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1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

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

APN(s):

14-21-381-008, 14-21-381-007, 14-21-381-006, 14-21-381-005, 14-21-381-004, 14-21-381-003,  
14-21-381-002, 14-21-381-011, 14-21-381-012, 14-21-381-013, 14-21-381-014, 14-21-381-015,  
14-21-381-016, 14-21-381-017, 14-21-381-024, 14-21-381-023, 14-21-381-022, 14-21-381-021,  
14-21-381-020, 14-21-381-019, 14-21-381-018, 14-21-381-026, 14-21-381-027, 14-21-381-028,  
14-21-381-029, 14-21-381-030, 14-21-381-031, 14-21-381-032, 14-21-381-039, 14-21-381-038,  
14-21-381-037, 14-21-381-036, 14-21-381-035, 14-21-381-034, 14-21-381-033, 14-21-381-041,  
14-21-381-042, 14-21-381-043, 14-21-381-044, 14-21-381-045, 14-21-381-046, 14-21-381-047,  
14-21-376-015, 14-21-376-016, 14-21-376-017, 14-21-376-018, 14-21-376-019, 14-21-376-020,  
14-21-376-021, 14-21-376-030, 14-21-376-029, 14-21-376-028, 14-21-376-027, 14-21-376-026,  
14-21-376-025, 14-21-376-024, 14-21-376-031, 14-21-376-032, 14-21-376-033, 14-21-376-034,  
14-21-376-035, 14-21-376-036, 14-21-376-043, 14-21-376-042, 14-21-376-041, 14-21-376-040,  
14-21-376-039, 14-21-376-038, 14-21-376-044, 14-21-376-045, 14-21-376-046, 14-21-376-047,  
14-21-376-048, 14-21-376-049, 14-21-376-050, 14-21-376-058, 14-21-376-057, 14-21-376-056,  
14-21-376-055, 14-21-376-054, 14-21-376-053, 14-21-376-052, ~~14-21-376-018~~, 14-21-384-031,  
14-21-384-030, 14-21-384-029, 14-21-384-028, 14-21-384-036, 14-21-384-037, 14-21-384-038,  
14-21-384-039, 14-21-384-040, 14-21-384-041, 14-21-384-042, 14-21-384-043, 14-21-384-051,  
14-21-384-050, 14-21-384-049, 14-21-384-048, 14-21-384-047, 14-21-384-046, 14-21-384-045  
and 14-21-384-044

When recorded, mail to:

James H. Jones, Esq.  
**SNELL & WILMER L.L.P.**  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

APN(s):

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

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE 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, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as it may be amended and modified from time to time, the "*Deed of Trust*") is made as of June 28, 2023, by **VANTAGGIO GABLERS TOWNS, L.L.C.**, a Utah limited liability company ("*Trustor*"), as trustor, whose mailing address is 978 East Woodoak Lane, Salt Lake City, Utah 84117, to **COTTONWOOD TITLE AGENCY, INC.** ("*Trustee*"), as trustee, whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK** ("*Beneficiary*"), as beneficiary, whose mailing address is One South Main, Suite 400, Salt Lake City, Utah 84133.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, 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 Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to that certain real property located in the County of Salt Lake, State of Utah, more particularly described in Exhibit A to this Deed of Trust (the "*Property*");

TOGETHER WITH all right, title, or interest of Trustor in any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (collectively, the "*Improvements*"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially-valuable substances that may be in, under or produced from any part of the Property;

TOGETHER WITH all right, title or interest of Trustor in all rents (including all “Rents” as defined in the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, § 57-26-101, *et seq.* (the “*Act*”)), subrents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and the Improvements (collectively, the “*Rents*”), subject to the terms and provisions of **Article 2** of this Deed of Trust with respect to all leases and subleases of the Property or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases, or subleases covering the Property or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the “*Leases*”);

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements;

TOGETHER WITH all right, title or interest of Trustor in all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Property or the Improvements, or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto), including but not limited to all air rights and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title or interest of Trustor now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

TOGETHER WITH all right, title, or interest of Trustor now owned or hereafter acquired by Trustor in all licenses, permits, approvals, or other authorizations (federal, state, and local) used or useful in connection with or in any way relating to the Property or Improvements, including any building permits relating to the development of the Property and Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Property or the Improvements, including, without limitation, the property and interests in property described on Exhibit B attached hereto, (ii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Property or the Improvements, including, without limiting the foregoing, all of Trustor’s present and future “Accounts”, “Cash Proceeds”, “Chattel Paper”, “Collateral”, “Deposit Accounts”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-credit Rights”, “Noncash Proceeds”, and “Tangible Chattel Paper”, (as such terms are defined in the *Utah Uniform Commercial Code*, U.C.A. §§ 70A-1-1, *et seq.*), (iii) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, (iv) all of Trustor’s right, title and interest in and to all deposit accounts maintained with Beneficiary or any affiliate of Beneficiary and (v) all appurtenances and additions thereto and substitutions or replacements thereof (such personal property, together with proceeds (as hereinafter provided), are referred to herein collectively as the “*Personal Property*”);

TOGETHER WITH 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;

TOGETHER WITH all right, title or interest of Trustor in all of the 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, indemnities, performance or redemption bonds, judgments, awards of damages, and settlements with respect thereto) that Trustor now has or may hereafter acquire in the Property, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages); and

TOGETHER WITH all right, title or interest of Trustor in 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.

The entire estate, property, right, title, and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "*Trust Estate*."

TO HAVE AND TO HOLD the Trust Estate unto Trustee and Trustee's successors, substitutes and assigns, IN TRUST, however, upon the terms, provisions, and conditions herein set forth.

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "*Obligations*"):

(a) Payment of indebtedness of the **CLARK AND CHRISTINE IVORY FOUNDATION**, a Utah nonprofit corporation ("*Borrower*"), in the total principal amount of **TWENTY-EIGHT MILLION SEVEN HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$28,720,000.00)** (the "*Loan*"), with interest thereon, evidenced by that certain Secured Promissory Note of even date herewith evidencing the Loan (as it may be amended, modified, extended, and renewed from time to time, the "*Note*"), executed by Borrower, pursuant to that certain Loan Agreement between Borrower and Beneficiary of even date herewith (as it may be amended, modified, extended, and renewed from time to time, the "*Loan Agreement*") pursuant to which Beneficiary may make advances of Loan proceeds from time to time subject to the conditions and limitations therein;

(b) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the default interest rate set forth in the Note and/or the Loan Agreement (which rate of interest is hereinafter referred to as the "*Agreed Rate*");

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor or Borrower, or their successors or assigns, by Beneficiary, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

(d) payment and performance of every other obligation of Trustor and Borrower contained in the Loan Agreement and other Loan Documents (as defined below);

(e) performance of every obligation of Trustor and Borrower contained in any agreement, document, or instrument now or hereafter executed by Trustor (and accepted by or agreed to by Beneficiary) reciting that the obligations thereunder are secured by this Deed of Trust;

(f) for the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected; and

(g) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

This Deed of Trust, the Note, the Loan Agreement, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "*Loan Documents*." Any references herein to the *Utah Code Annotated* shall be deemed to be a reference to the current version of such statutes together with any successor or replacement statute or law therefor.

