

PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Goodwin Procter LLP  
620 8th Avenue  
New York, New York 10018  
Attn: Diana Brummer  
#157756-BHF  
APN(s): 22-29-130-025

13991578 B: 11359 P: 8517 Total Pages: 43  
07/27/2022 04:57 PM By: asteffensen Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

**NORTH UNION DE PARTNERS, LLC**  
a Delaware limited liability company,

to be indexed as the trustor ("Trustor")

To

**COTTONWOOD TITLE INSURANCE AGENCY, INC.**  
as trustee ("Trustee")

for the benefit of

**CMTG FUNDING I LLC,**  
a Delaware limited liability company, as beneficiary ("Lender")

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

**Dated:** As of July 27, 2022

**Location:** 935 E. South Union Avenue, Midvale, Utah 84047

**County:** Salt Lake

**Debtor:**

North Union DE Partners, LLC  
500 North Marketplace Drive  
Suite 10  
Centerville, Utah 84014

**Secured Party:**

CMTG Funding I LLC  
c/o Mack Real Estate Credit Strategies, L.P.,  
60 Columbus Circle, 20<sup>th</sup> Floor  
New York, New York 10023

**Property Description:**

See Exhibit A attached hereto

THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, LENDER IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

Table of Contents

Page

ARTICLE 1

GRANTS OF SECURITY

Section 1.1	Property Conveyed.....	2
Section 1.2	Assignment of Rents.....	5
Section 1.3	Security Agreement .....	6
Section 1.4	Fixture Filing .....	6
Section 1.5	Pledges of Monies Held.....	6
Section 1.6	Future Disbursements .....	6

ARTICLE 2

DEBT AND OBLIGATIONS SECURED

Section 2.1	Debt.....	7
Section 2.2	Other Obligations.....	7
Section 2.3	Debt and Other Obligations .....	8

ARTICLE 3

TRUSTOR COVENANTS

Section 3.1	Payment of Debt .....	8
Section 3.2	Incorporation by Reference.....	8
Section 3.3	Insurance .....	8
Section 3.4	Payment of Taxes.....	8
Section 3.5	Maintenance of Property.....	8
Section 3.6	Waste.....	9
Section 3.7	Payment for Labor and Materials .....	9
Section 3.8	Performance of Other Agreements .....	9
Section 3.9	Change of Name, Identity or Structure .....	9
Section 3.10	Property Use.....	9
Section 3.11	Warranty of Title.....	9

ARTICLE 4

OBLIGATIONS AND RELIANCES

Section 4.1	Relationship of Trustor and Lender .....	10
Section 4.2	No Reliance on Lender .....	10
Section 4.3	No Lender Obligations.....	10
Section 4.4	Reliance.....	11

ARTICLE 5

FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc .....11  
 Section 5.2 Further Acts, etc.....11  
 Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws .....12  
 Section 5.4 Splitting of Mortgage.....12  
 Section 5.5 Replacement Documents .....13  
 Section 5.6 Performance at Trustor’s Expense.....13  
 Section 5.7 Legal Fees for Enforcement.....13

ARTICLE 6

DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance .....14  
 Section 6.2 No Transfer .....14

ARTICLE 7

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies.....14  
 Section 7.2 Application of Proceeds.....19  
 Section 7.3 Right to Cure Defaults .....19  
 Section 7.4 Actions and Proceedings.....20  
 Section 7.5 Recovery of Sums Required to Be Paid.....20  
 Section 7.6 Examination of Books and Records.....20  
 Section 7.7 Other Rights, etc .....20  
 Section 7.8 Right to Release Any Portion of the Property .....21  
 Section 7.9 Violation of Laws .....21  
 Section 7.10 Right of Entry .....21  
 Section 7.11 Lender Not Obligated; Cumulative Rights .....21

ARTICLE 8

PREPAYMENT

Section 8.1 Prepayment .....21

ARTICLE 9

INDEMNIFICATION

Section 9.1 General Indemnification .....22  
 Section 9.2 Mortgage and/or Intangible Tax .....23  
 Section 9.3 ERISA Indemnification .....23

Section 9.4	Intentionally Omitted .....	23
Section 9.5	Duty to Defend; Attorneys' Fees and Other Fees and Expenses .....	23
Section 9.6	.....	24

ARTICLE 10

WAIVERS

Section 10.1	Waiver of Counterclaim.....	24
Section 10.2	Marshalling and Other Matters .....	24
Section 10.3	Waiver of Notice.....	24
Section 10.4	Waiver of Statute of Limitations.....	24
Section 10.5	Survival .....	25

ARTICLE 11

EXCULPATION

ARTICLE 12

NOTICES

Section 12.1	Notices .....	25
--------------	---------------	----

ARTICLE 13

APPLICABLE LAW

Section 13.1	Governing Law .....	25
Section 13.2	Usury Laws .....	26
Section 13.3	Provisions Subject to Applicable Law.....	26

ARTICLE 14

DEFINITIONS

Section 14.1	Definitions.....	26
--------------	------------------	----

ARTICLE 15

MISCELLANEOUS PROVISIONS

Section 15.1	No Oral Change .....	26
Section 15.2	Successors and Assigns.....	27
Section 15.3	Inapplicable Provisions.....	27
Section 15.4	Headings, etc.....	27
Section 15.5	Number and Gender/Joint and Several .....	27
Section 15.6	Subrogation.....	27

