its agent a registrar and transfer agent, which agent shall maintain, subject to such reasonable regulations as such agent shall provide, such books and records as may be necessary for the registration and transfer of the Note and this Deed of Trust, all in a manner acceptable to Lender in its sole unfettered discretion. Borrower hereby agrees that Lender may forward to each potential purchaser, transferee, assignee, service, trustee, participant or investor in any Covered Transaction, or to any rating agency, all documents and information which Lender now has or may hereafter acquire relating to the Secured Debt, the Property, Borrower or any guarantor or indemnitor of the Secured Debt that has been furnished by Borrower or any other party in connection with the Secured Debt, as Lender may, in its sole unfettered discretion, determine is necessary or desirable.

- 10.15 *Acknowledgment of Receipt.* Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Deed of Trust.
- 10.16 *Time of the Essence.* Time is of the essence of each and every payment and/or performance obligation of Borrower and the Guarantor(s) under this Deed of Trust or any of the other Loan Documents.
- 10.17 *Exhibits.* The following are the Exhibits referred to in this Deed of Trust, which are hereby incorporated by reference herein:

Exhibit A - Property Description

**BOYER RED BUTTE CREEK 1, L.C.**  
a Utah limited liability company

By: **BOYER RED BUTTE CREEK 1 MANAGER, INC.**  
a Utah corporation  
Its Manager


By:   
Name: **Jacob L. Boyer**  
Title: ~~Manager Vice President~~

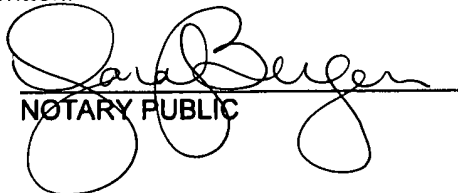
"Borrower"

STATE OF UTAH                    )  
  : ss.  
COUNTY OF Salt Lake        )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 2014, by Jacob L. Boyer, the Manager Vice Pres. of **BOYER RED BUTTE CREEK 1 MANAGER, INC.**, a Utah corporation, the Manager of **BOYER RED BUTTE CREEK 1, L.C.**, a Utah limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]  **SARA BERGEN**  
Notary Public State of Utah  
My Commission Expires on:  
April 4, 2016  
Comm. Number: 654881

  
NOTARY PUBLIC

**EXHIBIT A**

**Property Description**

**That certain real property ground leased by Borrower and situated in the County of Salt Lake, State of Utah and described as follows:**

**[See Attached.]**

**PARCEL 1:**

The **LEASEHOLD ESTATE** and interest which arise pursuant to that certain **Enhanced-Use Ground Lease** dated as of May 9, 2001, by and between **THE SECRETARY OF VETERANS AFFAIRS, AN OFFICER OF THE UNITED STATES, ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS ("Landlord")**, and **BOYER RED BUTTE CREEK 1, L.C.**, a Utah limited liability company ("**Tenant**"), the existence of which is disclosed by that certain Memorandum of Enhanced-Use Ground Lease recorded May 31, 2001 as Entry No. 7909328, in Book 8463, at Page 280 of the Official Records of the County Recorder of Salt Lake County, Utah, as said Enhanced-Use Ground Lease shall have heretofore been amended and/or supplemented by a First Amendment to Enhanced-Use Ground Lease dated as of October 28, 2004, in and to the following described parcel of land, to-wit:

A parcel of land located in the Department of Veterans Affairs Medical Center overall tract of land, lying in the Southerly portion of said tract of land being more particularly described as follows: Beginning at a point which lies along the monument line of Sunnyside Avenue being North 89°59'50" East 697.67 feet and North 00°00'10" West 1654.96 feet more or less perpendicular to said monument line, from a found brass cap monument at the intersection of Sunnyside Avenue and Legrand Road (known as Legrand Street on Salt Lake City Atlas plats and Salt Lake County tax parcel plats); thence North 51°21'42" West 370.86 feet to the beginning of a curve to the right, having a central angle of 95°19'38", a radius of 45.00 feet (chord bears North 03°41'53" West 66.53 feet); thence along the arc of said curve 74.87 feet; thence North 43°57'56" East 23.41 feet; thence North 35°54'59" East 61.17 feet; thence North 38°41'46" East 66.22 feet; thence North 46°16'54" East 215.34 feet; thence North 38°34'08" East 80.44 feet to the beginning of a curve to the right, having a central angle of 66°31'18", a radius of 50.00 feet (chord bears North 71°49'47" East 54.85 feet); thence along the arc of said curve 58.05 feet to a point of non-tangency; thence South 46°16'32" East 138.38 feet to the beginning of a curve to the right, having a central angle of 07°37'47", a radius of 1452.00 feet (chord bears South 42°27'39" East 193.21 feet); thence along the arc of said curve 193.35 feet to a point of tangency; thence South 38°38'45" East 102.10 feet more or less to a point which lies on the centerline of Red Butte Creek; thence along the said centerline the following six (6) courses: South 52°09'37" West 62.36 feet, North 77°21'05" West 59.56 feet, South 54°28'52" West 166.98 feet, South 40°34'04" West 66.30 feet, South 04°37'54" East 53.13 feet, South 34°27'16" West 122.95 feet to the point of beginning.

**PARCEL 1A:**

A non-exclusive easement for ingress and egress appurtenant to **PARCEL 1** described herein, as defined, described and created pursuant to the provisions of that certain Enhanced-Use Ground Lease dated as of May 9, 2001, by and between THE SECRETARY OF VETERANS AFFAIRS, AN OFFICER OF THE UNITED STATES, ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS ("Landlord"), and BOYER RED BUTTE CREEK 1, L.C., a Utah limited liability company ("Tenant"), over and across the following described tract of land:

A parcel of land located in the Department of Veterans Affairs Medical Center overall tract of land, lying in the southerly portion of said tract of land being more particularly described as follows: Beginning at a point which lies along the monument line of Sunnyside Avenue being North 89°59'50" East 697.67 feet and North 00°00'10" West 1654.96 feet more or less perpendicular to said monument line, from a found brass cap monument at the intersection of Sunnyside Avenue and Legrand Road (known as Legrand Street on Salt Lake City Atlas plats and Salt Lake County tax parcel plats); thence North 51°21'42" West 370.86 feet to the beginning of a curve to the right, having a central angle of 95°19'38", a radius of 45.00 feet (chord bears North 03°41'53" West 66.53 feet); thence along the arc of said curve 74.87 feet; thence North 43°57'56" East 23.41 feet; thence North 35°54'59" East 61.17 feet; thence North 38°41'46" East 66.22 feet; thence North 46°16'54" East 215.34 feet; thence North 38°34'08" East 80.44 feet to the beginning of a curve to the right, having a central angle of 66°31'18", a radius of 50.00 feet (chord bears North 71°49'47" East 54.85 feet); thence along the arc of said curve 58.05 feet to a point of cusp; thence North 55°15'38" West 106.87 feet to a point of cusp, also being a curve to the right, having a central angle of 46°57'50", a radius of 30.00 feet (chord bears South 10°50'15" West 23.91 feet); thence along the arc of said curve 24.59 feet; thence South 34°19'10" West 165.80 feet; thence South 39°22'52" West 100.00 feet to the beginning of a curve to the left, having a central angle of 18°10'32", a radius of 100.00 feet (chord bears South 48°28'08" West 31.59 feet); thence along the arc of said curve 31.72 feet; thence South 37°50'37" West 244.82 feet; thence South 51°22'18" East 390.93 feet; thence South 44°53'06" East 56.12 feet; thence North 34°27'16" East 36.45 feet to the point of beginning.