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE 1

### COVENANTS AND AGREEMENTS OF TRUSTOR

1.1 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or perform each of the Obligations.

1.2 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary or as may be required by Requirements (defined below). Trustor shall complete promptly and in a good and workmanlike manner in accordance with all applicable laws any Improvement that may be now or hereafter constructed on the Property and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease. "*Requirement*" and "*Requirements*" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (a) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local) and (b) such obligations and requirements of, in, or in respect of (i) any consent, authorization, license, permit, or approval relating to the Trust Estate, (ii) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (iii) any Lien or Encumbrance, (iv) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected, and (v) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.3 Required Insurance. Trustor shall procure and maintain policies of insurance as set forth in the Loan Agreement.

1.4 Delivery of Policies, Payment of Premiums.

(a) At Beneficiary's option, all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary or shall name Beneficiary as an additional insured. Trustor shall furnish Beneficiary with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location or by policies procured by a tenant or other party holding under Trustor; provided, however, all such policies shall meet the requirements referred to in **Section 1.1**. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and the insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) If Trustor fails to obtain, maintain, or deliver to Beneficiary the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Beneficiary may, at Beneficiary's election, but without any obligation so to do, 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 shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "*Insurance Impounds*"). In such event Trustor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Trustor set forth in **Section 1.1** to obtain and maintain insurance. Beneficiary may commingle Insurance Impounds with its own funds, and Trustor shall not be entitled to interest thereon. Beneficiary may reserve for future payments of premiums such portion of Insurance Impounds as Beneficiary in its absolute and sole discretion deems proper. If Trustor fails to deposit with Beneficiary sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand with interest from the date advanced at the Agreed Rate, or at the option of Beneficiary the latter may, without making any

advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Beneficiary may, at any time, at Beneficiary's option, apply any Insurance Impounds or Impositions Impounds under this **Section 1.4** or **Section 1.8**, any funds paid as Rents, and any other funds of Trustor held by Beneficiary to payment of any of the Obligations, in such manner and order as Beneficiary may elect, notwithstanding that such Obligations may not yet be due.

1.5 Casualties; Insurance Proceeds.

(a) Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$50,000.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within one hundred eighty (180) days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

(b) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** hereof and as required by the CC&R's (as defined in the Loan Agreement) or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust, or invalidate any act done pursuant to such default or notice of default.

1.6 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by **Section 1.1** shall inure to the benefit of and pass to the successor-in-interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.7 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment, excepting such matters arising from Beneficiary's negligence or willful misconduct. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor

shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate 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 Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; in each case, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "**Person**" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, limited liability company, limited liability partnership, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

#### 1.8 Impositions.

(a) Trustor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever (including, without limitation, non-governmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "**Imposition**" and collectively as "**Impositions**"); provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, 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 a fee, tax, or assessment on Beneficiary which is measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "**Impositions**" as defined in **Section 1.8(a)** and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If



Trustor fails to pay such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Obligations, immediately due and payable. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

(c) Subject to the provisions of **Section 1.8(d)** and upon request by Beneficiary, Trustor shall deliver to Beneficiary, within thirty (30) days after the date upon which any Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate 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 1.8**, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's absolute and sole discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "**Impositions Impounds**"). In such event, Trustor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this **Section 1.8(e)**. Beneficiary may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Beneficiary may reserve for future payment of Impositions such portion of Impositions Impounds as Beneficiary may in its absolute and sole discretion deem proper. If Trustor fails to deposit with Beneficiary sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due.

(f) Trustor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

1.9 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

1.11 Actions by Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee (at Beneficiary's direction), each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days' prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee (at Beneficiary's direction) shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) 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; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Assignment, Due on Sale or Change of Control.

(a) Trustor shall not, without the prior written consent of Beneficiary, mortgage, assign, convey, transfer, sell or otherwise dispose of or encumber (collectively a "**conveyance**") the Project (as defined in the Loan Agreement), Trustor's interest in the Project, or any part of the Project, or the income to be derived from the Project. Moreover, Beneficiary has approved the Loan in material reliance upon the ownership and control of Trustor and the Project being the same as exists as of the date this Deed of Trust is recorded. It is acknowledged that any change in such ownership or control of (a) Trustor and/or (b) the Project (whether direct or indirect and regardless of the percentage of interest conveyed) materially affects the financial risks anticipated by Beneficiary in extending the Loan. Accordingly, other than as set forth herein or in the Loan Agreement or with the prior written consent of Beneficiary, it is and shall be a default under this Deed of Trust, the Loan Agreement, the Note and all of the other Loan Documents for there to be any conveyance of any ownership interest or beneficial interest (regardless of the percentage interest conveyed or whether such interest is held as a partner, member, shareholder, beneficiary or

otherwise) in: (i) Trustor or in the Project, or (ii) the operation, management, income, or profits of or fee title to the Project (whether held directly or indirectly), or (iii) any entity holding an ownership or beneficial or controlling interest in Trustor or in the Project, or (iv) any entity which through one or more intermediaries holds any ownership interest or beneficial interest, or controlling interest (direct or indirect) in Trustor or the Project. "**Control**" hereunder means the ability of any person or entity to (1) direct the business operations or voting procedures for any entity, (2) cause the election, selection or the appointment of entity officers or managers, (3) cause the appointment of the management managing any entity, (4) cast a majority of the votes in any election or decision making process for any entity, or (5) do any of the foregoing for any intermediary entity holding any ownership or beneficial or majority interest (whether direct or indirect) in Trustor or in the Project.

(b) Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "**sale or transfer**" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25.0%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor.

(c) The foregoing limitations in this **Section 1.12** regarding conveyance and control (collectively, a "**transfer**") shall not apply to the following situations: (a) a transfer to which Beneficiary has given its prior written consent; (b) a transfer of Personal Property due to obsolescence or ordinary wear and tear or fire or casualty and which is promptly replaced by Trustor with Personal Property of equal or greater value; (c) any transfer by Trustor leasing any portion of the Project to a tenant which is expressly permitted pursuant to (i) the Loan Agreement and/or (ii) the assignment of Leases in this Deed of Trust, provided, however, Beneficiary holds a security interest in the lease and a subordination and non-disturbance agreement is granted in favor of Beneficiary on a Beneficiary approved form (unless the same is waived or not required pursuant to the Loan Agreement or the assignment of Leases in this Deed of Trust); or (d) where the transfer under applicable state or federal law governing Beneficiary and the Loan (pursuant to either statutory authority or judicial opinion) expressly prohibits the use, exercise or enforcement of said due on sale or change of control clause in the form set forth in this **Section 1.12**.