Section 15.7	Entire Agreement.....	27
Section 15.8	Limitation on Lender’s Responsibility .....	28
Section 15.9	Sole Discretion of Lender .....	28
Section 15.10	Counterparts.....	28

ARTICLE 16

DEED OF TRUST PROVISIONS

Section 16.1	Concerning the Trustee.....	28
Section 16.2	Trustee’s Fees. ....	29
Section 16.3	Certain Rights. ....	29
Section 16.4	Retention of Money. ....	30
Section 16.5	Perfection of Appointment.....	30
Section 16.6	Succession Instruments.....	30

ARTICLE 17

STATE SPECIFIC PROVISIONS

Section 17.1	Financing Statement.....	30
Section 17.2	Reconveyance .....	30
Section 17.3	Conflicting Provisions.....	30
Section 17.4	Default Interest, Late Charges, Etc. ....	31
Section 17.5	Utah Construction Registry.....	31
Section 17.6	Deficiency .....	32
Section 17.7	Reinstatement.....	32
Section 17.8	Water Rights .....	32
Section 17.9	Property Status .....	33
Section 17.10	Foreclosure; Lawsuits .....	34
Section 17.11	Amendments to Utah Code Annotated .....	34
Section 17.12	Obligations Under Environmental Indemnity .....	34
Section 17.13	Additional Waivers .....	34
Section 17.14	Oral Agreements .....	35
Section 17.15	Receiver .....	35

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**") is made as of this 27<sup>th</sup> day of July, 2022, by **NORTH UNION DE PARTNERS, LLC**, a Delaware limited liability company, having its principal place of business at 500 North Marketplace Drive, Suite 10, Centerville, Utah 84014 ("**Trustor**"), as trustor, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, having an address at 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, as trustee ("**Trustee**") for the benefit of **CMTG FUNDING I LLC**, a Delaware limited liability company, having an address at c/o Mack Real Estate Credit Strategies, L.P., 60 Columbus Circle, 20th Floor, New York, New York 10023 (together with its successors and assigns, "**Lender**") as beneficiary.

**W I T N E S S E T H:**

WHEREAS, Lender is making a loan to Trustor in the maximum principal amount of up to SEVENTY SIX MILLION AND NO/100 DOLLARS (\$76,000,000) (the "**Loan**") pursuant to that certain Loan Agreement dated as of the date hereof between Trustor and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), which Loan is evidenced by that certain Promissory Note in the aggregate principal amount of the Loan (together with all extensions, renewals, replacements, restatements or modifications thereof, whether one or more being hereinafter collectively referred to as the "**Promissory Note**");

WHEREAS, Trustor desires to secure the payment of the Debt and the performance of all of its obligations under the Promissory Note, the Loan Agreement and the other Loan Documents (as hereinafter defined); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Trustor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Promissory Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Promissory Note, this Security Instrument, and all other documents evidencing or securing the Debt or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "**Loan Documents**"); and

WHEREAS, Trustor is the owner and holder of fee simple absolute title in and to the real property described on Exhibit A attached hereto and made apart hereof (the "**Parcel**").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument, Trustor agrees as follows:

## ARTICLE 1

### GRANTS OF SECURITY

Section 1.1 Property Conveyed. Trustor does hereby irrevocably and unconditionally grant, bargain, sell, pledge, assign, warrant, transfer and convey and grant a security interest in, on and to Trustee and its successors and assigns, in trust, with power of sale and right of entry and possession for the benefit of Lender and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Trustor (collectively, the "Property"):

(a) Land. The Parcel described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land or any other use and all additional lands and estates therein which may, from time to time, by supplemental security instrument or otherwise be expressly made subject to the Lien of this Security Instrument regardless of ownership thereof (the "Additional Land");

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land or the Additional Land (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights (including, without limitation, air rights, subsurface rights and all other development rights), strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights, including but not limited to Water Rights, if any, (as defined below) and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land, the Additional Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land or the Additional Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land or the Additional Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9/Chapter 9a of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Trustor, which is used at or in connection with the Improvements or the Land or the Additional Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other equipment now owned or hereafter acquired by Trustor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");



(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Trustor which is so related to the Land or the Additional Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or the Additional Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Trustor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures");

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code (as hereinafter defined)), other than Fixtures, which are now or hereafter owned by Trustor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "Personal Property"), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Personal Property is located (the "Uniform Commercial Code"), superior in lien to the Lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into, and all extensions, amendments and modifications thereto, whether before or after the filing by or against Trustor of any petition for relief under Title 11 U.S.C.A. §101 et seq. and the regulations adopted and promulgated thereto (as the same may be amended from time to time, the "Bankruptcy Code") (collectively, the "Leases") and all right, title and interest of Trustor, its successors and assigns therein and thereunder, including, without limitation, any guarantees of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, including but not limited to "rents" as defined in the Utah Act (defined below), additional rents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Trustor

of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (collectively, the “Rents”) and the right of Trustor to receive and apply the Rents to the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Trustor is required to carry such insurance by Lender under the Loan Documents), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in Taxes and Other Charges charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash and liquidation claims;

