

WHEN RECORDED, RETURN TO

Dan W. Egan  
SUITTER AXLAND  
175 South West Temple, Suite 700  
Salt Lake City, Utah 84101-1480

E 1409029 B 2300 P 362  
JAMES ASHAUER, DAVIS CNTY RECORDER  
1998 JUN 1 10:56 AM FEE 34.00 DEP DJW  
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

E 1406680 B 2295 P 372  
JAMES ASHAUER, DAVIS CNTY RECORDER  
1998 MAY 21 4:13 PM FEE 34.00 DEP DJW  
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

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**CONSTRUCTION LOAN**  
**DEED OF TRUST**  
**AND**  
**SECURITY AGREEMENT**

NE-24-2N-1W

06-037-0163

-0164

THIS CONSTRUCTION LOAN DEED OF TRUST AND SECURITY AGREEMENT (the "Deed of Trust") is made and entered into effective as of the 21<sup>st</sup> day of May, 1998, by, between and among BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company ("Trustor"), in favor of U.S. BANK NATIONAL ASSOCIATION ("Trustee"), for the benefit of U.S. BANK NATIONAL ASSOCIATION ("Beneficiary").

**RECITALS:**

A. Trustor is the owner of certain real property located in Davis County, Utah, as more particularly described on Exhibit "A" attached to and incorporated by reference in this Deed of Trust (the "Property").

B. Trustor has requested Beneficiary to make a loan in the principal amount of FOUR MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$4,424,000.00), the proceeds of which are to be used by Trustor to construct on the Property a commercial office building, together with appurtenant parking and other related facilities and improvements.

C. Beneficiary has committed to make the loan to Trustor, provided that Beneficiary obtains a first position deed of trust lien and encumbrance on the Property.

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, TRUSTOR HEREBY CONVEYS AND WARRANTS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, and hereby grants to Beneficiary, as a secured party, a security interest in the following described real and personal property:

**GRANTING CLAUSE I:**  
**REAL PROPERTY**

All right, title, interest and estate of Trustor in and to the Property.

**GRANTING CLAUSE II:**  
**BUILDINGS, IMPROVEMENTS AND INTERESTS**

All right, title, interest and estate of Trustor now owned or hereafter acquired, in and to:

\*\*\* This Deed of Trust is being re-recorded to add a Notary Seal.

E-480977AN  
Title 23844

(1) All buildings, improvements, renovations, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments upon, and all renewals and replacements of, any of the foregoing, which are acquired by Trustor with proceeds of the Loan (as defined in Article I of this Deed of Trust) and which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property; and

(2) All easements, licenses, streets, ways, alleys, roads, passages, rights-of-way, waters, watercourses and water rights (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or any portion of the Property.

**GRANTING CLAUSE III:  
PERMITS AND LICENSES**

All permits, franchises, privileges, grants, consents, licenses, authorizations and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities (including, without limitation, Bountiful City and Davis County, Utah) to or for the benefit of Trustor and utilized in connection with the construction of the improvements on the Property.

**GRANTING CLAUSE IV:  
TANGIBLE PERSONAL PROPERTY**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All goods, supplies, furnishings, equipment, machinery and other tangible personal property acquired by Trustor with loan proceeds or incorporated into the improvements; and

(2) All parts, accessories and accessions to each and all of the foregoing and all renewals and replacements thereof.

**GRANTING CLAUSE V:  
TENEMENTS AND HEREDITAMENTS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, rights, privileges and appurtenances belonging, relating, or in any way appertaining to any of the Property, or any portion of the Property, or which shall hereafter in any way belong, relate or in any way appertain thereto (including, without limitation, any and all development rights, air rights or similar or comparable rights), whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property or any portion of the Property.

GRANTING CLAUSE VI:  
AWARDS

All right, title, interest and estate of Trustor in and to:

(1) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property or of any improvements now or hereafter situate thereon or any estate or easement in the Property (including any awards for change of grade of streets); and

(2) The proceeds of insurance paid on account of partial or total destruction of the improvements or any portion thereof.

GRANTING CLAUSE VII:  
RENTS, ISSUES, ETC.

All right, title, interest and estate of Trustor in and to all sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Property or any portion of the Property.

ARTICLE I  
DEFINITIONS

1.1 Definitions. Unless the context clearly indicates otherwise, certain terms used in this Deed of Trust shall have the meanings set forth below:

"Access Laws" shall mean, collectively, the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, and any other federal, state or local laws or ordinances related to disabled access; or any statute, rule, regulation, ordinance, order of governmental bodies and regulatory agencies, or order or decree of any court adopted or enacted with respect thereto, as now existing or hereafter amended or adopted.

"Event of Default" shall mean the occurrence and continuance of any one of the events listed in Section 12.1 of this Deed of Trust.