(d) In the event of any conflict among the Loan Agreement or this Deed of Trust and any other security agreement governing the Collateral for the Loan, the following conflict resolution provision shall apply: (i) if the Collateral is Personal Property and does not constitute fixtures and is not part of the Project, such security agreement governing the Personal Property shall control, unless Trustor and Beneficiary agree otherwise or (ii) if the Collateral constitutes fixtures and is part of the Project, this Deed of Trust shall control, unless Trustor and Beneficiary agree otherwise. In any event, the Loan Agreement shall control over any conflict between this Deed of Trust or the security agreement governing the Collateral. For purposes of this **Section 1.12(d)**, "**Collateral**" shall have the meaning as set forth in the Loan Agreement.

1.13 Eminent Domain.

(a) Notice of Proceedings. Trustor shall immediately notify Lender in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part or parts of the Property. Trustor further agrees to promptly take such steps as may be necessary and proper within Lender's sole judgment and at Trustor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Trustor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Lender's prior written consent.

(b) Lender's Participation. Lender may, at Lender's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Lender's choice. Trustor agrees to provide Lender with such documentation as Lender may request to permit Lender to so participate and to reimburse Lender for Lender's costs associated with Lender's participation, including Lender's reasonable attorneys' fees.

(c) Conduct of Proceedings. If Trustor fails to defend any such condemnation or expropriation proceedings to Lender's satisfaction, Lender may undertake the defense of such a proceeding for and on behalf of Trustor. To this end, Trustor irrevocably appoints Lender as Trustor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Deed of Trust, Lender will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Trustor's prior approval, which approval shall not be unreasonably withheld.

(d) Application of Net Proceeds. Lender shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("*condemnation proceeds*"). In the event that Trustor should receive any such condemnation proceeds, Trustor agrees to immediately turn over and to pay such proceeds to Lender. All condemnation proceeds, which are received by, or which are payable to either Trustor or Lender, shall be applied, at Lender's sole option and discretion, and in such manner as Lender may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Trustor and/or Lender), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property or (b) reducing the then outstanding balance of the Indebtedness, together with interest thereon, with such payments being applied in the manner provided in this Deed of Trust. Lender's receipt of such condemnation proceeds and the application of such proceeds as provided in this Deed of Trust shall not affect the lien of this Deed of Trust.

(e) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

1.14 Additional Security. No other security now existing or hereafter taken to secure the Obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor to any Trustee named herein or acting hereunder, and such successor shall, without conveyance from Trustee's predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

1.16 Inspections. Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.17 Ownership and Liens and Encumbrances.

(a) Liens in General. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisition be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Except in the case of mechanic's and materialmen's liens which are governed by **Section 1.17(b)** below, Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred twenty percent (120.0%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, 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 or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. 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 Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "*Lien or Encumbrance*" and "*Liens and Encumbrances*" mean, respectively, each and all of the following in respect of the Trust Estate: leases (except for Leases of the Property approved by Beneficiary in accordance with the Loan Agreement), other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or

adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions.

(b) Mechanic's and Materialmen's Liens.

(i) Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the 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.

(ii) 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 Property in the State Construction Registry in accordance with *Utah Code Annotated* § 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 Property that are included in the State Construction Registry and/or received by Trustor.

(iii) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing. 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 Property or recorded against the Property.

(iv) 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 work that the claimant furnished before the recording of this Deed of Trust pursuant to *Utah Code Annotated* § 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, or with respect to preliminary notice filed with respect to labor or services performed by or on behalf of a tenant, Trustor shall cause its title insurer to insure over such preliminary notice.

(v) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by *Utah Code Annotated* § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the County in which the Property is located.

(vi) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, 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 Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by 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 mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

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

(viii) 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 Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* § 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 Note.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon

any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.20 Financial Statements. Trustor shall deliver to Beneficiary such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement. Beneficiary shall have the right to audit, inspect and copy all of Trustor's books and records, relating thereto.

1.21 Trade Names. At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

1.22 Environmental Laws. Trustor represents and warrants to Lender that:

(a) (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and



reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

(b) Without otherwise limiting Trustor's covenants as provided herein, Trustor shall not without Lender's prior written consent, remove or permit the removal of sand, gravel or topsoil, or engage in borrow pit operations, or use or permit the use of the Property as a land fill or dump, or store, burn or bury or permit the storage, burning or burying of any material or product which may result in contamination of the Property or the groundwater or which may require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or request or permit a change in zoning or land use classification, or cut or remove or suffer the cutting or removal of any trees or timber from the Property.

(c) At its sole cost and expense, Trustor shall comply with and shall cause all occupants of the Property to comply with all Environmental Laws with respect to the disposal of industrial refuse or waste, and/or the discharge, processing, manufacture, generation, treatment, removal, transportation, storage and handling of Hazardous Substances, and pay immediately when due the cost of removal of any such wastes or substances from, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations and orders.

(d) Trustor shall not install or permit to be installed in or on the Property, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. Trustor shall further not install or permit the installation of any machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) on or in the Property. With respect to any such material or materials currently present in or on the Property, Trustor shall promptly comply with all applicable Environmental Laws regarding the safe removal thereof, at Trustor's expense.

(e) Trustor shall indemnify and defend Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claim relating to the presence or removal of any Hazardous Substance, or compliance with any Environmental Law. No notice from any governmental body has ever been served upon Trustor or, to Trustor's knowledge after due inquiry, upon any prior owner of the Property, claiming a violation of or under any Environmental Law or concerning the environmental state, condition or quality of the Property, or the use thereof, or requiring or calling attention to the need for any work, repairs, construction, removal, cleanup, alterations, demolition, renovation or installation on, or in connection with, the Property in order to comply with any Environmental Law; and upon receipt of any such notice, Trustor shall take any and all steps, and shall perform any and all actions necessary or appropriate to comply with the same, at Trustor's expense. In the event Trustor fails to do so, Lender may declare this Deed of Trust to be in default.

1.23 Leasehold. If a leasehold estate constitutes any portion of the Trust Estate, except to the extent permitted in the Loan Agreement, if any, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Beneficiary, which consent may be withheld by Beneficiary in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to timely pay any sums due under any lease creating the leasehold estate on or before the date due and to timely perform all obligations and agreements under said leasehold. Trustor

shall not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor, within three (3) days of its receipt, with respect to any such default or alleged default. Beneficiary shall have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

## ARTICLE 2

### ASSIGNMENT OF RENTS

2.1 Assignment of Rents. Trustor hereby collaterally assigns and grants to Beneficiary a security interest in, as additional security for the Obligations, all the Rents of the Trust Estate and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents after the occurrence of an Event of Default. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time following an Event of Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than three (3) months in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and is not continuing or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this **Article 2** is intended to be a collateral assignment from Trustor to Beneficiary. Beneficiary's rights to the Rents are not contingent upon and may be exercised without possession of the Trust Estate.