(m) Rights. The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. All agreements (including all management and franchise agreements), contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof (including, without limitation, the Punch List Holdback Agreement and the Punch List Additional Holdback Agreement (each as defined in the Loan Agreement)) and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement) hereunder, to receive and collect any sums payable to Trustor thereunder;

(o) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All Accounts, Account Collateral, reserves, escrows and deposit accounts maintained by Trustor with respect to the Property including without limitation, the Clearing Account, the Cash Management Account, the Interest Reserve Account, the Tax and Insurance Reserve Account, the TI Reserve Account, the Replacement Reserve Account, the

Excess Cash Reserve Account and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Causes of Action");

(r) Interest Rate Protection Agreement. All right, title, interest and claim of Trustor in, to, under or pursuant to any Interest Rate Protection Agreement and any and all amendments, supplements and additions thereto (the Interest Rate Protection Agreement, together with any amendments, additions or supplements thereto, the "Cap Agreement"), and all claims of Trustor for breach by the counterparty thereto of any covenant, agreement, representation or warranty contained in the Cap Agreement;

(s) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(t) Other Rights. Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Trustor expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and conveyed hereby.

Section 1.2 Assignment of Rents. As security for the payment and performance of the Obligations (as hereinafter defined), Trustor hereby collaterally assigns to Lender and grants lender a security interest and lien in all of Trustor's right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a collateral assignment. Nevertheless, so long as no Event of Default exists, Lender grants to Trustor a revocable right to collect and receive the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums and for other payments as contemplated by the terms of the Loan Agreement, subject to the terms of the Loan Agreement. This Section 1.2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Ann.* § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 1.2 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Lender shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

Section 1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Security Instrument, Trustor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property, the Accounts, the Account Collateral and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “Collateral”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have and to the extent permitted by applicable laws, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Trustor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Trustor shall pay to Lender on demand any and all out-of-pocket expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. The principal place of business of Trustor (Debtor) and Lender (Secured Party) are each set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Trustor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Reserve Funds, the Accounts, Net Restoration Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

Section 1.6 Future Disbursements. This Security Instrument secures not only existing indebtedness or disbursements made contemporaneously with the execution hereof, if any, but also future principal disbursements (with all interest thereon), to or for the benefit of Trustor, made

pursuant to the terms of the Loan Documents (as the same may be amended or supplemented from time to time), the terms of all of which are incorporated herein by reference, whether such disbursements are obligatory, optional, or both, to the same extent as if such future disbursements were made contemporaneously with the execution of this Security Instrument, even though no disbursement may have been made at the time of execution of this Security Instrument and even though no indebtedness may be outstanding at the time any disbursement is made, and any liens attaching to the Property after the date hereof shall be under, subject and subordinate to all indebtedness, including, without limitation, future disbursements (regardless of when made), secured hereby. This Security Instrument shall also secure, in addition to the principal amount specified herein, interest, service charges and any disbursements made for the payment of taxes, assessments, maintenance, care, protection or insurance on the Property, with interest on such disbursements.

### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property and all parts thereof, together with the rents, issues, profits and proceeds thereof, unto Trustee for and on behalf of Lender and their successors and assigns, forever;

IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Loan Agreement, the Promissory Note and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall pay to Lender the Debt at the time and in the manner provided in the Promissory Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations as set forth in Section 2.2 of this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Promissory Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Trustor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

### ARTICLE 2

#### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt. The Debt has an Initial Maturity Date, subject to extension pursuant to the terms and conditions of the Loan Documents and as more particularly set forth therein.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Trustor contained herein;

(b) the performance of each obligation of Trustor contained in this Security Instrument, the Promissory Note, the Loan Agreement and any other Loan Document; and

(c) the performance of each obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Promissory Note, the Loan Agreement or any other Loan Document.

Section 2.3 Debt and Other Obligations. Trustor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

### ARTICLE 3

#### TRUSTOR COVENANTS

Trustor covenants and agrees that:

Section 3.1 Payment of Debt. Trustor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Promissory Note and this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in the Loan Agreement, the Promissory Note and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Trustor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Trustor and the Property as required pursuant to the Loan Agreement.

Section 3.4 Payment of Taxes. Trustor shall promptly pay all Taxes and Other Charges in accordance with the terms of the Loan Agreement.

Section 3.5 Maintenance of Property. Trustor shall cause the Property to be maintained in a good and safe condition and repair. Subject to the terms of the Loan Agreement, the Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished, expanded or materially altered without the prior written consent of Lender. Subject to the terms of the Loan Agreement, Trustor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated, or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Subject to the terms of the Loan Agreement, Trustor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Trustor will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 3.6 Waste. Trustor shall not commit, permit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or impair the security of this Security Instrument. Trustor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.7 Payment for Labor and Materials.

(a) Trustor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials (“Labor and Material Costs”) incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

Section 3.8 Performance of Other Agreements. Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by Trustor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property, or given by Trustor to Lender for the purpose of further securing the Obligations and any amendments, modifications or changes thereto.