"Hazardous Materials" shall mean: (a) any asbestos in any form which is or could become friable; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; or (d) any other hazardous wastes, toxic substances, or other related materials, whether in the form of an element, compound, solution, mixture or otherwise. For purposes of this Deed of Trust, the term "Hazardous Materials" shall include, but shall not be limited to, substances defined as "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended 42 U.S.C. 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; Chapters 2, 3, 4, 5 and 6 of the Utah Environmental Quality

Code, Title 19, Utah Code Annotated (1953), as the same may be amended from time to time; and in all rules adopted and regulations promulgated pursuant to any of the foregoing.

**"Impositions"** shall mean all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal or other charges or impositions of any kind or nature whatsoever (including, without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) which are assessed or imposed upon the Trust Estate, or become due and payable, and which create or may create a lien upon the Property or any portion of the Property, equipment or other facility used in the construction, renovation, operation or maintenance of the Trust Estate.

**"Improvements"** shall mean the commercial office building, together with appurtenant parking and other related facilities and improvements (both on-site and off-site) to be constructed by Trustor on the Property with the proceeds of the Loan.

**"Loan"** shall mean the construction loan to be advanced by Beneficiary to Trustor in the original principal amount of FOUR MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$4,424,000.00).

**"Loan Agreement"** shall mean that certain Construction Loan Agreement, dated the same date as this Deed of Trust, by and between Trustor, as borrower, and Beneficiary, as lender, relating to the Loan.

**"Loan Documents"** shall mean the Loan Agreement, the Note, this Deed of Trust, an assignment of rights under construction contract, an assignment of lessor's interest in leases, one or more guaranties, Uniform Commercial Code Financing Statements, and any and all other documents between Trustor and Beneficiary evidencing or securing the Loan.

**"Note"** shall mean the Construction Loan Promissory Note, dated the same date as this Deed of Trust, in the maximum principal amount of FOUR MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$4,424,000.00), executed by Trustor, as maker, and payable to the order of Beneficiary, as payee, to evidence the obligations of Trustor under the Loan.

**"Obligations"** shall mean the obligations of Trustor described in Section 2.1 of this Deed of Trust, the payment and performance of which are secured by this Deed of Trust.

**"Permitted Encumbrances"** shall mean those liens, encumbrances and matters affecting the Property listed on Exhibit "B" attached to and incorporated by reference in this Deed of Trust.

**"Personalty"** shall mean all personal property, fixtures, equipment, furnishings and other personal property listed in Granting Clauses III and IV of this Deed of Trust used in the construction of or incorporated into the Improvements.

**"Property"** shall mean that certain real property situate in Davis County, Utah, referred to in Granting Clause I of this Deed of Trust, and owned by Trustor. The Property is more particularly described on Exhibit "A" attached to this Deed of Trust.



"Trust Estate" shall mean all of the items, documents, interests and properties referred to in Granting Clauses I through VII of this Deed of Trust.

## ARTICLE II OBLIGATIONS SECURED

2.1 Obligations. This Deed of Trust is given for the purpose of securing the following Obligations of Trustor:

(a) The payment and performance of each and every obligation of Trustor, evidenced by the Note, including, without limitation, the payment of principal of and interest on the Loan.

(b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust, and under any other instrument given to evidence or further secure the payment and performance of any obligation of Trustor under the Loan, the Loan Agreement and all of the other Loan Documents.

(c) The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Deed of Trust, together with interest thereon as provided in this Deed of Trust, the Loan Agreement and the Note.

2.2 Extensions and Renewals. Any extensions of, renewals of, modifications of, or additional advances of the Loan, or any of the Obligations evidenced by the Note, regardless of the extent or subject matter of any such extension, renewal, modification or additional advance shall be secured by this Deed of Trust.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Property. Trustor represents and warrants to Beneficiary as follows:

(a) Except for the Permitted Encumbrances, Trustor is or simultaneously with the execution of this Deed of Trust will become the owner of fee simple title in and to the Property:

(b) Trustor possesses all requisite power and authority to execute and deliver this Deed of Trust;

(c) Except for the Permitted Encumbrances, Trustor shall defend title to the Property against all claims and demands whatsoever;

(d) The Property is free and clear of and from any and all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever, in favor of any third party, other than the Permitted Encumbrances;

(e) The lien created by this Deed of Trust upon the Property is a valid and subsisting first position lien against the Trust Estate, subject only to the Permitted Encumbrances;

(f) Any and all obligations incurred by Trustor in connection with the acquisition of all or any portion of the Property are current and without default on the part of Trustor; and

(g) To the best of Trustor's actual knowledge and except as expressly disclosed to Beneficiary by Trustor in writing prior to the date of this Deed of Trust (in the form of a Phase I environmental report): (1) the Trust Estate is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Trust Estate, including, without limitation, soil and ground water conditions; (2) there are no Hazardous Materials constructed, deposited, stored, disposed, placed or located in, on or under the Trust Estate (except those materials such as cleaning supplies, detergents and other similar substances as are commonly utilized in the use and operation of a commercial office building); and (3) Trustor has not received notice from any federal, state or local agency or department regarding the noncompliance by Trustor or the Trust Estate with respect to any federal, state or local law, ordinance or regulation governing the use, handling, storage, generation, transportation or disposal of Hazardous Materials or the mere presence of Hazardous Materials on the Property.