2.2 Collection Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, subject to compliance with applicable laws, 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 Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents 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. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases, and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

### 2.3 Application of Rents.

(a) Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

(b) In connection herewith, Trustor further agrees that all Rents received by Beneficiary from any lessee may be allocated, if Beneficiary so elects, to the payment of all current obligations of such lessee under its Lease and not to amounts which may be accrued and unpaid as of the date of termination of Trustor's right to collect such Rents. Beneficiary may, but shall have no obligation to, pursue any lessee for the payment of Rents which may be due under its Lease with respect to any period prior to the exercise of Beneficiary's rights under this assignment or which may become due thereafter. Beneficiary shall not be liable to any lessee for the payment or return of any security deposit under any Lease unless and to the extent that such security deposit has been paid to and received by Beneficiary, and Trustor agrees to indemnify, defend and hold Beneficiary harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a lessee with respect thereto, excepting such matters arising from Beneficiary's gross negligence or willful misconduct. Trustor further agrees that the collection of Rents by Beneficiary and the application of such Rents by Beneficiary to the costs, expenses and obligations referred to herein shall not cure or waive any default or Event of Default or invalidate any act (including, but not limited to, any sale of all or any portion of the Property or any property now or hereafter securing the Loan) done in response to or as a result of such Event of Default or pursuant to any notice of default or notice of sale issued pursuant to this Deed of Trust.

2.4 Protection of Leases. Trustor and Beneficiary agree that all lessees under any Leases shall be bound by and required to comply with the provisions of this assignment. In connection therewith, Trustor and Beneficiary further agree as follows:

(a) Notice to Lessees of Assignment. If requested by Beneficiary, Trustor shall: (i) notify each lessee under any Lease now or hereafter affecting all or any portion of the Property of the existence of this assignment and the rights and obligations of Trustor and Beneficiary hereunder; (ii) provide each present or future lessee with a copy of this Deed of Trust and the assignment of leases hereunder; and (iii) obtain each lessee's agreement to be bound and comply with the provisions of Article 2 hereof.

(b) Occurrence of Event of Default. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any lessee a notice to the effect that: (i) an Event of Default has occurred and that Beneficiary has revoked Trustor's right to collect the Rents; (ii) Beneficiary has elected to exercise its rights under this assignment; and (iii) such lessee is thereby directed to thereafter make all payments of Rents and to perform all obligations under its Lease for the benefit of Beneficiary or as Beneficiary shall direct.

(c) Notice to Lessee to Comply with Leases. Upon receipt of any such notice from Beneficiary, each lessee is hereby instructed by Trustor and Beneficiary to comply with the provisions of such notice, to make all payments of Rents and to perform all obligations under the Lease to and for the benefit of Beneficiary or as Beneficiary shall direct. Such notice and direction shall remain effective until the first to occur: (i) the receipt by Lessee of a subsequent notice from Beneficiary to the effect that such Event of Default has been cured or that Beneficiary has appointed Trustor to act as agent for Beneficiary pursuant to this assignment; (ii) the appointment of a receiver pursuant to this assignment, in which event such lessee shall thereafter make payments of Rents and perform all obligations under the Leases as may be directed by such receiver; or (iii) the issuance of an order of a court of competent jurisdiction terminating this assignment or otherwise directing such lessee to pay Rents and perform its obligations in a manner inconsistent with said notice.

(d) Lessee's Reliance on Notice from Beneficiary. Each lessee shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice.

(e) No Duty for Lessee to Investigate. Each lessee who receives a notice from Beneficiary pursuant to this assignment shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold such lessee harmless from and against any and all loss, claim, damage or liability arising from or related to payment of Rents or performance of obligations under any Lease by such lessee made in good faith in reliance on and pursuant to such notice.

(f) No Assumption by Beneficiary of Lease Obligations. The payment of Rents to Beneficiary pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Beneficiary shall not cause Beneficiary to assume or be bound by the provisions of such Lease, including, but not limited to, any duty to return any security deposit to the lessee under such Lease unless and to the extent such security deposit was paid to Beneficiary by Trustor.

(g) Assignment Binding on Lessees. The provisions of this **Section 2.4** are expressly made for the benefit of and shall be binding upon and enforceable by each lessee under any Lease now or hereafter affecting all or any portion of the Property.

2.5 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this instrument shall make Beneficiary a party-in-possession in contemplation of the law, except at the option of Beneficiary.

2.6 Indemnity. Trustor hereby agrees to indemnify and hold harmless Beneficiary and each Lender for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment, excepting such matters arising from Beneficiary's gross negligence or willful misconduct, and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

2.7 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property

by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

2.8 Unlawful Use, Medical Marijuana, Controlled Substances, and Prohibited Activities. Neither Trustor nor any tenant shall use or occupy or permit the use or occupancy of the Property in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation manufacture, distribution or marketing of any controlled substances or other contraband or any law relating to the medicinal use or distribution of marijuana. Notwithstanding the foregoing, Trustor shall have no duty to search or investigate tenants without actual knowledge of behavior violating this Section.

2.9 Assignment, Due on Sale or Change of Control.

(a) Trustor shall not, without the prior written consent of Beneficiary, mortgage, assign, convey, transfer, sell or otherwise dispose of or encumber (collectively, a “*conveyance*”) the Project (as defined in the Loan Agreement), Trustor’s interest in the Project, or any part of the Project, or the income to be derived from the Project. Moreover, Beneficiary has approved the Loan in material reliance upon the ownership and control of Trustor and the Project being the same as exists as of the date this Deed of Trust is recorded. It is acknowledged that any change in such ownership or control of (i) Trustor and/or (ii) the Project (whether direct or indirect and regardless of the percentage of interest conveyed) materially affects the financial risks anticipated by Beneficiary in extending the Loan. Accordingly, other than as set forth herein or in the Loan Agreement or with the prior written consent of Beneficiary, it is and shall be a default under this Deed of Trust, the Loan Agreement, the Notes and all of the other Loan Documents for there to be any conveyance of any ownership interest or beneficial interest (regardless of the percentage interest conveyed or whether such interest is held as a partner, member, shareholder, beneficiary or otherwise) in: (i) Trustor or in the Project, or (ii) the operation, management, income, or profits of or fee title to the Project (whether held directly or indirectly), or (iii) any entity holding an ownership or beneficial or controlling interest in Trustor or in the Project, or (iv) any entity which through one or more intermediaries holds any ownership interest or beneficial interest, or controlling interest (direct or indirect) in Trustor or the Project. “*Control*” hereunder means the ability of any person or entity to (1) direct the business operations or voting procedures for any entity, (2) cause the election, selection or the appointment of entity officers or managers, (3) cause the appointment of the management managing any entity, (4) cast a majority of the votes in any election or decision making process for any entity, or (5) do any of the foregoing for any intermediary entity holding any ownership or beneficial or majority interest (whether direct or indirect) in Trustor or in the Project.