Section 3.9 Change of Name, Identity or Structure. Other than as permitted under the Loan Agreement, Trustor shall not change Trustor’s name, identity (including its trade name or names) or, if not an individual, Trustor’s corporate, partnership or other structure without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action reasonably required by Lender for the purpose of perfecting or protecting the Lien and security interest of Lender and (c) in the case of a change in Trustor’s structure, without first obtaining the prior written consent of Lender. Trustor shall promptly notify Lender in writing of any change in its organizational identification number. Trustor hereby authorizes Lender, prior to or contemporaneously with the effective date of any such change, to file any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Trustor shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Trustor intends to operate the Property, and representing and warranting that Trustor does business under no other trade name with respect to the Property.

Section 3.10 Property Use. The Parcel shall be used only as provided for in the Loan Agreement.

Section 3.11 Warranty of Title. (i) To the best of Trustor’s knowledge, Trustor has good title to the Property, and (ii) Trustor has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Trustor possesses a fee simple absolute estate in

the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances. The Permitted Encumbrances do not and will not materially adversely affect or interfere with the value, or materially adversely affect or interfere with the current use or operation, of the Property, or the security intended to be provided by this Security Instrument or the ability of Trustor to repay the Note or any other amount owing under the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents or to perform its obligations thereunder in accordance with the terms of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create when properly recorded or filed in the appropriate records (i) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, subject only to Permitted Encumbrances. This Security Instrument when properly recorded in the appropriate records, creates a valid first priority assignment of, or a valid first priority security interest in, certain rights under the related Leases, subject only to a license granted to Trustor to exercise certain rights and to perform certain obligations of the lessor under such Leases, including the right to operate the Property as provided in the Loan Agreement. No Person other than Trustor owns any interest in any payments due under such Leases that is superior to or of equal priority with the Lender's interest therein. Trustor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

#### ARTICLE 4

##### OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Trustor and Lender. The relationship between Trustor, on the one hand, and Lender, on the other, is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Trustor, and no term or condition of any of the Loan Agreement, the Promissory Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Trustor, on the one hand, and Lender, on the other, to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The general partners, members, principals and (if Trustor is a trust) beneficial owners of Trustor are experienced in the ownership and operation of properties similar to the Property, and Trustor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations.

(a) Notwithstanding the provisions of Section 1.1(h),(n) or (o) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.



(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Promissory Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Trustor recognizes and acknowledges that in accepting the Loan Agreement, the Promissory Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy in all material respects (or, with respect to representations and warranties qualified by materiality, in all respects) of the warranties and representations set forth in Article 5 of the Loan Agreement and Articles 3 and 4 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in accepting the Promissory Note, the Loan Agreement, this Security Instrument and the other Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5 of the Loan Agreement and Articles 3 and 4 hereof.

## ARTICLE 5

### FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time upon Lender's written request, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Trustor will pay all taxes, filing, registration or recording fees, and all out-of-pocket expenses, including, but not limited to, reasonable legal fees and disbursements incident to the preparation, execution, acknowledgment and/or recording of the Promissory Note, the Loan Agreement, this Security Instrument, the other Loan Documents, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents and all federal, state, county and municipal taxes, duties, imposts, assessments and third-party charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, etc. Trustor will, at the cost of Trustor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require in writing, for the better assuring,

conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Trustor, on written demand, will execute and deliver and hereby authorizes Lender to file one or more financing statements or execute in the name of Trustor to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property or any Collateral. Trustor authorizes Lender to the furthest extent permitted by Applicable Law to use collateral descriptions such as "all personal property" or "all assets", in each case "whether now owned or hereafter acquired" or words of similar import or any other description Lender, in its sole discretion, so chooses in any such financing statements. Trustor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Trustor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting this Security Instrument and any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2. To the extent not prohibited by applicable law, Trustor hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws. If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Trustor will pay such tax, with interest and penalties thereon, if any.

(a) Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt.

(b) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Promissory Note, the Loan Agreement, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Splitting of Mortgage. This Security Instrument and the Promissory Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more Promissory Notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Trustor, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute Promissory Notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Promissory Note, and

containing terms, provisions and clauses substantially similar to those contained herein and in the Promissory Note, and such other documents and instruments as may reasonably be required by Lender on substantially the same form and on the same terms as the Loan Documents.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Promissory Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Promissory Note or other Loan Document, Trustor will issue, in lieu thereof, a replacement Promissory Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Promissory Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

Section 5.6 Performance at Trustor's Expense. Trustor acknowledges and confirms that Lender may impose certain administrative processing and/or commitment fees in Lender's customary amounts from time to time in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination or non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Trustor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority; provided, however, that other than in connection with a continuing Event of Default, Lender shall not require any such reappraisal more than once in a given one (1) year period. Trustor hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature in Lender's customary amounts which may be imposed by Lender from time to time, upon the occurrence of any Event. Lender shall provide Trustor reasonable documentation for any fees incurred with its request or demand for payment hereunder. Wherever it is provided for herein that Trustor pay any costs and expenses, such costs and expenses shall include, but not be limited to, out-of-pocket costs and expenses incurred by Lender or Trustee, including, but not limited to, reasonable legal fees and disbursements.

Section 5.7 Legal Fees for Enforcement. (a) Trustor shall pay all out-of-pocket reasonable legal fees of outside counsel incurred by Lender in connection with the preparation of the Loan Agreement, the Promissory Note, this Security Instrument and the other Loan Documents and (b) Trustor shall pay to Lender within five (5) Business Days following demand therefor any and all out-of-pocket costs and expenses, including, but not limited to, reasonable legal fees of outside counsel and disbursements, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Trustor, provided that in no event shall such amounts bear interest at the Default Rate for any date that is earlier than thirty (30) days prior to Lender's delivery of such written demand for payment or reimbursement.