3.2 Personalty. Trustor represents and warrants to Beneficiary as follows:

(a) Trustor is the owner, or upon acquisition thereof, will be the owner of all Personalty used in connection with or incorporated into the improvements on the Property;

(b) The Personalty is, or upon acquisition of title thereto by Trustor will be, free and clear of all liens, claims, encumbrances, restrictions, charges and security interests in favor of any third party other than the Permitted Encumbrances;

(c) Trustor will not create, permit or suffer to exist, any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty without the prior written consent of Beneficiary; and

(d) Trustor shall defend the Personalty and take such other action as is necessary to remove any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty superior to the security interest in Beneficiary created hereunder, except the Permitted Encumbrances.

ARTICLE IV  
MAINTENANCE OF TRUST ESTATE

Trustor shall: (a) maintain the Trust Estate at all times in good condition and repair; (b) not commit any waste of the Trust Estate, or, except with the prior written permission of Beneficiary, remove, damage, demolish or structurally alter any building, fixture or other improvement now on the Property, or to be constructed on the Property hereafter; (c) complete promptly and in good and workmanlike manner the fixtures and other improvements on the Property, or any portion of the Property, which may for any reason be constructed; (d) restore promptly and in good and workmanlike manner any building, fixture or other improvement on the Property, or any portion of the Property, which may for any reason be damaged or destroyed; (e) comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Trust Estate; (f) not commit or knowingly permit any act upon the Trust Estate in

violation of law; and (g) do all acts which by reason of the character or use of the Trust Estate may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

## ARTICLE V INSURANCE

5.1 **Insurance.** Trustor or Trustor's general contractor, as applicable, shall secure and at all times maintain and promptly pay when due all premiums for the following types of insurance:

(a) During any period of construction, builder's risk extended coverage insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, motor vehicles, aircraft, smoke, theft, vandalism, malicious mischief, and other risks from time to time included under extended coverage policies in an amount not less than one hundred percent (100%) of the full replacement value of Improvements. All policies secured and carried in accordance with this Section 5.1(a) shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Beneficiary as loss payee, and shall name Beneficiary as an additional insured.

(b) During any period of construction, workmen's compensation insurance against liability arising from claims of workmen with respect to and during the period of any work on or about the Property.

(c) Following any period of construction, insurance against loss or damage to the Property, the buildings, improvements and fixtures thereon and all Personalty used in connection with the Property by fire, vandalism, malicious mischief, and any of the risks covered by insurance of the type now known as "fire and extended coverage" in an amount not less than One Hundred Percent (100%) of the full replacement value of the Improvements. Such insurance policy or policies shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Beneficiary as loss payee, and shall name Beneficiary as an additional insured.

(d) Equipment and machinery insurance covering vessels, machinery, piping, and other equipment, provided the Improvements contain equipment of such nature, and insurance against loss of use arising from any such breakdown, in such amounts as are reasonably satisfactory to Beneficiary.

(e) If the Property is located in a special flood hazard area as identified by the Federal Insurance Administration, federally subsidized flood insurance covering the risk of damage to the buildings, fixtures, and other improvements and Personalty located or to be installed upon the Property caused by flooding in the aggregate amount of the Loan or for the maximum amount of subsidized insurance available, whichever is less. In lieu of such flood insurance, Trustor shall submit to Beneficiary evidence satisfactory to Beneficiary that no part of the Property is, or will be, within an area designated as a flood hazard area by the Federal Insurance Administration.

(f) Public liability and property damage insurance applicable to the Trust Estate in the minimum amounts of ONE MILLION DOLLARS (\$1,000,000.00) per person and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for public liability and ONE MILLION

DOLLARS (\$1,000,000.00) per occurrence for property damage. Such liability insurance shall be issued by one or more insurance companies reasonably satisfactory to Beneficiary and shall name Beneficiary as an additional insured.

(g) Such other insurance and in such amounts as may from time to time reasonably be required by Beneficiary against the same or other hazards.

All policies of builder's risk, fire and extended coverage and other casualty insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of the insurance. The policies shall provide that the insurer will waive all rights of set-off, counterclaim or deduction against Trustor.

**5.2 Policies and Premiums.** All policies of insurance shall be issued by insurance companies which have a company rating of not less than "A" and a financial rating of not less than Class VI in "Best's Insurance Reports." All policies of builder's risk and other casualty insurance shall have included therein a standard mortgagee protection clause. Trustor shall furnish Beneficiary with an original policy of all policies of required insurance or an original certificate of insurance together with a true and correct copy of each such policy. All such policies shall contain a provision that such policies will not be canceled or materially amended or altered, including reduction of coverage, without at least thirty (30) days prior written notice to Beneficiary. If Beneficiary consents to Trustor providing any of the required insurance through blanket policies carried by Trustor and covering more than one location, then Trustor shall cause the insurance company to furnish Beneficiary with an endorsement to such policy which sets forth the coverage, the limits of liability, the name of the carrier, the policy number, the expiration date and a statement that the insurance company will not cancel or materially modify or alter the coverage evidenced by the endorsement without first affording Beneficiary at least thirty (30) days prior written notice. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by Section 5.1, Beneficiary may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest, and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary. If Trustor fails to pay any premium after demand by Beneficiary, Beneficiary, at Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance. Any sums so advanced, together with interest thereon at the same rate as provided for on the original indebtedness, shall be secured by this Deed of Trust.

