

14123718 B: 11429 P: 44 Total Pages: 35
06/29/2023 04:22 PM By: adavis Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
First National Bank of Omaha
1620 Dodge Street, SC 1065
Omaha, Nebraska 68197

APN: 16-29-429-012, 16-28-302-001, 16-28-302-002, 16-29-429-005 &
16-29-429-006
C1-168577-NTP

DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS

(The Boyer Company – Millcreek Flats)

THIS DEED OF TRUST 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, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF UTAH CODE ANN. § 70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust") is executed this 19 day of June, 2023, by and among BOYER MILLCREEK COMMON 1, L.C., a Utah limited liability company ("Trustor"), whose address is 101 South 200 East, Suite 200, Salt Lake City, Utah 84111; FIRST NATIONAL BANK OF OMAHA, a national banking association ("Beneficiary"), whose address is 1620 Dodge Street, SC 1065, Omaha, Nebraska 68197; and Cottonwood Title Insurance Agency, Inc., a Utah corporation, whose address is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121 ("Trustee"). This Deed of Trust is executed and delivered to Beneficiary as Administrative Agent for the Banks under a syndicated loan made pursuant to a Building Loan Agreement dated of even date herewith by and between Trustor, Beneficiary (as Administrative Agent) and the Lenders (the "Building Loan Agreement"). Terms used in this Deed of Trust with an initial capitalized letter that are not otherwise defined herein shall have the meanings ascribed to them by the Building Loan Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged:

I. Trustor hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the estate, property and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Property" more particularly described on Exhibit "A" attached hereto, and which shall include all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "Rents"); all estate, right, title and interest of Trustor in and to all leases or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, and all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property; a 217-unit apartment project and any and all other buildings and improvements now or hereafter erected on the Property, which shall be constructed in accordance with the Plans, as defined in the Building Loan Agreement, including, but not limited to, all of Trustor's right, title and interest in the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements");

II. Trustor further grants Beneficiary a security interest Trustor's right, title and interest in the following (the "Personal Property"):

(a) all accounts and all goods whose sale, lease or other disposition by the Trustor has given rise to accounts and have been returned to, or repossessed or stopped in transit by, the Trustor, or rejected or refused by an account debtor;

(b) all inventory, including, without limitation, raw materials, work-in-process and finished goods;

(c) all goods (other than inventory), including, without limitation, embedded software, equipment, vehicles, furniture and fixtures;

(d) all software and computer programs;

(e) all deposit accounts;

(f) all chattel paper, electronic chattel paper, instruments, documents, investment property, letter of credit rights, all proceeds of letters of credit, health care insurance receivables, supporting obligations, notes secured by real estate, commercial tort claims and general intangibles, including payment intangibles;

(g) all books and records evidencing or relating to any of the foregoing;

(h) all insurance policies and proceeds insuring the foregoing property or any part thereof, including unearned premiums;

(i) all structures, buildings and improvements of every kind and description now existing or at any time hereafter located or placed on the Property;

(j) all machinery, appliances, apparatus, equipment and fixtures now or hereafter located in, upon or under the Property or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore, and owned by Trustor or in which Trustor now has or hereafter acquires an interest;

(k) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all equipment, furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Property or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest;

(l) all of the Rents of the Property and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto, and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Property or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees or licensees, as applicable, of their obligations thereunder.

(m) all goods, building materials and supplies now or hereafter placed on the Property or in the Improvements;

(n) all accounts, accounts receivable, contract rights, general intangibles, chattel paper, documents, instruments, equipment and books and records relating to any of the foregoing;

(o) all plans, specifications, surveys, architectural renderings and drawings, soil test reports, other reports or examinations of the property, architectural contracts, engineering contracts, construction contracts, subcontracts and contracts with material suppliers;

(p) all service contracts, listing agreements maintenance contracts, management agreements, warranties, guaranties and the right to use all names now or hereafter used by Trustor in connection with the Property; provided, the foregoing shall not include the name "Boyer" or any derivation thereof;

(q) all permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation, use and occupancy of the Property, including without limitation, certificates of occupancy;

(r) all claims, demands, judgments, insurance proceeds, rights of action, awards or damages, compensation and settlements resulting from the taking of all or any part of the Property under the power of eminent domain or for any damage (whether caused by such taking or casualty or otherwise) to all or any part of the Property

(s) all contract rights, general intangibles, chattel paper, documents, instruments, equipment and books and records relating to any of the foregoing;

(t) all replacements, additions, substitutions or renewals of the foregoing and all other greater rights and interests of every nature in the Property and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor; and

(u) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

The Property, Improvements and Personal Property are collectively referred to herein as the "Mortgaged Property."

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee shall release the Mortgaged Property.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by certain Promissory Notes dated of even date herewith (collectively, the "Promissory Note"), executed by Trustor in favor of Lenders in the aggregate principal amount of \$49,150,000.00, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, presently scheduled to mature June 30, 2027, subject to extension rights, which if exercised, as provided in the Promissory Note, shall extend the maturity date to June 30, 2028, as provided in the Promissory Note;

(ii) Payment of all other indebtedness and performance of all obligations and covenants of Trustor under each of the "Loan Documents," as hereinafter defined; and

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents and all sums advanced by Beneficiary to protect the Mortgaged Property, with interest thereon at the applicable interest rate set forth in the Promissory Note from the date of advance by Beneficiary to the date of payment by Trustor.