(b) If this **Section 2.9** is breached, at the option of Beneficiary and without demand or notice, the full principal indebtedness of the Notes and other obligations under the Notes, the Loan Agreement, this Deed of Trust and the other Loan Documents shall immediately become due and payable to Beneficiary. If Beneficiary elects to accelerate payment of the principal indebtedness because of a default under this **Section 2.9**, and if the Notes or any other Loan Document contains a yield maintenance provision or a prepayment fee or prepayment premium, such acceleration shall be deemed to be a “prepayment” of the principal indebtedness under the Loan, whether or not the accelerated Loan balance is actually paid at the time of the subject conveyance. At the time the principal indebtedness is accelerated by Beneficiary, any prepayment fee or prepayment premium

or yield maintenance fee set forth in the Notes or other Loan Document shall be immediately due and payable to Beneficiary together with the balance of the unpaid principal indebtedness and all unpaid accrued interest on the Loan.

(c) The foregoing limitations in this **Section 2.9** regarding conveyance and control (collectively a “*transfer*”) shall not apply to the following situations: (i) a transfer to which Beneficiary has given its prior written consent, (ii) a transfer of Personal Property to obsolescence or ordinary wear and tear or fire or casualty and which is promptly replaced by Trustor with Personal Property of equal or greater value, (iii) any transfer by Trustor leasing any portion of the Project to a tenant which is expressly permitted pursuant to (1) the Loan Agreement and/or (2) the Assignment of Leases in this Deed of Trust, provided, however, Beneficiary holds a security interest in the lease and a subordination and non-disturbance agreement is granted in favor of Beneficiary on a Beneficiary approved form (unless the same is waived or not required pursuant to the Loan Agreement or the Assignment of Leases in this Deed of Trust), or (iv) where the transfer under applicable state or federal law governing Beneficiary and the Loan (pursuant to either statutory authority or judicial opinion) expressly prohibits the use, exercise or enforcement of said due on sale or change of control clause in the form set forth in this **Section 2.9**.

(d) In the event of any conflict among the Loan Agreement or this Deed of Trust and any other security agreement governing the Collateral for the Loan, the following conflict resolution provision shall apply: (i) if the Collateral is Personal Property and does not constitute fixtures and is not part of the Project, such security agreement governing the Personal Property shall control, unless Trustor and Beneficiary agree otherwise; or (ii) if the Collateral constitutes fixtures and is part of the Project, this Deed of Trust shall control, unless Trustor and Beneficiary agree otherwise. In any event, the Loan Agreement shall control over any conflict between this Deed of Trust or the security agreement governing the Collateral. For purposes of this **Section 2.9(d)**, “*Collateral*” shall have the meaning as set forth in the Loan Agreement.

2.10 Uniform Assignment of Rents Act. This Article 2 is subject to the Act, and in the event of any conflict or inconsistency between the provisions of this Article 2 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 3

### SECURITY AGREEMENT

#### 3.1 Creation of Security Interest.

(a) Trustor hereby grants to Beneficiary, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to Beneficiary all of Trustor’s Personal Property (as defined herein) and all other personal property assets of Trustor, including, without limitation, “Accounts”, “Cash Proceeds”, “Chattel Paper”, “Collateral”, “Deposit Accounts”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-credit Rights”, “Noncash Proceeds”, and “Tangible Chattel Paper”, as defined in the Utah Commercial Code, as more particularly described on Exhibit B hereto, all Leases, and all insurance claims and other proceeds or products thereof, whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor’s possession and control or in the possession and control of a third party.

(b) This Deed of Trust constitutes and shall be deemed to be a “security agreement” for all purposes of the Utah Uniform Commercial Code. Beneficiary shall be entitled to all the rights and remedies of a “secured party” under the Utah Uniform Commercial Code. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the UCC as amended from time to time.

(c) Trustor further agrees, at the request and option of Beneficiary, to take any and all actions Beneficiary may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Beneficiary to enforce, Beneficiary’s security interest in any and all of the Personal Property, including, without limitation, (i) causing Beneficiary’s name to be noted as Beneficiary on any certificate of title for the Personal Property or any portion thereof if such notation is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary’s security interest in such Personal Property; (ii) complying with any provision of any statute, regulation or treaty of any State or the United States as to any Personal Property if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary’s security interest in such Personal Property; (iii) obtaining governmental and other third-party waivers, consents and approvals in form and substance satisfactory to Beneficiary, including, without limitation, any consent of any licensor, lessor or other person obligated on Personal Property; and (iv) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Beneficiary.

(d) Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

(e) The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the UCC) are as stated on the first page of this Deed of Trust.

3.2 Financing Statements. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder’s office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the scope of Chapter 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Chapter 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform

Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under § 9-509(4)(b) of the Utah Uniform Commercial Code. Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

3.3 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(a) Commercial Use. The Personal Property is not used or bought for personal, family or household purposes.

(b) Location of Property; Replacement. The tangible portion of the Personal Property will be kept on or at the Property or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom 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 similar items of greater value.

(c) Trade Names. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any trade name or fictitious business name.

(d) Trustor's Legal Status. Trustor represents and warrants to Beneficiary as follows: (i) Trustor's exact legal name is as indicated in the introductory paragraph hereof and on the signature page hereof, (ii) Trustor is an organization of the type, and is organized in the jurisdiction set forth in the introductory paragraph hereof, (iii) Trustor's organizational identification number is as set forth in Exhibit D hereto, and (iv) the address listed in **Section 6.6** accurately sets forth Trustor's place of business or, if more than one, its chief executive office, as well as Trustor's mailing address, if different. Trustor covenants with Beneficiary as follows: (x) without providing at least thirty (30) days' prior written notice to Beneficiary, Trustor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (y) if Trustor does not have an organizational identification number and later obtains one, Trustor shall forthwith notify Beneficiary of such organizational identification number, and (z) Trustor will not change its type of organization, jurisdiction of organization or other legal structure.

(e) Adverse Claims. Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(f) Cumulative Rights. The grant of a security interest to Beneficiary by this Deed of Trust shall not be construed to derogate from or impair the lien or provisions of, or the rights of Beneficiary under, this Deed of Trust with respect to any property described herein which is real property, or which the parties have agreed to treat as real property.

(g) Ownership. Trustor is, or will be upon acquisition, and shall at all times remain the owner of the Personal Property, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Deed of Trust



and except for the Permitted Exceptions. Trustor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Beneficiary.

(h) Farm Products. None of the Personal Property constitutes, or is the proceeds of, "farm products" as defined in § 9a-102(34) of the Uniform Commercial Code of the State of Utah.

(i) Commercial Tort Claims. Trustor holds no commercial tort claims with respect to the Property.

(j) Fair Labor Standards Act. Trustor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act.