**5.3 Occurrence and Notice of Casualty.** In the event of loss or damage to the Trust Estate, or any portion of the Trust Estate, Trustor shall immediately give notice thereof to Beneficiary. Beneficiary may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary. The insurance proceeds or any part thereof shall be deemed part of the security for the Obligations and shall be applied to restore or repair the portion of the Trust Estate damaged, provided that any insurance proceeds not so applied may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable). Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Trust Estate as provided in Article IV of this Deed of Trust or restoring all damage or destruction to the Trust Estate, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount. The



application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

5.4 Disposition of Policies on Foreclosure. In the event Beneficiary exercises the power of sale provisions of this Deed of Trust or makes any other transfer of title or assignment of the Trust Estate in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the policies of insurance required by Section 5.1 shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Trust Estate.

#### ARTICLE VI INDEMNIFICATION AND OFF-SET

6.1 Indemnification by Trustor. Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

(a) If Beneficiary is made a party defendant to any litigation (except litigation wherein Trustor asserts a claim against Beneficiary and prevails) concerning this Deed of Trust or the Trust Estate or any part of the Trust Estate or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from any and all liability by reason of such litigation, including reasonable attorney fees and costs incurred by Beneficiary in any such litigation, whether or not the litigation is prosecuted to judgment. If, following the occurrence and continuance of an Event of Default, Beneficiary commences an action against Trustor to enforce any of the material terms, covenants or conditions of this Deed of Trust or because of the breach by Trustor of any of the material terms, covenants or conditions, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorney fees and costs in an amount equal to the amount of such fees and costs actually incurred by Beneficiary. The right to such attorney fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorney fees and costs in an amount equal to the amount of such fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Trustor by reason of such breach.

(b) If Beneficiary is required to defend itself against or is held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor or materials furnished in connection with or arising from the construction of any building, fixture or other Improvement, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorney fees and costs.

(c) Trustor, to the full extent permitted by law, shall indemnify, defend and hold harmless Beneficiary, Beneficiary's directors, officers, employees, agents, participants, successors and assigns from and against any and all loss, cost, expense or liability incurred in connection with any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Materials located under or

upon or migrating into, under, from or through the Property, which Beneficiary may incur due to the making of the Loan, the exercise of any of Beneficiary's rights under this Deed of Trust or under any other document evidencing or securing the Loan, or otherwise. The foregoing indemnity shall apply: (1) whether or not the release of the Hazardous Materials was caused by Trustor, a tenant or subtenant of Trustor, or a prior owner or tenant of the Property; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Materials or the mere presence of Hazardous Materials on the Property. The obligations of Trustor under this Section 6.1(c) shall survive the foreclosure of this Deed of Trust, a conveyance in lieu of foreclosure, the repayment of the Loan proceeds and the discharge and release of the lien and encumbrance of this Deed of Trust.

6.2 Off-Set. All sums payable by Trustor under this Deed of Trust shall (unless otherwise specifically provided in this Deed of Trust) be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Trust Estate or any part thereof; (b) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Trustor has or might have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

## ARTICLE VII IMPOSITIONS

7.1 Payment of Impositions. Subject to Section 7.3 of this Deed of Trust, Trustor shall pay, prior to delinquency, all Impositions. However, if, by law, any Imposition is payable, or may at the election of the taxpayer be paid in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

7.2 Evidence of Payment. Trustor shall, upon request by Beneficiary, furnish to Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

7.3 Right to Contest. Trustor shall have the right, before any date set for forfeiture, whether at tax sale, foreclosure on a tax lien or otherwise, to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1, unless Trustor has given prior written notice to Beneficiary of Trustor's intent so to contest or object to an Imposition, and unless, at Beneficiary's option: (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust

Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings, or (b) Trustor shall furnish good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

**7.4 Tax on Deed of Trust.** If at any time after the date hereof there shall be assessed or imposed: (a) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Trustor; or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments on the Note (whether principal or interest); then all such taxes, assessments and fees shall be deemed to be included within the term "Impositions" as defined in Section 1.1 of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

**7.5 Reserves for Taxes and Insurance.** In furtherance of Section 5.1 and Section 7.1 of this Deed of Trust and anything to the contrary herein notwithstanding, Trustor, upon request by Beneficiary for reasonable cause shown, shall pay to Beneficiary, on the date monthly installments of interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth of the annual Impositions reasonably estimated by Beneficiary to pay the installment of Impositions next due on the Trust Estate; and one-twelfth of the annual aggregate insurance premium on all policies of insurance required in Section 5.1. Upon such request, Trustor shall thereafter cause all bills, statements or other documents relating to Impositions and insurance premiums to be sent to Beneficiary. Provided Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 7.5, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary pursuant to this Section 7.5 are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 7.5. Beneficiary shall not be obligated to pay any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions and insurance premiums such portion of such payments as Beneficiary, in Beneficiary's absolute discretion, may deem proper. In the event that upon request from Beneficiary pursuant to this Section 7.5 Trustor fails to deposit with Beneficiary sums sufficient to pay fully such Impositions and insurance premiums at least thirty (30) days before delinquency thereof, Beneficiary, at Beneficiary's election, but without any obligation to do so, may advance any amounts required to make up the deficiency, which advances, if any, shall be secured by this Deed of Trust, and shall be repayable to Beneficiary, with interest from the date advanced, at the rate of interest specified in the Note.