The indebtedness and the obligations secured by this Deed of Trust which are described in (i) through (iii) above may be referred to herein as the "Secured Obligations." 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 any Promissory Note, Building Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Promissory Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

The indebtedness secured hereby is further evidenced and secured by the following documents, executed by Trustor, dated of even date herewith, which, with this Deed of Trust, the Promissory Note and any amendments or supplements thereto or modifications thereof are hereinafter referred to collectively as the "Loan Documents":

- (a) Building Loan Agreement;
- (b) Assignment of Rents and Leases;
- (c) Collateral Assignment of Design Build Construction Contract;
- (c) Assignment of Contracts and Agreements Affecting Real Estate;
- (d) Environmental Indemnity Agreement ("Environmental Indemnity");
- (e) UCC-1 Financing Statements; and

- (f) Completion Guaranty and Guaranty of Payment executed by The Boyer Company, L.C., a Utah limited liability company (the "Guarantor").

ARTICLE I
REPRESENTATIONS, WARRANTIES, COVENANTS
AND AGREEMENTS OF TRUSTOR

Trustor hereby represents, warrants, covenants and agrees to the following:

Section 1.01. **Payment of Secured Obligations.** Trustor hereby grants this Deed of Trust to secure the payment and performance when due of the Secured Obligations. The consideration received by Trustor to execute and deliver this Deed of Trust and the liens and security interests created herein are sufficient and will provide a direct economic benefit to Trustor.

Section 1.02. **Title of Trustor.** Trustor has, subject to Permitted Encumbrances set forth in Exhibit "B" hereto, in its own right, good and indefeasible title in fee simple to the Mortgaged Property and as set forth and described in the Title Policy, as defined in the Building Loan Agreement, and Trustor has full right to make this conveyance.

Section 1.03. **Construction of Improvements.** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Property or contemplated by the Building Loan Agreement, to pay when due all costs and liabilities incurred therefor, and, subject to Section 1.04 below, not to permit any mechanic's or materialmen's lien against the Property (except to the extent Trustor is contesting the same as provided in the Loan Documents). Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding:

- (a) to promptly commence work and to complete the proposed improvements promptly;
- (b) to complete same substantially in accordance with Plans, as defined in the Building Loan Agreement;
- (c) to comply with all of the terms of the Building Loan Agreement;
- (d) to allow Beneficiary to inspect the Property at all times during construction subject to the Building Loan Agreement; and
- (e) to commence and diligently pursue the replacement or correction of any work or materials which do not comply with the Plans and which are reasonably unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary.

Section 1.04. **Maintenance, Repair, Alterations.** Trustor shall: (i) keep the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear; not remove, demolish or, except as otherwise contemplated by the Building Loan Agreement,

substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; (ii) complete promptly and in good and workmanlike manner any building or other Improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor, provided, however, Trustor may contest the validity of such claims so long as (a) no Event of Default exists beyond any applicable grace or cure period, (b) Trustor notifies Beneficiary in writing that it intends to contest such claim, (c) Trustor (x) pays such amount under protest, (y) posts a bond as required by applicable law (which bond releases such lien as a lien on the Property, or (z) provides Beneficiary with an indemnity, bond or other security reasonably satisfactory to Beneficiary assuring the discharge of Trustor's obligations for such claims, including interest and penalties, and (d) Trustor is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the thirtieth (30th) day preceding the date on which the Mortgaged Property is scheduled to be sold for non-payment; (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property, or any part thereof, or requiring any alterations or improvements; (iv) not to commit or permit any waste or deterioration of the Mortgaged Property; (v) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas within the Property in good and neat order and repair; (vi) comply with the provisions of any lease, if this Deed of Trust is on a leasehold; and (vii) not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

Section 1.05. **Required Insurance.** Trustor shall provide, maintain and keep at all times in force the policies of insurance as required by Section 5.13 of the Building Loan Agreement.

Section 1.06. **Delivery of Insurance Policies, Payment of Premiums.** All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents and as otherwise satisfactory to Beneficiary. All policies of insurance shall name Beneficiary as an additional insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary, which endorsement indicates that all insurance proceeds are payable directly to Beneficiary, and shall be otherwise in form satisfactory to Beneficiary. Trustor shall furnish Beneficiary with an original or certified copy of all policies of required insurance.

Fifteen (15) days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including, without limitation, amended to reduce the scope of limits of coverage, without thirty (30) days' prior written notice (or ten (10) days in case of non-payment) to Beneficiary and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to Beneficiary. In all cases, Trustor shall immediately give notice to Beneficiary of any notice received by Trustor of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or make the deposits required hereunder, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the Default Rate provided by the Promissory Note, shall be secured by this Deed of Trust.

Subject to Section 1.07, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts received pursuant hereto, or as Rents of the Mortgaged Property or otherwise, upon any Secured Obligation in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums by Beneficiary hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Beneficiary under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

Section 1.07. **Insurance Proceeds.** After the occurrence of any casualty to the Mortgaged Property, or any part thereof, Trustor shall give prompt written notice thereof to Beneficiary and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; Trustor shall provide Beneficiary with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Property shall be paid to Beneficiary; each insurer is hereby authorized and directed to make payment for any such loss directly to Beneficiary instead of payment to Trustor. Any Insurance Proceeds shall be applied first to the payment of all out of pocket costs and expenses incurred by Beneficiary in obtaining such proceeds. Provided no Event of Default has occurred hereunder, or no event has occurred or condition exists which, with the passage of time or the giving of notice, would constitute an Event of Default hereunder, the balance of the Insurance Proceeds, if any, shall be (i) applied by Beneficiary toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed (provided, any amounts constituting loss of rents or business interruption will be held and applied to amounts owing under the Loan Documents when due), and (ii) the remaining balance against sums secured hereby, in such order as Beneficiary may in its absolute discretion elect. Such damage or destruction shall not adversely affect the lien of this Deed of Trust or the obligations of Trustor hereunder, and Beneficiary is authorized at Beneficiary's option to compromise and settle all loss claims on said policies if not adjusted promptly by Trustor. The application of Insurance Proceeds in the manner set forth above shall be conditional upon Trustor first depositing with Beneficiary such amount as Beneficiary may, in its reasonable discretion, determine to be required beyond the Insurance Proceeds to complete the altering, restoring or rebuilding of the Mortgaged Property, or such portion thereof as may have been altered, damaged or destroyed ("Additional Funds"). Disbursement of Insurance Proceeds, together with the Additional Funds, if any, required to be so deposited by Trustor with Beneficiary shall be in accordance with the Building Loan Agreement. If, however, an Event of Default has occurred and is continuing which was not cured within the applicable grace or cure period, if any, or Trustor has failed to provide the deposit of the