## ARTICLE 6

### DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Trustor acknowledges that Lender has examined and relied on the experience of Trustor and its general partners, members, principals and (if Trustor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Trustor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Trustor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Trustor default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Transfer. Trustor shall not permit or suffer any Transfer to occur, unless expressly permitted by the Loan Agreement.

## ARTICLE 7

### RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and continuation of any Event of Default, Trustor agrees that Lender or Trustee (at Lender's direction), or both, as applicable, may, to the furthest extent permitted by Applicable Law, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise (including but not limited to as a mortgage in accordance with Lender's rights under *Utah Code Ann.* § 57-1-23, or other applicable law, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Promissory Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Promissory Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Trustor, any guarantor or indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) the right granted to Trustor under Section 1.2 hereof shall automatically be revoked and, subject to applicable law, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon written demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Trustor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor; (vi) require Trustor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Trustor may be evicted in accordance with applicable law; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all out-of-pocket costs and expenses, including, but not limited to, reasonable legal fees and disbursements incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of any Collateral, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral, and (ii) request Trustor at its expense to assemble the Collateral and make it available to Lender at a reasonably convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall constitute commercially reasonable notice to Trustor;

(j) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Personal Property and the other Property may, at the option of Lender, be sold as a whole or in separate parcels, and in such order as Lender may determine (but subject to Trustor's statutory right under *Utah Code Ann. § 57-1-27* to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold);

(k) it shall not be necessary that Lender take possession of the Personal Property or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personal Property or any part thereof be present at the location of such sale;

(l) prior to application of proceeds of disposition of the Personal Property to the Debt, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Lender;

(m) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender;

(n) apply any sums then deposited in the Accounts and any other sums held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Documents to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Promissory Note;
- (iv) Amortization of the unpaid principal balance of the Promissory Note;

(v) All other sums payable pursuant to the Promissory Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation disbursements made by Lender pursuant to the terms of this Security Instrument;

(o) surrender the policies of Required Insurance and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Trustor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Trustor to collect such Insurance Premiums;

(p) apply the undisbursed balance of any Net Restoration Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(q) foreclose by applicable legal proceedings and apply the proceeds of any recovery to the Debt in accordance with Section 7.2 or to any deficiency under this Security Instrument;

(r) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale or otherwise, and apply the proceeds of any recovery to the Debt in accordance with Section 7.2 or to any deficiency under this Security Instrument; or

(s) pursue such other remedies as Lender may have under applicable law.

(t) Sales of Personal Property.

(i) If it chooses to do so, Lender may dispose of any Personal Property separately from the sale of real property, in any manner permitted by Article 9/Chapter 9a of the Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of any Personal Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Lender shall mail written notice of the sale of the Property not later than ten (10) Business Days prior to such sale. Once per week during the four weeks immediately preceding such sale, Lender will publish notice of the sale in a local daily newspaper of general circulation in the county where the Property is located. Upon receipt of any written request, Lender will make the Personal Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Lender shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Personal Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(u) Trustee's Sales of Real Property or Mixed Collateral.

(i) Lender may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its discretion, Lender may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and Personal Property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9a 604(1) of the Uniform Commercial Code. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of Personal Property.

(ii) Before any sale, Lender or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Lender shall have any obligation to make demand on Trustor before any sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Lender's request shall, postpone any sale by public announcement at the time and place noticed for that sale.

(iii) At any sale, Lender or Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Lender or Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(v) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Lender may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition (but subject to Trustor's statutory right under *Utah Code Ann.* § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold); and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted herein, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or, to the maximum extent permitted by applicable law, through two or more such sales or dispositions; or in any other manner Lender may deem to be in its best interest. To the extent permitted by applicable law, if Lender chooses to have more than one sale, Lender at its option may cause the sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Lender may deem to be in its best interests. No sale shall terminate or affect the liens of this Security Instrument or any part of the Property which has not been sold, until all of the obligations secured hereby have been paid in full.

(w) Bidding. At any sale, any person including Trustor, Trustee or Lender, may bid for and acquire the Property or any part thereof to the extent permitted by then applicable law. Instead of paying cash for such Property, Lender may settle for the purchase price by crediting the sales price of the property against the following obligations:

(i) First, the amount attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse such Lender or Trustee under this Security Instrument; and

(ii) Second, all other obligations secured hereby in any order and proportions as such Lender in its sole discretion may choose.

(x) Application of Proceeds. After sale of the Property pursuant to the exercise of the power of sale herein, 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 reasonable attorney's fees actually incurred not to exceed the amount which may be provided for herein, SECOND: to payment of the obligations secured by this Security Instrument, and THIRD: the balance, 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 Ann.* § 57-1-29.

(y) Transfer of Title. Upon the completion of any sale or sales, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

(z) Effect. Any sale or sales made by virtue of or under this Security Instrument, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the Property so sold, or any part thereof from, through or under Trustor, its successors and assigns. The receipt of Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority to the maximum extent permitted by applicable law.