#### ARTICLE VIII ADDITIONAL COVENANTS

**8.1 Payment of Utilities.** Trustor shall pay when due all utility charges relating to the Trust Estate which may become a lien or charge against the Trust Estate or any portion thereof, for gas, electricity, water or sewer services furnished to the Trust Estate and all assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.



8.2 Defense of Title. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect in good faith to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee.

8.3 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without any obligation to do so, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either Beneficiary or Trustee appears to be superior to the lien of this Deed of Trust; and (d) in exercising any such powers, incur any liability, expend such reasonable amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Deed of Trust and shall accrue interest in accordance with the terms of the Note.

8.4 Repayment of Advances. Trustor shall immediately repay to Beneficiary all sums, other than Loan proceeds, with interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary to maintain this Deed of Trust as a prior, valid and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

8.5 No Removal of Fixtures. Trustor shall not, during the existence of this Deed of Trust and without the prior written consent of Beneficiary, remove from the Property any building, fixture, structure or other improvement at any time affixed or constructively affixed to the Property or any portion of the Property, or any Personalty, except in the ordinary course of Trustor's business.

8.6 Further Assurance. Trustor shall execute and deliver to Beneficiary such further instruments, including, without limitation, Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may reasonably be required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and encumbrance created or intended to be created hereby any property, rights or interests covered or intended to be covered by this Deed of Trust. Trustor hereby authorizes (to the extent such authorization is valid under applicable law) Beneficiary to execute and file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect or continue the perfection of the security interests created by this Deed of Trust.

8.7 No Further Encumbrances. Except for the Permitted Encumbrances and the liens and encumbrances of this Deed of Trust and the financing statements listing Trustor, as debtor, and Beneficiary,



as secured party, executed and recorded in connection with the closing of the Loan, Trustor shall not create, permit or suffer to exist, and, at the responsible Trustor's expense, will defend the Trust Estate and take such other action as is necessary to remove any lien, claim, charge, security interest or encumbrance in or to the Trust Estate, or any portion of the Trust Estate.

8.8 No Conveyance of Property. Trustor shall not sell, convey or alienate the Property or any portion thereof, or any interest therein to any person or entity, without the prior written consent of Beneficiary. In the event Trustor shall sell, convey or alienate all or any portion of the Property, or any interest therein, in violation of the foregoing, or be divested of title to the Property in any manner, whether voluntarily or involuntarily, then the entire principal indebtedness of the Loan, as evidenced by the Note, and all other Obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without prior demand or notice, shall become immediately due and payable.

8.9 Application of Payments. If at any time during the term of this Deed of Trust Beneficiary receives or obtains a payment, installment or sum which is less than the entire amount then due under the Note secured by this Deed of Trust and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment or sum, or any part thereof, to such of the items or Obligations then due from Trustor or to Beneficiary as Beneficiary, in Beneficiary's sole discretion, may determine.

8.10 Hazardous Substances. Trustor shall comply with all applicable federal, state and local laws, regulations, rules and ordinances governing the handling, storage, generation, transportation and disposal of Hazardous Materials as the same affect or may affect the operation of Trustor's present business on or with respect to the Trust Estate. In addition, Trustor shall not without the prior written consent of Beneficiary undertake any new business venture or operation on or affecting the Trust Estate which now requires or may hereafter require compliance with any federal, state or local law, regulation, rule or ordinance governing Hazardous Materials. If requested by Beneficiary from time to time during the continuance of this Deed of Trust, Trustor shall submit to Beneficiary a report, in form satisfactory to Beneficiary, certifying that the Trust Estate is not being used in any regulated activities directly or indirectly involving the use, handling, storage, generation, transportation and disposal of Hazardous Materials. Beneficiary reserves the right, in Beneficiary's sole and absolute discretion, to retain, at Trustor's expense, an independent professional consultant to review any report prepared by Trustor and to conduct its own investigation of the Trust Estate. Trustor hereby grants to Beneficiary, its agents, employees, consultants and contractors, the right to enter upon the Trust Estate and to perform such tests as are reasonably necessary to conduct such a review or investigation.

8.11 Access Laws. Trustor makes the following covenants with Beneficiary with respect to Access Laws:

- (a) Trustor and the Property shall at all times strictly comply with the requirements of all Access Laws. At any time, Beneficiary may require a certificate of compliance with the Access Laws and indemnification agreement in a form reasonably acceptable to Beneficiary. Beneficiary may also require a certificate of compliance from an architect, engineer or other third party acceptable to Lender.