Additional Funds within the later of thirty (30) days following the date of receipt of the Insurance Proceeds, then the balance of the proceeds, if any, may be applied at the option of Beneficiary, (i) toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Beneficiary may in its absolute discretion elect.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations following the application of Insurance Proceeds shall remain in full force and effect, and Trustor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature on which insurance was not obtained or obtainable shall result in damage to or loss or destruction of the Mortgaged Property, Trustor shall give immediate notice thereof to Beneficiary and, unless otherwise so instructed by Beneficiary, shall promptly, at Trustor's sole cost and expense, whether or not the Insurance Proceeds are adequate to cover such cost and expense, restore, repair, replace and rebuild the Mortgaged Property as nearly as reasonably practicable to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with the Plans.

(c) Except as provided below, nothing contained in this Deed of Trust shall be deemed to excuse Trustor from repairing or maintaining the Mortgaged Property as provided in Section 1.04 hereof. The application or release by Beneficiary of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice. If Beneficiary elects not to so apply the Insurance Proceeds to the restoration, rebuilding or repair of the Mortgaged Property pursuant to Section 1.07(a) hereof, Trustor shall not be required to restore, rebuild or repair the portion of the Mortgaged Property damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Deed of Trust.

Section 1.08. **Insurance Upon Foreclosure.** In the event of the foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property, or any part thereof, by nonjudicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Property, or such part thereof, shall succeed to all of Trustor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.05, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Property or such part thereof. If Beneficiary acquires title to the Mortgaged Property, or any part thereof, in any manner, it shall thereupon (as between Trustor and Beneficiary) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to the Mortgaged Property, or such part thereof, required by Section 1.05, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Property, or such part thereof, if any.

Section 1.09. **Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party defendant to any legal proceedings concerning this Deed of Trust or the Mortgaged Property, or any part thereof or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify and hold

Beneficiary harmless from all liability by reason of such legal proceedings, including all reasonable attorneys' fees and expenses incurred by Beneficiary in any such legal proceedings, whether or not any such legal proceeding is prosecuted to judgment, except as provided in this Section 1.09 below. Upon an Event of Default, Beneficiary may employ an attorney to protect its rights hereunder, and in the event of such employment following an Event of Default, Trustor shall pay all attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of an Event of Default.

(b) Trustor waives any and all rights to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Mortgaged Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust except for loss or damage due to Beneficiary's gross negligence or willful misconduct.

(c) All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Trustor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property, or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements, or any part thereof, by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Trustor, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

(d) Notwithstanding anything contained herein to the contrary, the waiver and indemnification contained in this Section 1.09 shall not apply to any instance in which Beneficiary or Bank has committed gross negligence, willful misconduct, or illegal acts.

Section 1.10. **Taxes and Impositions.**

(a) Trustor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such

Imposition is payable, or may at the option 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 (except as otherwise provided in this sentence) or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Trustor pursuant to subparagraph (a) hereof, or (ii) 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 Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Beneficiary under Article V of this Deed of Trust, at the option of Beneficiary, all Secured Obligations, together with all accrued interest thereon, shall become due and payable one hundred eighty (180) days after Trustor receives written notice thereof in the event that Trustor shall not be permitted to pay such fees, taxes or assessments on behalf of Beneficiary.

(c) Trustor shall deposit, in an account with a Beneficiary approved depository and subject to Beneficiary's control (the "Deposit Account"), on the first (1st) day of each month (i) an amount equal to one-twelfth (1/12) of the annual real property and similar taxes next to become due upon the Mortgaged Property; and (ii) an amount equal to one-twelfth (1/12) of the annual premiums coming due on the insurance required to be maintained hereunder. The amount of such periodic deposits (the "Deposits") shall be set by Beneficiary on the basis of its reasonable estimate as to the amount and schedule of taxes and premiums for Insurance next to be payable. Notwithstanding the preceding sentence, in the case of the first Deposit, there shall be deposited, in addition to the specified periodic Deposit, an amount which, when added to the aggregate amount of the periodic sums next payable under this Section 1.10, will result in a sufficient reserve to pay the taxes and premiums on the Insurance next becoming due at least one month prior to the date when such taxes or premiums are due and payable. Any interest accruing on the funds in the Deposit Account shall be added to the Deposit Account. The aggregate Deposits shall be accrued until the next date on which an installment of taxes or premium for Insurance is due and shall be applied by Beneficiary, so long as no Event of Default has occurred hereunder and is continuing, to the payment of taxes and premiums for Insurance. Trustor shall furnish to Beneficiary with evidence of the taxes and premiums for Insurance no later than thirty (30) days prior to the last date on which the same are due and payable without penalty or premium of any kind. If the Deposits then in the Deposit Account shall not be sufficient to pay all the taxes and premiums for the Insurance when the same shall become due, then Trustor shall immediately deposit in the Deposit Account an amount equal to the deficiency. If the total of the Deposits exceeds the amount required to pay the taxes and premiums for the Insurance, such excess shall be held and credited against the obligation to make subsequent Deposits.