### 3.4 Power of Attorney.

(a) Appointment and Powers of Beneficiary. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Beneficiary's own name, for the purpose of carrying out the terms of this Deed of Trust, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Deed of Trust and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of Trustor, without notice to or assent by Trustor, to do the following:

(i) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Personal Property in such manner as is consistent with the Uniform Commercial Code of the State of Utah and as fully and completely as though Beneficiary were the absolute owner thereof for all purposes, and to do, at Trustor's expense, at any time, or from time to time, all acts and things which Beneficiary deems necessary or useful to protect, preserve or realize upon the Personal Property and Beneficiary's security interest therein, in order to effect the intent of this Deed of Trust, all at least as fully and effectively as Trustor might do, including, without limitation, (A) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (B) upon written notice to Trustor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if Beneficiary so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (C) the execution, delivery and recording, in connection with any sale or other disposition of any Personal Property, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Personal Property; and

(ii) to the extent that Trustor's authorization given in **Section 3.2** is not sufficient, to file such financing statements with respect hereto, with or without Trustor's signature, or a photocopy of this Deed of Trust in substitution for a financing statement, as Beneficiary may deem appropriate and to execute in Trustor's name such financing statements and amendments thereto and continuation statements which may require Trustor's signature.

(b) Ratification by Trustor. To the extent permitted by law, Trustor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

(c) No Duty on Beneficiary. The powers conferred on Beneficiary hereunder are solely to protect its interests in the Personal Property and shall not impose any duty upon it to exercise any such powers. Beneficiary shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Trustor for any act or failure to act, except for Beneficiary's own gross negligence or willful misconduct.

3.5 Use of Personal Property by Trustor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.6 Remedies Upon an Event of Default.

(a) Remedies. If an Event of Default shall have occurred and be continuing, in addition to the remedies provided in **Section 4.2** hereof, subject to compliance with applicable law, Beneficiary, without any other notice to or demand upon Trustor shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a Beneficiary under the Uniform Commercial Code of the State of Utah and any additional rights and remedies which may be provided to a Beneficiary in any jurisdiction in which Personal Property is located, including, without limitation:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at such location or locations within the jurisdiction(s) of Trustor's principal office(s) or at such other locations as Beneficiary, or an agent or representative designated by Beneficiary, may reasonably designate. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies

conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, the other Loan Documents or any other applicable law.

(b) Notice of Sale. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give to Trustor at least ten (10) Business Days' prior written notice of the time and place of any public sale of Personal Property or of the time after which any private sale or any other intended disposition is to be made. Trustor hereby acknowledges that ten (10) Business Days' prior written notice of such sale or sales shall be reasonable notice. Such notice may be mailed to Trustor at the address set forth in **Section 6.6**. In addition, Trustor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Beneficiary's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Personal Property and to exercise its rights and remedies with respect thereto.

(c) Proceeds of Dispositions; Expenses. Trustor shall pay to Beneficiary, on demand, any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in protecting, preserving or enforcing Beneficiary's rights and remedies under or in respect of any of the Obligations or any of the Personal Property and arising from the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made). After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Personal Property shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Beneficiary may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by §§ 9a-608(1)a)(iii) or 9a-615(1)(c) of the Uniform Commercial Code of the State of Utah, any excess shall be returned to Trustor. In the absence of final payment and satisfaction in full of all of the Obligations, Trustor shall remain liable for any deficiency. Until paid, all amounts due and payable by Trustor hereunder shall be a debt secured by the Trust Estate and shall bear, whether before or after judgment, interest at the Agreed Rate.

3.7 Successive Remedies. Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

3.8 Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on Beneficiary to exercise remedies in a commercially-reasonable manner, Trustor acknowledges and agrees that it is not commercially unreasonable for Beneficiary (a) to fail to incur expenses reasonably

deemed significant by Beneficiary to prepare Personal Property for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third-party consents for access to Personal Property to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third-party consents for the collection or disposition of Personal Property to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Personal Property or to fail to remove liens or encumbrances on or any adverse claims against Personal Property, (d) to exercise collection remedies against account debtors and other persons obligated on Personal Property directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Personal Property through publications or media of general circulation, whether or not the Personal Property is of a specialized nature, (f) to contact other persons, whether or not in the same business as Trustor, for expressions of interest in acquiring all or any portion of the Personal Property, (g) to hire one or more professional auctioneers to assist in the disposition of Personal Property, whether or not the Personal Property is of a specialized nature, (h) to dispose of Personal Property by utilizing Internet sites that provide for the auction of assets of the types included in the Personal Property or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Beneficiary against risks of loss, collection or disposition of Personal Property or to provide to Beneficiary a guaranteed return from the collection or disposition of Personal Property, or (l) to the extent deemed appropriate by Beneficiary, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Beneficiary in the collection or disposition of any of the Personal Property. Trustor acknowledges that the purpose of this **Section 3.8** is to provide non-exhaustive indications of what actions or omissions by Beneficiary would fulfill Beneficiary's duties under the Uniform Commercial Code or other law of the State of Utah or any other relevant jurisdiction in Beneficiary's exercise of remedies against the Personal Property and that other actions or omissions by Beneficiary shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this **Section 3.8**. Without limitation upon the foregoing, nothing contained in this **Section 3.8** shall be construed to grant any rights to Trustor or to impose any duties on Beneficiary that would not have been granted or imposed by this Deed of Trust or by applicable law in the absence of this **Section 3.8**.

3.9 **Marshalling.** Beneficiary shall not be required to marshal any present or future collateral security (including but not limited to the Personal Property) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Trustor hereby agrees that it will not invoke any law relating to the marshalling of Personal Property which might cause delay in or impede the enforcement of Beneficiary's rights and remedies under this Deed of Trust or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Trustor hereby irrevocably waives the benefits of all such laws.

3.10 **Fixture Filing.** Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Certain financing statement information is set forth on Exhibit D to this Deed of Trust.

## ARTICLE 4

### REMEDIES UPON DEFAULT

4.1 Events of Default. Each of the following shall constitute an event of default ("*Event of Default*"):

(a) Failure by Trustor to make any payment due and payable on the Maturity Date under the terms of the Note, this Deed of Trust or any other Loan Agreement.

(b) Failure by Trustor to make any payment due and payable under the terms of the Note, this Deed of Trust or any other Loan Document within three (3) days of when due except for any payments due on the Maturity Date.

(c) Any failure by Trustor to perform any obligation hereunder not involving the payment of money, or to comply with any other term or condition applicable to Trustor hereunder and the expiration of fifteen (15) days after written notice of such failure by Beneficiary to Trustor, unless cured within such fifteen (15) day period.

(d) Any representation or warranty by Trustor hereunder is materially false, incorrect, or misleading as of the date made.

(e) The occurrence of any conveyance not expressly permitted under **Section 1.12** hereof.

(f) The occurrence of (i) any default and the failure to cure such default during applicable cure periods, if any, or (ii) any Event of Default, (as such term is defined in any other Loan Document), under any other Loan Document.