(b) Notwithstanding any provisions set forth herein or in any security instrument, Trustor shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Trustor's responsibilities for compliance with the Access Laws without the prior written approval of Beneficiary. In connection with such approval, Beneficiary may require a certificate of compliance with the Access Laws from an architect, engineer or other party acceptable to Beneficiary.

(c) Trustor shall give prompt written notice to Beneficiary of the receipt by Trustor of any claims of violation of any of the Access Laws and of the commencement of any proceedings or investigations which relate to compliance with the Access Laws.

(d) Trustor shall indemnify and hold harmless Beneficiary from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines and other proceedings, including, without limitation, reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with the Access Laws. The obligations and liabilities of Trustor under this subsection shall survive any termination, satisfaction, assignment, judicial or non-judicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure with respect to this Deed of Trust, any security instrument or the Property.

#### ARTICLE IX CONDEMNATION AWARDS

Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvements. If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled: (1) to receive all compensation, awards and other payments or relief for such taking or condemnation; (2) at Beneficiary's option and in Beneficiary's own name, to commence, appear in and prosecute in Beneficiary's own name any action or proceeding relating to such taking or condemnation; and (3) to make any compromise or settlement in connection with any such taking or condemnation. All such compensation, awards, damages, causes of action, proceeds or other payments shall be deemed part of the security for the Obligations and are hereby assigned to Beneficiary. Beneficiary, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees incurred by Beneficiary in connection with such compensation, shall apply any and all moneys so received by Beneficiary to restore or repair damage to the remaining Trust Estate, provided that any proceeds not so applied may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due), and any excess still remaining after such restoration, repair and application shall be paid to Trustor. The application or release by Beneficiary of any condemnation awards or other compensation shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice. Subject to the foregoing, Trustor shall execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds or other payments as Beneficiary may from time to time require.

ARTICLE X  
ASSIGNMENT OF RENTS AND CONTRACTS

10.1 **Assignment.** As additional security for the Obligations secured by this Deed of Trust, Trustor hereby assigns, sells, transfers and conveys to Beneficiary during the continuance of this Deed of Trust, all contracts, leases, subleases and agreements relating to the sale, lease, sublease or use of any portion of the Trust Estate or the Property, together with all sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Trust Estate. Until the occurrence of an Event of Default, Trustor may collect and use all such sales proceeds, rents, subrents, issues, royalties, income and profits and may retain, use and enjoy the Trust Estate as they become due and payable. Upon the occurrence and continuance of an Event of Default hereunder, Trustor's right to collect and use any of such proceeds shall cease, and Beneficiary shall have the right, with or without taking possession of the Trust Estate, and either in person, by agent or through a court appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such sales proceeds, rents, subrents, issues, royalties, income and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this Section 10.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Trust Estate is in danger of being lost, removed or materially injured, or whether the Trust Estate or any other security is adequate to discharge the Obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power and authority of Beneficiary thereafter to collect the same. Nothing contained herein, nor Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate. All purchasers, tenants, lessees, sublessees and other persons who have any obligation to make any payment to Trustor in connection with the Trust Estate or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, profits and other payments payable by them with respect to the Trust Estate, or any portion thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such sales proceeds, rents, subrents, issues, royalties, income and profits shall be a good and sufficient discharge of the obligation of the purchaser, tenant, lessee, sublessee or other person concerned to make the payment connected with the amount so received by Beneficiary.

10.2 **No Waiver of Rights by Collection of Proceeds.** The entering upon and taking possession of the Trust Estate or any portion of the Trust Estate or the collection of sale proceeds, rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Trust Estate, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

10.3 Indemnification. Trustor shall indemnify and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs and fees (including reasonable attorney fees and costs) arising from or related to receipt by Beneficiary of the sale proceeds, rents, subrents, issues, royalties, income and profits from the Trust Estate or any portion of the Trust Estate, except negligent or willful acts of Beneficiary.

#### ARTICLE XI ASSIGNMENT OF UTILITY TAPS

Trustor hereby assigns to Beneficiary all right, title and interest of Trustor in and to any and all contracts, agreements or commitments between Trustor and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Property and the buildings, fixtures and other Improvements constructed and to be constructed thereon. Such assignment shall become effective immediately upon the occurrence of an Event of Default. Trustor hereby irrevocably appoints Beneficiary as Trustor's true and lawful attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Trustor necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Property, the buildings, fixtures and other Improvements constructed and to be constructed thereon.

#### ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

12.1 Events of Default. The occurrence and continuance of any one of the following shall constitute an Event of Default under this Deed of Trust:

- (a) Failure by Trustor to observe and perform any term, covenant or condition to be observed or performed by Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents.
- (b) Any representation or warranty of Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents was untrue when made.
- (c) A default by Trustor under the terms of any other promissory note, deed of trust, security agreement, undertaking or arrangement between Trustor and Beneficiary now in existence or hereafter arising.