(d) Subject to the provisions of subparagraph (e) of this Section 1.10, Trustor covenants to furnish Beneficiary within thirty (30) days after the date upon which any such Imposition is due and payable to Trustor, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to Beneficiary, evidencing the payment thereof.

(e) Subject to the applicable state law provisions, Trustor shall have the right to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this 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 this Section 1.10, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option: (i) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof to satisfy such Imposition prior to final determination of such proceedings; (ii) Trustor shall either (x) pay such Imposition under protest, or (y) escrow one hundred ten percent (110%) of the liability for such Impositions on terms reasonably acceptable to Beneficiary; and (iii) Trustor shall diligently and continuously prosecute all legal proceedings in a manner to prevent the sale of the Mortgaged Property.

(f) Trustor covenants and agrees not to knowingly suffer, permit or initiate the joint assessment of the Property and Personal Property, or any other procedure whereby the lien of the Property taxes and the lien of the Personal Property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

(g) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary, at Trustor's expense, a tax reporting service covering the Mortgaged Property of the type and duration and with a company satisfactory to Beneficiary.

Section 1.11 **Utilities.** Trustor shall pay when due all utility charges which are incurred for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.12. **Actions Affecting Mortgaged Property.** Trustor shall appear in and contest any action or proceeding purporting to affect the title of Trustor in the Mortgaged Property or security hereof or the rights or powers of Beneficiary or Trustee; and Trustor shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear unless the same are paid by the Title Company.

Section 1.13. **Actions by Beneficiary and/or Trustee to Preserve Mortgaged Property.** Should Trustor fail to make any payment or to do any act as and in the manner provided in this Deed of Trust and such failure continues beyond any applicable grace or cure periods provided herein or in the other Loan Documents, Beneficiary, in its sole discretion,

without obligation to do so and without further notice to or demand upon Trustor and without releasing Trustor from any Secured Obligation, may make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Beneficiary shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Property; (ii) to direct Trustor to terminate any management agent and to employ such management agent as Beneficiary may determine its sole discretion; (iii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iv) subject to the provision of Section 1.10(e) above, to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (v) subject to the provision of Section 1.04 above, to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Beneficiary may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall, within ten (10) days of demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys' fees.

Section 1.14. **Survival of Warranties.** Trustor shall fully and faithfully satisfy and perform the Secured Obligations. All representations, warranties and covenants of Trustor contained herein shall remain continuing obligations, warranties and representations of Trustor during any time when any portion of the Secured Obligations remains outstanding.

Section 1.15. **Eminent Domain.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary may participate in any such Condemnation proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by Beneficiary to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings and shall consult with Beneficiary and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property or any part thereof or interest therein shall be paid to Trustor. If an Event of Default has occurred hereunder or any event has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, all proceeds shall be applied at the option of Beneficiary (i) toward altering, restoring or rebuilding the Mortgaged Property, or such portion thereof that may have been altered, damaged or destroyed, or (ii) against the Secured Obligations in such order as Beneficiary may in its absolute discretion elect. If Beneficiary elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Property, Trustor shall not be required to repair or restore that portion of the Mortgaged Property affected by Beneficiary's election and the failure to do so shall not constitute a breach by Trustor of its obligation to maintain the Mortgaged Property set forth in Section 1.04 hereof.

Trustor hereby assigns and transfers to Beneficiary, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Beneficiary may request. Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Beneficiary shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.16. **Additional Security.** In the event Beneficiary at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. **Additional Indebtedness.** Trustor shall not further encumber the Mortgaged Property or any portion thereof (including, without limitation, secured transactions under the UCC) without the prior written consent of Beneficiary.

Section 1.18. **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The covenants and agreements of Trustor contained herein shall apply to and be binding upon any successor owner of the Mortgaged Property or any part thereof.

Section 1.19. **Inspections.** Subject to Section 3.8 of the Building Loan Agreement, Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

Section 1.20. **Liens.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall either (a) pay such amounts under protest, (b) post a bond pursuant to applicable law (which releases the lien, encumbrance or charge as a lien against the property, or (c) deposit with Beneficiary a bond or other security reasonably satisfactory to Beneficiary in such amounts as Beneficiary shall require but not more than 150% of the amount of the claim plus costs (including attorneys' fees) and interest and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail so to discharge any such lien, encumbrance or charge prior to the thirtieth (30th) day preceding the date on which the Mortgaged Property is scheduled to be sold for non-payment, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either, by paying the amount claimed to be due, or by procuring the discharge of such lien, either, by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any actual out of pocket cost incurred by Beneficiary in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

Section 1.21. **Restrictions Affecting Title.** Trustor shall perform when due all Secured Obligations required to be performed by Trustor by the provisions of any agreement affecting title to the Mortgaged Property.

Section 1.22. **Further Assurances.** Trustor shall take all action and do all things which it is authorized by law to take and do, and cooperate with Beneficiary as Beneficiary deems necessary or desirable, to insure the release of all encumbrances against the Mortgaged Property, except Permitted Encumbrances, existing prior to the date hereof, claims contested pursuant to Section 1.04 above, Impositions contested pursuant to Section 1.10 above and liens contested pursuant to Section 1.20 above.

So long as any Secured Obligation shall remain unpaid, Trustor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Beneficiary all such instruments and documents as in the opinion of Beneficiary are necessary or desirable to preserve the first priority lien created by this Deed of Trust.

Section 1.23. **Performance of Covenants.** Trustor shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Loan Documents and in all of its proceedings pertaining to this Deed of Trust.

Section 1.24. **Notice of Event of Default Under Loan Documents.** Upon obtaining knowledge thereof, Trustor agrees to notify Beneficiary promptly in writing of any Event of Default.