4.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in **Section 3.6** or **Section 2.2**:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and 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 and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver pursuant to the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-201-101, *et seq.*, and as more particularly described in **Section 4.5**, or specifically enforce any of the covenants hereof;

(c) Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Trust Estate to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law; and/or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.3 **Exercise of Power of Sale.** Upon the occurrence of an Event of Default, at Beneficiary's direction, after the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the 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:

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

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

THIRD: The balance, if any, to the person or persons legally entitled to the proceeds, or 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 Annotated* § 57-1-29.

Upon any sale made under or by virtue of this **Section 4.3**, 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, Beneficiary may bid for and acquire the Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary may 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 Property or any part thereof, shall

be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Estate, and Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note or Loan Agreement to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Estate pursuant to this Deed of Trust.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of 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.

4.4 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 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 Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

4.5 Appointment of Receiver. Upon the occurrence of an Event of Default, 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 Trust Estate 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 Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated.

4.6 Remedies Not Exclusive. Trustee (at the direction of Beneficiary) and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee (at Beneficiary's direction) and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as Beneficiary in its absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to

which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

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

4.8 Reinstatement. If Trustor, Trustor's successor-in-interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 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.

4.9 Marshalling of Assets. Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary, upon a foreclosure, to first resort to the sale of any portion of the Trust Estate which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

4.10 No Merger. In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

4.11 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder and under any other deed of trust affecting the Trust Estate now or at any time in the future be mailed to it at the address set forth in **Section 6.6**.

4.12 Dispute Resolution.

(a) This Dispute Resolution Provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.

(b) Survival. This Dispute Resolution Provision shall survive any termination, amendment or expiration of this Agreement, or any other relationship between the parties.

(c) Jury Trial Waiver. Each party **waives their respective rights to a trial before a jury in connection with any Dispute**, and all **Disputes shall be resolved by a judge sitting without a jury**. If a court determines that this jury trial waiver is not enforceable for any reason, then **at any time prior to trial of the Dispute, but not later than thirty (30) days after entry of the order determining this provision is unenforceable**, any party shall be entitled to move the court for an order, as applicable: (i) compelling arbitration and staying or dismissing such litigation pending arbitration ("*Arbitration Order*") under **Section 4.12(e)** hereof or (ii) staying such litigation and compelling judicial reference under **Section 4.12(k)** hereof.



(d) Class Action Waiver. If permitted by applicable law, **each party waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.**

(e) Arbitration, if Jury Waiver Unenforceable. If (but only if) a state or federal court located outside the state of California determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to a Dispute, then any party hereto may require that said Dispute be resolved by binding arbitration pursuant to this **Section 4.12(e)** before a single arbitrator. An arbitrator shall have no authority to determine matters (i) regarding the validity, enforceability, meaning, or scope of this Dispute Resolution Provision or (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member, which matters may be determined only by a court without a jury. **By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

(f) Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, the National Arbitration Forum ("*NAF*") or Judicial Arbitration and Mediation Service, Inc. ("*JAMS*") ("*Administrator*") as selected by the initiating party. However, if the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. If *NAF* and *JAMS* both decline to administer arbitration of the Dispute, and if the parties are unable to mutually agree upon a licensed attorney to act as arbitrator with an Administrator, then either party may file a lawsuit (in a court of appropriate venue outside the state of California) and move for an Arbitration Order. The arbitrator, howsoever appointed, shall have expertise in the subject matter of the Dispute. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Lender is headquartered. The arbitrator shall apply the law of the state specified in the agreement giving rise to the Dispute.

(i) After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

(ii) Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000.00, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds

\$4,000,000.00, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within thirty (30) days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

(iii) Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* If the terms of this **Section 4.12(e)** vary from the Administrator's rules, this **Section 4.12(e)** shall control.

(g) **Reliance.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce a jury waiver, class action waiver, arbitration provision or judicial reference provision in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, material reliance upon the mutual waivers, agreements, and certifications in the four Sections of this DISPUTE RESOLUTION PROVISION.

(h) Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this Section.

## ARTICLE 5

### RELEASE AND RECONVEYANCE OF TRUST ESTATE

5.1 **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.2 **Partial Reconveyance.** At any time, without liability therefor and without notice, and without affecting the personal liability of Trustor or any other person for payment of the Obligations, Trustee shall, at the direction of Beneficiary: (a) release and reconvey by deed of reconveyance any part of the Trust Estate from the lien hereof; (b) consent to the making and recording of any maps or plats of the Trust Estate; (c) join in granting any easement on the Trust Estate; or (d) join in any extension agreement or any agreement subordinating or modifying the lien or charge hereof. If Trustee shall perform any such acts or execute complete or partial reconveyances it shall be paid a fee in accordance with its established fees and charges therefor.

## ARTICLE 6

### MISCELLANEOUS

6.1 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

6.2 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, (c) all rights and remedies that Trustor may have or be able to assert under applicable law pertaining to the rights and remedies of sureties or guarantors, and (d) the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* § 78B-6-901 (formerly *Utah Code Annotated* § 78-37-1) and *Utah Code Annotated* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

6.3 Waiver of Defenses and Release of Claims. The undersigned hereby (a) represents that neither the undersigned nor any affiliate or principal of the undersigned has any defenses to or setoffs against any indebtedness or other obligations owing by the undersigned, or by the undersigned's affiliates or principals, to Lender or Lender's affiliates (the "**Obligations**"), nor any claims against Lender or Lender's affiliates for any matter whatsoever, related or unrelated to the Obligations, and (b) releases Lender and Lender's affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Obligations, including the subject matter of this Agreement. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to the undersigned by Lender or Lender's affiliates. As used in this paragraph, the word "undersigned" does not include Lender or any individual signing on behalf of Lender. The undersigned acknowledges that Lender has been induced to enter into or continue the Obligations by, among other things, the waivers and releases in this paragraph.

6.4 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

6.5 Document Imaging. Lender shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to any of Borrower's loans, including, without limitation, this document and the Loan Documents, and Lender may destroy or archive the paper originals. The parties hereto (a) waive any right to insist or require that Lender produce paper originals, (b) agree that such images shall be accorded the same force and effect as the paper originals, (c) agree that Lender is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (d) further agree that any executed facsimile (faxed), scanned, or other imaged copy of this document or any Related Document shall be deemed to be of the same force and effect as the original manually executed document.

6.6 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested (except for any notice address which is a post office box, in which case notice shall be given by first-class mail), through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Beneficiary:           Zions Bancorporation, N.A. dba Zions First National Bank  
One South Main, Suite 400  
Salt Lake City, Utah 84133  
Attention: Jacob Despain

with a copy to:           Snell & Wilmer L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Attention: James H. Jones, Esq.

To Trustor:               Clark and Christine Ivory Foundation  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

with a copy to:           Ivory Homes  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

6.7 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

6.8 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto. All exhibits and riders attached hereto, including the full text of Exhibit E hereto, are incorporated herein by reference and are agreed to by all signatories hereto.