12.2 Notice. Unless otherwise expressly provided by the terms of this Deed of Trust, or the other Loan Documents, if an Event of Default shall occur, Beneficiary shall give written notice of such occurrence to Trustor, and Trustor shall have an opportunity to cure the default, as provided in the Loan Agreement.

12.3 Division of Trust Estate. Upon the occurrence and continuance of an Event of Default and if there are Hazardous Materials then present on the Property, Beneficiary, at Beneficiary's election and without any obligation to do so, may divide the Trust Estate into any number of parcels to facilitate the sale of the Trust Estate at foreclosure sale. In connection therewith, Beneficiary may: (a) enter



upon the Trust Estate and conduct or cause to be conducted inspections and surveys of the Trust Estate, (b) divide the Trust Estate in such manner as to segregate any Hazardous Materials into one or more distinct parcels; and (c) elect to sell at foreclosure sale only those portions of the Trust Estate that are not contaminated by or do not contain Hazardous Materials. Trustor hereby consents to such division and sale of the Trust Estate.

**12.4 Acceleration; Notice.** Upon the occurrence and continuance of an Event of Default, Beneficiary shall have the option, in addition to any other remedy Beneficiary may have under the Note, to declare by notice to Trustor all sums secured by this Deed of Trust immediately due and payable and elect to have the Trust Estate sold in the manner provided herein. In the event Beneficiary elects to sell the Trust Estate, Beneficiary shall execute or cause Trustee to execute a written notice of default and election to cause the Trust Estate to be sold to satisfy the Obligations. Such notice shall be filed for record in Davis County, Utah.

**12.5 Exercise of Power of Sale.** After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, except as provided by law, shall sell the Trust Estate 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 Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. In every such case, notice or postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than seventy-two (72) hours beyond the date and time 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. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed of any matters or facts relating to the exercise of the power of sale and the sale of the Trust Estate shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorney fees and costs; (b) all sums expended or advanced by Beneficiary in conjunction with any provisions of this Deed of Trust, not then repaid, with accrued interest thereon from the date of expenditure, at the default rate of interest specified in the Note; (c) all sums then secured by this Deed of Trust, including interest and principal on the Note; and (d) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of Davis County, Utah.

**12.6 UCC Remedies.** Beneficiary, with regard to the security interest in all Personalty granted to Beneficiary under the Granting Clauses of this Deed of Trust, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Uniform Commercial Code of Utah, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble the Personalty and make the Personalty available to Beneficiary at the Property.

**12.7 Foreclosure as a Mortgage.** If an Event of Default occurs and continues hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the

foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorney fees and costs, in such amounts as shall be fixed by the court.

12.8 Receiver. If an Event of Default occurs and continues, Beneficiary, as a matter of right and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction over the subject matter to appoint a receiver or receivers of the Trust Estate. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and may exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

12.9 No Remedy Exclusive. No remedy conferred upon or reserved to Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust, the Loan Agreement, the Note or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

12.10 Cross Default. The occurrence and continuance of an Event of Default under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document, or any other agreement or arrangement between Trustor and Beneficiary now existing or entered into hereafter shall constitute a default under all such documents, including, without limitation, this Deed of Trust, the Note, the Loan Agreement, the other Loan Documents, as well as any other such agreement or arrangement.

### ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Notices. Except as otherwise provided herein, all notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or on the fifth day following the day on which the same is deposited in the United States Mail, by registered or certified mail, postage prepaid, addressed as follows:

If to Trustor, to:	Barton Creek Partners, L.L.C. 505 South Main Street Bountiful, Utah 84010 Attn: Thomas C. Mabey
With a copy to:	Stephen M. Tumblin, Esq. LeBocuf, Lamb, Greene & MacRae 136 South Main Street, Suite 1000 Salt Lake City, Utah 84101
If to Beneficiary, to:	U.S. Bank National Association 107 South Main Street, Suite 400 Salt Lake City, Utah 84111 Attn: Jacalyn W. Clayton Commercial Real Estate Division

If to Trustee, to:

U.S. Bank National Association  
107 South Main Street  
Salt Lake City, Utah 84111  
Attn: Legal Department

Such addresses may be changed by notice to the other parties in the same manner as above provided.

13.2 Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative or unenforceable to any extent whatsoever.

13.3 Amendments, Changes and Modifications. This Deed of Trust may not be amended, changed, modified, altered or terminated without the prior written consent of both Beneficiary and Trustor.

13.4 Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah.

13.5 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article and section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

13.6 Binding Effect. This Deed of Trust shall be binding upon shall inure to the benefit of the respective successors and assigns of Beneficiary and Trustor.

13.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of the undertakings, agreements or covenants contained in this Deed of Trust shall not waive, affect or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

13.8 Access. Beneficiary, or Beneficiary's authorized agents and representatives, is hereby authorized and shall have the right, at all reasonable times during the existence of this Deed of Trust and without prior written notice to Trustor, to enter upon the Trust Estate or any portion of the Trust Estate for the purpose of inspecting the Trust Estate or for the purpose of performing any of the acts that Beneficiary is authorized under this Deed of Trust to perform.