Section 1.25. **Rules, Regulations, Environmental Laws, Warrants and Covenants.** Trustor represents and warrants as of the date hereof and covenants for so long as the Secured Obligations remain outstanding:

(i) the location, construction, occupancy, operation and use of the Mortgaged Property for its intended industrial purposes does not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Mortgaged Property, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Regulations");

(ii) the Mortgaged Property and Trustor are not in violation of or subject to any existing, pending or, to Trustor's knowledge, threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976 ("RCRA"), and this representation and warranty shall continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts,

conditions and circumstances, if any, pertaining to the Mortgaged Property. If any such investigation or inquiry is subsequently initiated, Trustor will promptly notify Beneficiary;

(iii) that Trustor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws;

(iv) that Trustor has taken all steps to determine and has determined to its reasonable satisfaction that no hazardous substances or solid wastes have been disposed of or otherwise released on or about the Mortgaged Property;

(v) the Mortgaged Property does not contain asbestos, formaldehyde foam insulation or any other chemical, material or substance exposure to which may or could pose a health hazard, whether or not the substance is prohibited, limited or regulated by any governmental authority;

(vi) that the use which Trustor makes and intends to make of the Mortgaged Property will not result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Mortgaged Property (except in compliance with applicable law). For purposes of this Section 1.25, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the state where the Property is located establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply;

(vii) to promptly notify Beneficiary of any violation or alleged violation of any Applicable Environmental Laws of which Trustor becomes aware; and

(viii) Intentionally Deleted.

Section 1.26. **Organization; Due Authorization.** Trustor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Utah, and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents to which it is a party. The execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Trustor.

Section 1.27. **Liabilities; Compliance with Other Instruments.** Trustor has no liabilities except under the Loan Documents and those incurred in the ordinary course of business and which are not delinquent or which are otherwise contemplated or permitted by this Deed of Trust and the other Loan Documents to which it is a party. To Trustor's knowledge, Trustor is not in default (i) in the payment of any taxes levied or assessed against it or its assets, (ii) under any applicable statute, rule, order or regulation of any governmental authority, (iii) under this Deed of Trust or any of the other Loan Documents to which it is a party, or (iv) under any other agreement to which it is a party or the Mortgaged Property are bound. Neither the execution and delivery of this Deed of Trust or any of the other Loan Documents to which Trustor is a party, nor the consummation of the transaction herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, conflicts with or results or will result in a breach of any of the terms, conditions or provisions of the Certificate of Organization or Operating Agreement of Trustor, any law, order, rule, regulation, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Trustor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder, or results or will result in the creation or imposition of any lien of any nature whatsoever upon any of its property or assets pursuant to the terms of any such agreement or instrument except the liens created or permitted by the Loan Documents to which it is a party.

Section 1.28. **Enforceability.** This Deed of Trust and each of the other Loan Documents to which Trustor is a party have been duly executed and delivered by Trustor and constitute valid and binding obligations of Trustor, enforceable in accordance with their respective terms, except as the enforceability (but not the validity thereof) may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

Section 1.29. **Pending Litigation.** There are no proceedings pending or, to the knowledge of Trustor threatened, against or affecting Trustor in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor or the right or ability of Trustor to enter into the Loan Documents to which it is a party, and if any such proceedings are subsequently initiated or threatened then Trustor will promptly provide written notice to Beneficiary. Trustor is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

Section 1.30. **Compliance With Law.** Trustor is in compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules or regulations relating to environmental protection the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor.

Section 1.31. **Appointment of Successor Trustee.** If Trustee shall die, be dissolved or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of Trustee named herein, Beneficiary shall have full

power, subject to applicable law, to appoint, by written instrument, a substitute Trustee, and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary, and, if Beneficiary is a corporation or limited partnership, and such appointment is executed in its behalf by any officer of such corporation or general partner of such limited partnership, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or further partnership action in the event of a limited partnership.

Section 1.32. **Transfer of Interests in Mortgaged Property.** Except as permitted under the Building Loan Agreement, Trustor shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Property or any interest therein, without the consent of Beneficiary. In the event that without first obtaining the written consent of the Beneficiary there shall be any (i) transfer, sale, mortgage or conveyance of all or any part of the Mortgaged Property, whether voluntarily or by operation of law, (ii) mortgage, pledge, encumbrance or lien to be outstanding against the Mortgaged Property, or any portion thereof, or any security interest to exist therein, or (iii) sale, conveyance, transfer, pledge or encumbrance of any member interest in the Trustor, other than as authorized by the Loan Agreement, then the entire amount secured hereby shall become immediately due and payable without notice at the option of the Beneficiary and failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent transfer, sale or conveyance. It is understood that a consent by the Beneficiary to any such transfer, conveyance or mortgage shall not be deemed a waiver of the right to require such consent to any subsequent transfer, mortgage, or conveyance and that the provisions of this paragraph shall be binding upon any and all successive holders of the interest of the Trustor in the Mortgaged Property or any part thereof. Unless otherwise approved by the Beneficiary, no transfer, conveyance, lease, sale or other disposition shall relieve Mortgagor from liability for its obligations hereunder or under the Note, whether or not the transferee assumes this Deed of Trust. The Beneficiary may, with notice to the Trustor, deal with any successor owner of all or any portion of the Mortgaged Property in the same manner as with the Trustor, without in any way discharging the liability of the Trustor hereunder or under the Note.

Section 1.33. **Financial Statements.** Trustor shall provide Beneficiary periodic financial and operating statements in the time and manner required by the Building Loan Agreement and such other and further financial information and data concerning Trustor and the Mortgaged Property as Beneficiary shall reasonably require from time to time. All financial data required to be provided hereunder shall be in such form as Beneficiary shall reasonably approve.