Section 7.2 Application of Proceeds The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Promissory Note, this Security Instrument, the Loan Agreement or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default or if Trustor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property by applicable judicial process for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the out-of-pocket costs and expenses, including, but not limited to, reasonable legal fees and disbursements thereof, with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon written demand. All such fees, costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such fees, costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute

a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable to Lender upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, upon the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Trustor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required to Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action.

Section 7.6 Examination of Books and Records. At reasonable times and upon reasonable prior written notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Trustor which reflect upon its financial condition, at the Property or at any office regularly maintained by Trustor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior written notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Trustor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Trustor where the books and records are located. This Section 7.6 shall apply throughout the term of the Promissory Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 Other Rights, etc.

(a) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Lender or Trustee to comply with any request of Trustor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Promissory Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Promissory Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Trustor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender and Trustee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 Violation of Laws. If the Property is not in material compliance with Legal Requirements, Lender may impose additional reasonable requirements upon Trustor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 Right of Entry. Upon reasonable prior written notice to Trustor (but in no event upon less than seventy-two (72) hours' notice other than in the event of an emergency), Lender and its agents shall have the right to enter and inspect the Property during business hours. Any such entry and inspection shall be subject to the rights of tenants and of the holders or beneficiaries of any Permitted Encumbrances.

Section 7.11 Lender Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Lender to take any action or incur any liability with respect to the Property, and all options given to Lender are for its benefit and shall and may be exercised in such order and in such combination as Lender in its sole discretion may from time to time decide. Each remedy is distinct and cumulative to all other rights and remedies under this Security Instrument and the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

## ARTICLE 8

### PREPAYMENT

Section 8.1 Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

## ARTICLE 9

### INDEMNIFICATION

Section 9.1 General Indemnification. Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages (excluding consequential (other than diminution in value), punitive or exemplary damages unless asserted by a third party), losses (out-of-pocket costs and expenses, including, but not limited to, reasonable legal fees and disbursements), diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, of whatever kind or nature (including but not limited to reasonable out-of-pocket attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Promissory Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Loan Agreement or the Promissory Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Trustor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Trustor to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) any failure of the Property to be in compliance with any Legal Requirements; (i) the enforcement by any Indemnified Party of the provisions of this Article 9; (j) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (k) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan; or (l) any misrepresentation made by Trustor in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable upon the delivery of a written demand for payment or reimbursement by Lender and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid, provided that in no event shall such amounts bear interest at the Default Rate for any date that is earlier than thirty (30) days prior to Lender's delivery of such written demand for payment or reimbursement and reasonable documentation supporting the payment or reimbursement request. For purposes of this Article 9, the term "Indemnified Parties" means Lender, each participant in the Loan, and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full

or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's or any Indemnified Party's assets and business).

Section 9.2 Mortgage and/or Intangible Tax. Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Promissory Note, the Loan Agreement or any of the other Loan Documents.

Section 9.3 ERISA Indemnification. Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender and/or any Lender may incur, directly or indirectly, as a result of a default under Sections 5.1.10 and 6.2.8 of the Loan Agreement.

Section 9.4 Intentionally Omitted

Section 9.5 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Trustor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Lender. Notwithstanding the foregoing, if any Indemnified Party reasonably determines that (i) Trustor's attorneys and professionals are not defending any claim or proceeding in a manner reasonably acceptable to any Indemnified Party or (ii) their interests, in connection with any claims or proceedings, conflict with those of Trustor, then such Indemnified Party shall have the right, at Trustor's sole cost and expense, to engage its own set of attorneys and other professional to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Trustor's consent, which consent shall not be unreasonably withheld. Within ten (10) days of demand by the Indemnified Parties or if an Event of Default shall have occurred and be continuing, on demand, Trustor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of out-of-pocket costs and expenses of engineers, environmental consultants, laboratories and other professionals in connection therewith, including, but not limited to, reasonable legal fees and disbursements.

TO THE EXTENT SUCH COVENANT AND WAIVER IS PERMITTED BY APPLICABLE LAW, TRUSTOR AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. TRUSTOR AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR AND LENDER.

## ARTICLE 10

### WAIVERS

Section 10.1 Waiver of Counterclaim. To the extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Promissory Note, any of the other Loan Documents, or the Obligations.

Section 10.2 Marshalling and Other Matters. To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Trustor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 10.3 Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except with respect to matters for which this Security Instrument, the Loan Agreement and/or any of the other Loan Documents specifically and expressly provides for the giving of notice by Lender or Trustee to Trustor and except with respect to matters for which Lender or Trustee is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument, the Loan Agreement and/or any other Loan Document does not specifically and expressly provide for the giving of notice by Lender or Trustee to Trustor.

Section 10.4 Waiver of Statute of Limitations. Trustor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.5 Survival. The indemnifications made pursuant to Article 9 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Promissory Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Trustor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Promissory Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Trustor from the obligations pursuant hereto.

## ARTICLE 11

### EXCULPATION

Section 11.1 Exculpation. The provisions of Section 10.4 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE 12

### NOTICES

Section 12.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 11.5 of the Loan Agreement.

## ARTICLE 13

### APPLICABLE LAW

Section 13.1 **GOVERNING LAW**. **WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF**

**NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.**

Section 13.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Trustor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to be interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Trustor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Trustor to Lender, or if there is no such indebtedness, shall immediately be returned to Trustor.