13.9 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Trust Estate or some part thereof is situated a substitution of trustee. From the time the substitution is filed of record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee named herein or of any successor trustee.

E 11489689 1 3385 P 381

Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

13.10 Acceptance of Trust. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be party, unless brought by Trustee.

13.11 Request for Notice of Default. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in Section 13.1 of this Deed of Trust.

13.12 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one instrument.

DATED effective as of the date first above written.

TRUSTOR:

BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company

By: 

THOMAS C. MABEY, Manager

BENEFICIARY:

U.S. BANK NATIONAL ASSOCIATION

By:  

JACALYN W. CLAYTON, Vice President



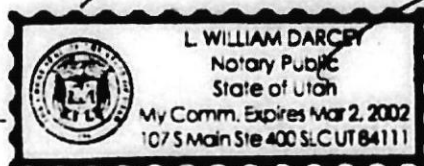
STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 21 day of May, 1998, by THOMAS C. MABEY, who is the Manager of BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company.

NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:

3.2.02



STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 21 day of May, 1998, by JACALYN W. CLAYTON, who is a Vice President of U.S. BANK NATIONAL ASSOCIATION.

NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:

3.2.02



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## EXHIBIT "A"

E 1409029 B 2300 P 383

PROPERTY DESCRIPTION~~E 1408680 B 2295 P 593~~

The following described property is located in Davis County, State of Utah:

Beginning at a point on the West line of 500 West Street, said point being North  $0^{\circ}08'30''$  West 1943.51 feet along the Section line and South  $89^{\circ}51'30''$  West 161.15 feet from the East quarter corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North  $0^{\circ}22'48''$  East 1547.01 feet along the centerline of 500 West Street and North  $89^{\circ}37'12''$  West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence South  $0^{\circ}22'48''$  West 291.58 feet along said West line; thence North  $89^{\circ}37'12''$  West 462.69 feet to a point on the Easterly right of way line of Interstate 15; thence along said Easterly line the following two courses: North  $21^{\circ}35'58''$  East 104.14 feet to a point on a 2776.90 foot radius curve to the right (radius bears South  $68^{\circ}58'34''$  East); thence along the arc of said curve 224.68 feet through a central angle of  $4^{\circ}38'09''$ ; thence leaving said Easterly line South  $65^{\circ}05'01''$  East 29.67 feet; thence South  $89^{\circ}37'12''$  East 310.38 feet to the point of beginning.

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C6 037 0164

## EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Taxes for the year 1998 and subsequent years.
2. Any charges and or assessments that may be levied by the Weber Basin Water Conservancy District, Mosquito Abatement District, Bountiful Water and the South Davis Sewer Improvement District.
3. Easement, by and between Werner Rosemann and Gertrude Rosemann, his wife and Emery McKean Argyle, executor of the Estate of Vida M. Argyle, Deceased, Grantors, and South Davis County Sewer Improvement District, Grantee, for a perpetual easement, insofar as the same lies within the property of said Grantors, to construct, reconstruct, operate, repair, replace and maintain a sewer main collection line and appurtenant structures, on, in, over, upon and across the subject property, recorded February 25, 1964, as Entry No. 263953, in Book 287, at page 229 of official records. (Affects the approximate East 5 feet)
4. Easement, dated January 28, 1964, in favor of Davis County Sewer Improvement District, to construct, reconstruct, operate, repair, replace and maintain a sewer main collection line and appurtenant structure on, in, over, upon and across the following described property: A strip of land 10 feet wide, lying 5 feet on each side of, parallel and adjacent to the following described centerline: A part of the Northeast quarter of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, described as follows: Beginning at a point on Grantor's property line, given as West 10 rods, North 106 rods and West 154.4 feet from the Southeast corner of the Northeast quarter of said Section 24, and running thence South 7°43' East 189.11 feet to the South line of Grantor's property. Recorded February 25, 1964, as Entry No. 263959, in Book 287, at page 241 of official records.
5. Outdoor Advertising Structure Lease Agreement, dated December 7, 1983 and May 17, 1984, by and between Bountiful Land and Livestock Company, as lessor, and Reagan Outdoor Advertising, as lessee, recorded June 1, 1984, as Entry No. 673743, in Book 992, at page 751, and recorded May 17, 1984, as Entry No. 672314, in Book 990, at page 740 of official records.

Unrecorded Leases as disclosed by the above mentioned instrument.

6. Unrecorded Lease, dated November 23, 1994, wherein Reagan Outdoor Advertising, as lessee, disclosed by a Notice of Claim of Interest recorded November 19, 1996, as Entry No. 1288028, in Book 2065, at page 1106 of official records.
7. Matters disclosed by survey prepared by Byrd & Associates L.L.C., dated May 20, 1998, Drawing No. 109-20 as follows:
  - (a) Barton Creek running through subject property.
  - (b) Irrigation line in Southeasterly portion of subject property.
8. Notice of Commencement of Construction recorded April 10, 1998 as Entry No. 1396276, in Book 2272, at page 1467 of official records.