Section 1.34. **Water Rights.** To the extent there are any Waters Rights (as defined below):

(a) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) 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, the County of Salt Lake, 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 Deed of Trust.

(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 Beneficiary 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 Beneficiary with evidence of each such payment.

(e) Trustor and 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 Deed of Trust, means and included 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 Beneficiary 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 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 1.35 Mechanic's Liens; State Construction Registry.

(a) Subject to any right that Trustor may have to contest hereunder or under the other Loan Documents, Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Mortgaged Property and to prevent the fixing of any lien against any part of the Mortgaged Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

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

(c) Trustor represents and warrants to Beneficiary that it has inspected or has caused in inspection via the Title Agent of 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 Beneficiary by Trustor in writing (including, without limitation, pursuant to the title commitment delivery to Lender). Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Mortgaged Property or recorded against the Mortgaged Property.

(d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code 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 Deed of Trust.

(e) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, 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: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Mortgaged Property secured hereby, the address of the Mortgaged Property, and the county in which the Mortgaged Property is located.

(f) Trustor shall cause, as a condition precedent to the closing of the Loan, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole

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

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

(h) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Land 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 Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Promissory Note.

Section 1.36. **Lease Provisions.** Any commercial non-residential lease of all or part of the Mortgaged Property by Trustor permitted under this Deed of Trust shall contain a provision obligating such lessee to enter into a subordination, attornment and non-disturbance agreement with Beneficiary in form and substance reasonably satisfactory to Beneficiary.

ARTICLE II

BENEFICIARY'S POWERS

At any time, or from time to time, without liability, therefor, Beneficiary, without affecting the personal liability, if any, of any person for payment of the Secured Obligations or the effect of this Deed of Trust upon the remainder of said Mortgaged Property, may from time to time without notice (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity of any Secured Obligation upon written request from Trustor or alter any of the terms of any Secured Obligations upon mutual agreement with Trustor, (vii) grant other indulgences, (viii) take or release any other or additional security for any obligation herein mentioned, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Trustor hereunder, and all amounts so advanced, with interest thereon at the rate provided by the Promissory Note, shall be secured hereby.

ARTICLE III

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Section 3.01. **Assignment of Rents.** Subject to the immediately following sentence of this Section 3.01, Trustor hereby absolutely assigns and transfers to Beneficiary all the Rents of the Mortgaged Property, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time during the continuance of an Event of Default, to take possession and control of the Mortgaged Property and to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all such Rents and apply the same to the Secured Obligations; provided, however, that Trustor shall have a revocable license to possess and control the Mortgaged Property and to collect such Rents (but not more than one month in advance) unless an Event of Default has occurred and is continuing under any of the Loan Documents. The assignment of the rents, issues and profits of the Mortgaged Property in this **Article III** is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. This Section 3.01 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Section 3.01 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

Section 3.02. **Collection Upon Default.** Upon the occurrence and during the continuance of any Event of Default under any of the Loan Documents which is not cured within the applicable grace period, if any, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Mortgaged Property,

or any part thereof, and in its own name sue for or otherwise collect such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable out-of-pocket attorneys' fees, upon any Secured Obligations, and in such order as Beneficiary may determine. The collection of such Rents or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. This Section 3.02 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Section 3.02 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

ARTICLE IV SECURITY AGREEMENT

Section 4.01. **Creation of Security Interest.** With respect to any portion of the Mortgaged Property which constitutes Personal Property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Trustor hereby authorizes Beneficiary to prepare and file in all appropriate jurisdictions all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) business days notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC.

Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or business form or structure and hereby authorizes Beneficiary, prior to or concurrently with the occurrence of any such change, to prepare and file all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property described or referred to herein.

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing

for record in the real estate records of the county in which the Mortgaged Property is situated. For this purpose, the following information is provided:

- (a) The name and address of the Secured Party is Beneficiary, whose address is stated in Section 6.05 of this Deed of Trust;
- (b) The name and address of the Debtor is Trustor, whose address is as stated in Section 6.05 of this Deed of Trust;
- (c) The collateral covered by this Deed of Trust, as a financing statement, is all goods constituting part of the Mortgaged Property (more particularly described in the granting clause of this Deed of Trust) which are or are to become fixtures;
- (d) The real estate to which the Property covered by this financing statement is attached or upon which it is located is the land described in Exhibit "A" to this Deed of Trust; and
- (e) The name of the record owner of the real estate is Trustor.

Section 4.02. **Warranties, Representations and Covenants of Trustor.** Trustor hereby represents, warrants, and covenants, with respect to the Personal Property, as follows:

- (a) except for the security interest granted hereby and other security documents in favor of Beneficiary, Trustor is, and as to any of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever, except for Permitted Encumbrances and liens permitted by Section 1.04, 1.10(e) and 1.20 of this Deed of Trust. Trustor will notify Beneficiary of, and will defend the Personal Property against, all prohibited claims and demands of all persons at any time claiming the same or any interest therein;
- (b) Trustor will not lease, sell, convey or in any manner transfer the Personal Property (except Personal Property transferred in the ordinary course of business and replaced by Personal Property of a similar nature and having at least the same value as the Personal Property replaced or Personal Property which is damaged, destroyed or obsolete) without the prior written consent of Beneficiary;
- (c) the Personal Property is not used or bought for personal, family or household purposes;
- (d) the Personal Property will be kept on or at the Property and Trustor will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality;

(e) all covenants and obligations of Trustor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property, whether or not expressly referred to herein; and

(f) it is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Ann. § 70A-9a-604 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 5.01. **Events of Default.** "Default" or "Event of Default" shall have the meaning of "Event of Default" as defined in the Building Loan Agreement. At the option of Beneficiary, while an Event of Default exists, Beneficiary may exercise any of the remedies available to it under this Deed of Trust or the Building Loan Agreement or any of the Loan Documents.