Section 13.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

**ARTICLE 14**

**DEFINITIONS**

Section 14.1 Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Trustor**" shall mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "each Lender and each and any subsequent holder(s) of the Promissory Note or any part thereof," the word "**Promissory Note**" shall mean "the Promissory Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

**ARTICLE 15**

**MISCELLANEOUS PROVISIONS**

Section 15.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Lender, but only by an agreement in writing signed



by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Trustor, Trustee and Lender and their respective successors and assigns forever.

Section 15.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Promissory Note, this Security Instrument or any other Loan Document is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Promissory Note, this Security Instrument or such other Loan Document, as the case may be, shall be construed without such provision.

Section 15.4 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 Number and Gender/Joint and Several. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. If Trustor consists of more than one Person, all representations, warranties, covenants, obligations and liabilities of each such Person hereunder shall be joint and several. A default hereunder by any such Person shall be deemed a default by all such Persons and Trustor. The representations, warranties and covenants contained herein shall be read to apply to the individual Persons comprising Trustor when the context so requires, but a breach of any such representation, warranty or covenant or a breach of any obligation under this Security Instrument shall be deemed a breach by all such Persons and Trustor, entitling Lender and Lenders to exercise all of their rights and remedies under this Security Instrument and under applicable law.

Section 15.6 Subrogation. If any or all of the proceeds of the Promissory Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Trustor's obligations hereunder, under the Loan Agreement, the Promissory Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 Entire Agreement. The Promissory Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Trustor and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Trustor and Lender with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Promissory Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make,

any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Promissory Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.8 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "lender in possession.

Section 15.9 Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly and specifically provided herein or in any of the other Loan Documents.

Section 15.10 Counterparts. To facilitate execution, this Security Instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all Persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Security Instrument to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. This Security Instrument may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif"). The effectiveness of any such documents and signatures shall, subject to applicable Legal Requirements, have the same force and effect as manually-signed originals and shall be binding on all parties to this Security Instrument. Lender may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or e-mail document or signature.

## ARTICLE 16

### DEED OF TRUST PROVISIONS

Section 16.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security

Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee or other compensation, except as set forth in Section 16.2 hereof for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Trustor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 16.2 Trustee's Fees. Unless required pursuant to applicable Legal Requirements, no fees, costs or expenses shall be or become payable to Trustee or Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder; provided that, in connection with services rendered by Trustee in connection with any foreclosure or sale in accordance with the terms hereof or with respect to the release and discharge of the lien and security interest of this Security Instrument upon the full and final payment of the Debt, Trustee shall be entitled to reasonable and customary fees and reimbursement of reasonable out-of-pocket costs and expenses incurred by Trustee. The foregoing permitted fees, costs and expenses shall be paid by Trustor to Trustee and Trustee's agents and counsel promptly upon request and such fees, costs and expenses shall be secured by this Security Instrument.

Section 16.3 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred

by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 16.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 16.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

Section 16.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

## ARTICLE 17

### STATE SPECIFIC PROVISIONS

Section 17.1 Financing Statement. This Security Instrument constitutes a financing statement filed as a fixture filing under Section 70A-9a-502(3) of the Uniform Commercial Code, as amended or recodified from time to time, covering any portion of the Property which is or later may become fixtures.

Section 17.2 Reconveyance. Upon written request of the Lender and surrender of this Security Instrument and the Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the property then subject to this Security Instrument. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

Section 17.3 Conflicting Provisions. The provisions of this Article are intended to supplement, and not limit, the other provisions of this Security Instrument; provided, however, that in the event the provisions of this Article contradict any other provision of this Security Instrument, the provisions of this Article shall govern.

Section 17.4 Default Interest, Late Charges, Etc. For purposes of *Utah Code Ann.* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Promissory Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Lender's Security Instrument lien upon the Property and 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 Security Instrument.

Section 17.5 Utah Construction Registry.

(a) If, and as applicable, Trustor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Ann.* with regard to filings and notices. Trustor shall cause Lender 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 Ann.* § 38-1a-201. Trustor shall also provide to Lender 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 Trustor.

(b) Trustor 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 Trustor in writing (which shall include the loan title policy issued in favor of Lender with respect to this Security Instrument (the "Title Policy") or for which the Lender's title insurer has provided affirmative coverage acceptable to Lender pursuant to the Title Policy. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing arising from Trustor's action or failure to act 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.

(c) 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 Security Instrument, Trustor shall provide to Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Ann.* § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

(d) Trustor shall cooperate with Lender and any title insurer to facilitate the filing of a Notice of Construction Loan, if applicable, as contemplated by *Utah Code Ann.* § 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, Trustor'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.

(e) Trustor 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 Security Instrument 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 Mortgage's Title Insurance Policy.

(f) If Trustor shall fail to remove and discharge any lien, encumbrance or charge on the Property prohibited by the terms hereof or any other Loan Document, 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 Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Ann.* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all 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 Promissory Note. Trustor may contest any such lien without violating this provision provided Trustor acts in accordance with the terms of the Loan Agreement.

Section 17.6 Deficiency. Trustor agrees to pay any deficiency, arising from any cause, to which Lender may be entitled after applications of the proceeds of any sale, and Lender may commence suit to collect such deficiency in accordance with *Utah Code Ann.* § 57-1-32 or other applicable law.