Section 5.02. **Judicial Foreclosure or Trustee's Sale on Default.**

(a) Upon the occurrence and during the continuance of one or more Events of Default, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or Mortgaged Property may be sold by the Trustee according to the laws of the State of Utah.

(b) In the event that the Mortgaged Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. 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 may at the direction of Beneficiary, sell the Mortgaged 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 Beneficiary may determine (but subject to Trustor's statutory right under Utah Code Ann. § 57-1-27 to direct the order in which the Mortgaged 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 set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient,

postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-25. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Ann. § 57-1-28, conveying the Mortgaged 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 Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

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

(b) SECOND: To payment of the obligations secured by the trust deed.

(c) THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in 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.

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

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, Building Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the collateral, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Promissory Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust.

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

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 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

Section 5.03. **Appointment of Receiver.** If an Event of Default shall have occurred and is continuing, which was not cured within the applicable grace or cure period, if any, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Mortgaged Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases.

Section 5.04 **Reinstatement.** If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

Section 5.05 **Remedies Not Exclusive.** Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents, or any other laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is

intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and failure of Trustor to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, as aforesaid. Beneficiary or Trustee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Beneficiary to any action or inaction of Trustor which is subject to consent or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

ARTICLE VI MISCELLANEOUS

Section 6.01. **Governing Law.** This Deed of Trust shall be governed by the laws of the State in which the Property is located. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. **Waiver of Rights.** To the extent permitted by law, Trustor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Property, and (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshaling in the event of foreclosure of the liens

hereby created. If any law referred to in this Section 6.02 and now in force, of which Trustor, Trustor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section 6.02, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 6.02. Trustor expressly waives and relinquishes any and all rights, remedies and defenses that Trustor may have or be able to assert by reason of the laws of the state in which the Property is located pertaining to the rights, remedies and defenses of sureties.

Section 6.03. **Limitation of Interest.** All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Promissory Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary or holder of the Promissory Note shall ever receive as interest under the Promissory Note or this Deed of Trust or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note or on account of other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and such other Secured Obligations, such excess shall be refunded to Trustor, or to the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Trustor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Trustor, or the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Trustor, and Beneficiary.

Section 6.04. **Statements by Trustor.** Trustor, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Beneficiary a written statement stating the unpaid principal of and interest on the Promissory Note and any other amounts secured by this Deed of Trust and stating that no offset or defense exists against such amounts.

Section 6.05. **Notices.** Any notice or other communication to any party in connection with this Deed of Trust shall be in writing and shall be sent by manual delivery, electronic transmission, overnight courier or United States registered or certified mail, postage prepaid, return receipt requested addressed to such party at the address specified below, or at such other address as such party shall have specified to the other parties hereto in writing not less than ten (10) days prior to the effective date of the address change. Unless otherwise specified herein, all periods of notice shall be measured from the date of delivery thereof if manually delivered, from the date of sending thereof if sent by electronic transmission, from the first Business Day after the date of sending if sent by overnight courier, or from three days after the date of mailing if

mailed. If any applicable statute shall provide a mandatory method for the delivery of notice, then the statutory method shall be followed.

If to Trustor: Boyer Millcreek Common 1, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111
Attn: President

With a copy to: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Lamont Richardson

If to Beneficiary: First National Bank of Omaha
1620 Dodge Street, SC 1065
Omaha, Nebraska 68197
Attn: Senior Loan Officer, Commercial Real Estate Department

With a copy to: Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114
Attn: James D. Buser, Esquire

With a copy to: Zions Bank
One South Main, Ste. 400
Salt Lake City, UT 84133
Attn: Katie Black, Commercial Real Estate Department
Email: katie.black@zionsbank.com

Section 6.06. **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 6.07. **Invalidity of Certain Provisions; Conflicting Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust. To the extent any conflict exists between the terms of the Commitment Letter and the terms of the other Loan Documents, the terms of the other Loan Documents will govern.

Section 6.08. **Subrogation.** To the extent that proceeds of the Promissory Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds or advances have been or will be advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior

encumbrances, irrespective of whether said liens, charges or encumbrances are released of record.

Section 6.09. **Change in Ownership.** If the ownership of the Mortgaged Property or any part thereof or interest therein becomes vested in a person other than Trustor owning the same on the date hereof which violates the Building Loan Agreement, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and the Secured Obligations in the same manner as with Trustor without in any way vitiating or discharging Trustor's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Secured Obligations, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability, if any, of Trustor or the liability of any guarantors or sureties of Trustor, either in whole or in part, unless otherwise agreed in writing by Beneficiary and Trustor.

Section 6.10. **Assignment of Beneficiary's Interest.** It is expressly agreed that any and all terms of this Deed of Trust, the other Loan Documents and all other agreements made or executed by Trustor or others in favor of Beneficiary, and all rights, powers, privileges, options and remedies conferred upon Beneficiary herein and therein, shall inure to and be for the benefit of Beneficiary and may be exercised by Beneficiary, its successors and assigns, and the word "Beneficiary" shall also mean and include the successor or successors and the assign or assigns of Beneficiary and its successors and assigns. Trustor hereby specifically grants unto Beneficiary the right and privilege, at Beneficiary's option, to transfer and assign to any third person all or any part of Beneficiary's rights to receive funds or payments hereunder.

Section 6.11. **Time Is of the Essence.** Time is of the essence under this Deed of Trust and the other Loan Documents.

Section 6.12. **Release by Trustee.** Upon payment of all sums secured hereby, Beneficiary will cancel the Promissory Note and will surrender the originals of this Deed of Trust and the cancelled Promissory Note to Trustee along with Beneficiary's Request for Release of the Deed of Trust, and upon payment by Trustor of Trustee's fees, if any, Trustee shall release the Deed of Trust.

Section 6.13. **No Joint Venture.** Trustor acknowledges that the relationship between the parties is that of Trustor, Beneficiary and Trustee and that in no event shall either Beneficiary or Trustee be deemed a partner or joint venturer with Trustor. Neither Beneficiary nor Trustee shall be deemed to be such a partner or joint venturer by reason of its becoming a Beneficiary in possession or by exercising any rights pursuant to this Deed of Trust or any other of the Loan Documents.

Section 6.14. **Waiver of Certain Rights.** With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Ann. § 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the

fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

Section 6.15 **Integration**. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE PROMISSORY NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

[Space Below Intentionally Left Blank – Signature Page to Follow]


SIGNATURE PAGE – DEED OF TRUST

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

TRUSTOR:

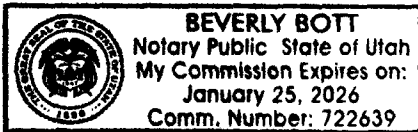
BOYER MILLCREEK COMMON 1, L.C.,
a Utah limited liability company, by its manager

The Boyer Company, L.C., a Utah limited liability
company

By: 
Name: Brian Gochnour
Title: Manager

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

The foregoing instrument was acknowledged before me this 13th day of June, 2023, by Brian Gochnour, a manager of The Boyer Company, L.C., a Utah limited liability company, the manager of Boyer Millcreek Common 1, L.C., a Utah limited liability company, on behalf of the company.




Notary Public

(Seal) (Title)
My commission expires:
1/25/26

Residing at:
Salt Lake County

EXHIBIT "A"
Legal Description

Tax Parcel Id No.: 16-29-429-012, 16-28-302-001, 16-28-302-002, 16-29-429-005 and 16-29-429-006

A tract of land located in the Southwest Quarter of Section 28 and the Southeast Quarter of Section 29, Township 1 South, Range 1 East, Salt Lake Base & Meridian, more particularly described as follows:

Beginning at a point on the southerly line of Miller Avenue, as dedicated by the official plat of MALOUF ANNEX TO SALT LAKE CITY recorded February 28, 1980 as Entry No. 3405230 in Book 80-2 of Plats at Page 46 in the office of the Salt Lake County Recorder, located South 464.97 feet from the West 1/4 Corner of Section 28, T1 S, R1 E, SLB&M (Basis of Bearing: N89°48'00"E along the Monument line of 3300 South Street between two found monuments at the intersections of 1300 East Street and Highland Drive.); running thence along said southerly line S87°15'00"E 69.99 feet to the northwesterly corner of a boundary determined by that certain Warranty Deed recorded February 27, 1997 as Entry No. 6581680 in Book 7607 at Page 966 in the office of the Salt Lake County Recorder; thence along said deed the following three (3) courses: (1) South 233.09 feet; thence (2) N87°00'00"W 17.03 feet; thence (3) South 61.87 feet to the northeasterly corner of a boundary determined by the certain Warranty Deed recorded April 2, 1993 as Entry No. 5468895 in Book 6632 at Page 1674 in the office of the Salt Lake County Recorder; thence along said deed the following two (2) courses: (1) N86°24'00"W 60.32 feet; thence (2) S00°38'39"E 28.13 feet to the southeasterly corner of a boundary determined by that certain Warranty Deed recorded September 4, 2020 as Entry No. 13384562 in Book 11012 at Page 9411 in the office of the Salt Lake County Recorder; thence N86°24'00"W 125.30 feet to and along the southerly line of a boundary determined by that certain Warranty Deed recorded January 17, 1947 as Entry No. 1069758 in Book 515 at Page 38 in the office of the Salt Lake County Recorder; thence along said deed North 6.87 feet to the southeasterly corner of a boundary determined by that certain Warranty Deed (Special) recorded February 8, 1991 as Entry No. 5025925 in Book 6289 at Page 2602 in the office of the Salt Lake County Recorder; thence along said deed West 77.24 feet to the southeasterly corner of a boundary determined by that certain Special Warranty Deed recorded January 12, 2016 as Entry No. 12204361 in Book 10395 at Page 310 in the office of the Salt Lake County Recorder; thence along said deed North 317.09 feet to said southerly line of Miller Avenue; thence along said southerly line S87°15'00"E 209.52 feet to the point of beginning.

EXHIBIT "B"
Permitted Encumbrances

1. The herein described Land is located within the boundaries of the Greater Salt Lake Municipal Services District, as disclosed by that certain Certificate of Creation recorded October 16, 2015 as Entry No. 12152166 in Book 10370 at Page 7834, and is subject to any and all charges and assessments levied thereunder.
2. The herein described Land is located within the boundaries of the Millcreek Community Reinvestment Agency, as disclosed by that certain Certificate of Creation recorded May 7, 2018 as Entry No. 12767700 in Book 10672 at Page 1947, and is subject to any and all charges and assessments levied thereunder.
3. Ordinance No. 21-38 Adopting the Community Reinvestment Project Area Plan for the Woodland Avenue Community Reinvestment Project Area, recorded September 28, 2021 as Entry No. 13784550 in Book 11245 at Page 7636.
4. The following matters disclosed on that certain survey prepared by CIR Civil Engineering and Surveying, dated June 15, 2023, as Job No. S23-122, by Gary Christensen, a Professional Land Surveyor holding License No. 5152617:
 - a. Existing utilities, including but not limited to, storm drain lines and boxes, sanitary sewer lines, irrigation lines and boxes, telephone lines, underground power lines, overhead power lines, and power poles, located on and across the Land without recorded easements.