Section 17.7 Reinstatement. If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Ann.* § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by *Utah Code Ann.* § 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. Furthermore, in addition to any Trustor payment obligations under this Security Instrument, Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by *Utah Code Ann.* § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 17.8 Water Rights.

(a) Trustor is not aware of any Water Rights (defined below) appurtenant to or used with respect to the Land. However, if Water Rights are determined to be appurtenant to or used with respect to the Land, then Trustor agrees to comply with the provisions of this Section 17.8. Trustor shall diligently comply with all deadlines affecting the Water Rights, if any, imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, Salt Lake

County, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Security Instrument.

(b) Trustor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(c) Trustor shall promptly provide the Lender with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(d) Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Lender with evidence of each such payment.

(e) Trustor and, to Trustor's knowledge, its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

(f) As used herein, "**Water Rights**" in addition to any foregoing meaning assigned in this Security Instrument, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Lender set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the Utah State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

Section 17.9 Property Status. Trustor represents and warrants to Lender that (a) the Property is not used principally for agricultural purposes, and (b) the loan secured by this Security Instrument was not made primarily for personal, family or household purposes. To allow Lender

to comply with *Utah Code Ann.* § 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number in accordance with the terms of the Loan Agreement.

Section 17.10 Foreclosure; Lawsuits. In addition to all other rights and remedies of Lender hereunder, upon the occurrence of an Event of Default, Lender may cause Trustee to exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with *Utah Code Ann.* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Ann.* § 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 Ann.* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property 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 Trustor's statutory right under *Utah Code Ann.* § 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 (subject to Lender's (or its nominee's) right to make a credit bid as set forth herein or pursuant to applicable law). 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, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Ann.* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Ann.* § 57-1-28, conveying the Property 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. Lender may credit bid in accordance with *Utah Code Ann.* § 57-1-28(1)(b) or other applicable law.

Section 17.11 Amendments to Utah Code Annotated. 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 Security Instrument, this Security Instrument 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.

Section 17.12 Obligations Under Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Security Instrument shall not secure the obligations evidenced by or arising under the Environmental Indemnity (as defined in the Loan Agreement).

Section 17.13 Additional Waivers. Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Ann.* § 78B-6-901 (formerly *Utah Code Ann.* § 78-37-1) and *Utah Code Ann.* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.



Section 17.14 ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 17.15 Receiver. In addition to any other rights provided for in this Security Instrument, Lender may appoint a receiver as and when provided in the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Ann.* § 78B-21-101 et seq.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PARCEL

A parcel of land situate within the Northwest quarter of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, located in Midvale City, County of Salt Lake, State of Utah and being more particularly described as follows:

Beginning at a point on the East line of 900 East Street, per that certain Warranty Deed conveyed to the Utah Department of Transportation (UDOT), Recorded June 12, 1972, as Entry No. 2462515, on file with the Salt Lake County Recorder's Office, said point being South 66°14'47" East, along the South Union Avenue centerline, a distance of 64.71 feet, and North 23°45'13" East, perpendicular to said centerline, a distance of 33.00 feet, from the monument at the intersection of South Union Avenue and 900 East Street, (Basis of Bearing being South 69°34'15" East, between monuments found at 900 East and 1000 East Street) said point of beginning also being East, a distance of 1771.37 feet and South, a distance of 1436.43 feet, from the Northwest corner of said Section 29; and running thence North 00°10'59" East, along the East right-of-way line of said 900 East Street, a distance of 226.80 feet, to the South line of parcel described in Entry No. 7735662; thence South 88°19'41" East, along said South line, a distance of 87.69 feet, to the Southeast corner thereof; thence South 01°00'00" West, along the West line and the extension thereof of that certain tract of land described in Entry No. 5477935, a distance of 87.21 feet; thence South 81°31'53" East, a distance of 53.47 feet; thence North 18°00'46" East, a distance of 6.83 feet, to the Southeast corner of said tract; thence North 10°53'16" East, along the East line of said tract and line retraced per Record of Survey S2004-12-1151, a distance of 215.28 feet, to a point in the Southerly line of North Union Avenue, said point being 33.00 feet perpendicularly distant to the centerline of said North Union Avenue; thence South 71°59'14" East, along the said Southerly line, a distance of 392.38 feet, to a point in the Northwesterly line of the East Jordan Canal (66.00 feet wide), per Judgement of Condemnation, recorded April 27, 1923, in Book 11-T, at Page 183; thence Southwesterly along the arc of a 444.80 foot radius non-tangent curve to the right, through a central angle of 20°14'23", a distance of 157.13 feet, subtended by a long chord bearing South 32°24'51" West, a distance of 156.31 feet, to a point of tangency; thence South 42°32'03" West, continuing along said Northwesterly line of East Jordan Canal, a distance of 279.41 feet, to a point on the Northerly line of South Union Avenue, said point being 40.00 feet perpendicularly distant to the centerline thereof; thence along the said Northerly line of South Union Avenue, the following four (4) courses: (1) North 70°03'40" West, a distance of 65.71 feet; (2) North 66°14'48" West, a distance of 90.89 feet; (3) South 06°30'39" West, a distance of 7.33 feet; (4) North 66°14'47" West, a distance of 149.89 feet, to the point of beginning.

Tax Id No.: 22-29-130-025

Exhibit A

ACTIVE/117964989.12