6.9 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the obligations, and all payments made on the 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 debt which is not secured or fully secured by the lien of this Deed of Trust.

6.10 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds 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.

6.11 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefor (including, without limitation, reasonable attorneys' fees), whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

6.12 Governing Law. THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, EXCLUDING ANY UTAH CONFLICT OF LAWS RULES.

6.13 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

6.14 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

6.15 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

6.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

6.17 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

6.18 Status of Title. Trustor represents and warrants that it is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate in the Property and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust.

6.19 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

6.20 Binding Effect. The Loan Documents will be binding upon and inure to the benefit of Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor shall not assign or delegate its obligations under this Deed of Trust.

6.21 Time of the Essence. Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

6.22 Survival. The representations, warranties, and covenants of Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

6.23 Additional State-Specific Provisions.

(a) Residential Property. Trustor represents and warrants to Beneficiary that (i) the Property is not used principally for agricultural purposes and (ii) the loan secured by this Deed of Trust was not made primarily for personal, family or household purposes. Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to construct residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees that promptly upon completion of the contemplated improvements, it will provide to a Beneficiary a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number at least every six months and more frequently at any time upon the request of Beneficiary.

(b) Water Rights.

(i) 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.

(ii) 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 non-use application with the Utah Division of Water Rights and diligently defend the non-use application and the Water Rights against any claim of forfeiture or abandonment.

(iii) 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.

(iv) 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.

(v) 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.

(vi) As used herein, "*Water Rights*", in addition to any foregoing meaning assigned in this Deed of Trust, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to 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.

(c) Environmental Matters. Notwithstanding anything to the contrary set forth in this Deed of Trust or any of the Loan Documents, this Deed of Trust shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor or Guarantor (as defined in the Loan Agreement) with respect to the Property or Improvements, including but not limited to the Environmental Indemnity (as defined in the Loan Agreement).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

**VANTAGGIO GABLERS TOWNS, L.L.C.**  
a Utah limited liability company

By: *Kevin Anglesey*  
Name: Kevin Anglesey  
Title: Manager

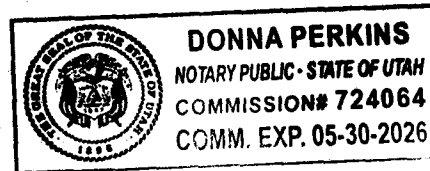
"Trustor"

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

On this 22 day of June, in the year 2023, before me Donna Perkins, a notary public, personally appeared KEVIN ANGLESEY, an individual and Manager of **VANTAGGIO GABLERS TOWNS, L.L.C.**, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

*Donna Perkins*  
Notary Signature





## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

That certain real property owned by Trustor and situated in the County of Salt Lake, State of Utah, and being described as follows:

#### **PARCEL 1:**

Lots 203 through 244, GABLER'S GROVE TOWNHOMES PHASE 1, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder on July 8, 2020 as Entry No. 13322376 in Book 2020P at Page 170.

#### **PARCEL 2:**

Lots 341 through 380, GABLER'S GROVE TOWNHOMES, PHASE 2, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder on January 25, 2022 as Entry No. 13876571 in Book 2022P at Page 36.

#### **PARCEL 3:**

Lots 489 through 508, GABLER'S GROVE TOWNHOMES, PHASE 4, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder on December 9, 2022 as Entry No. 14051263 in Book 2022P at Page 308.

#### **PARCEL A:**

A nonexclusive easement for ingress and egress, over, across, and through the Common Area and Facilities, as set forth and defined in that certain Declaration of Covenants, Conditions, and Restrictions for Towns at Gabler's, recorded December 21, 2021 as Entry No. 13852848 in Book 11285 at Page 5859, as supplemented by that certain First Supplement to Declaration of Covenants, Conditions, and Restrictions for Towns at Gabler's for Phases 2, recorded November 14, 2022 as Entry No. 14041968 in Book 11385 at Page 3035, as supplemented by that certain Second Supplement to Declaration of Covenants, Conditions, and Restrictions for Towns at Gabler's for Phase 4, recorded December 13, 2022 as Entry No. 14052412 in Book 11390 at Page 6333.

## EXHIBIT B

### DESCRIPTION OF PERSONAL PROPERTY

All of Trustor's assets, including, without limitation, "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", as defined in the Uniform Commercial Code. Such assets include, without limitation:

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Property or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Property, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Property, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants or purchasers of any portion of the Property or Improvements, rights to receive capital contributions or subscriptions from Trustor's partners or shareholders, amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest, and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments evidencing securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Property, the Improvements, the personal property described in **Paragraph (a)** above or the operation, occupancy, or use thereof, including, without limitation, all governmental and private contracts, agreements, permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Property or Improvements, all names under or by which the Property or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks, copyrights, patent and copyright applications and registrations, patterns, designs, drawings, plans and specifications, other proprietary information and intellectual property, and royalties relating in any way to the Property or the Improvements, and all management agreements with respect to the management and operation of the Property, and all goodwill and software in any way relating to the Property or the Improvements.

(e) Trustor's rights under all insurance policies covering the Property, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Property;

(g) All water, water stock and water rights relating to the Property;

(h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate;

(i) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Property and all studies, data, and drawings related thereto; and also all contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Property;

(j) All of Trustor's rights as a declarant, developer or otherwise, including, without limitation, all voting and other rights under all covenants, conditions and restrictions affecting the Property or the Improvements;

(k) All Trustor's rights in proceeds of the loan evidenced by the Note;

(l) All of Trustor's rights under any agreements affecting the Property, whether now existing or hereafter arising; and

(m) All proceeds from sale or disposition of any of the aforesaid collateral.

As used in this Exhibit B, the terms "Obligations", "Note", "Trust Estate", "Property", "Improvements", and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

## EXHIBIT C

### PERMITTED EXCEPTIONS

*“Permitted Exceptions”* means the following:

1. Sale, transfer, or other disposition of any Personal Property that is consumed or worn out in ordinary usage and that is promptly replaced with similar items of equal or greater value.
2. Liens and Encumbrances being contested in accordance with **Section 1.17** of the Deed of Trust.
3. Impositions being contested in accordance with **Section 1.8(d)** of this Deed of Trust.
4. This Deed of Trust.
5. Purchase money liens on items of Personal Property collateral.
6. The lien of current real property taxes not yet due.
7. The matters listed as title exceptions in the Title Insurance Policy provided pursuant to the Loan Agreement.

**EXHIBIT D**

**FINANCING STATEMENT INFORMATION**

The Beneficiary/Secured Party is:

Zions Bancorporation, N.A. dba Zions First National Bank  
One South Main, Suite 400  
Salt Lake City, Utah 84133  
Attention: Tim Raccuia

The Debtor is:

Clark and Christine Ivory Foundation  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

with a copy to:

Ivory Homes  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

Organizational Identification No.: 12108712-0160

The Collateral is the Personal Property (including all fixtures) described on Exhibit B to the Deed of Trust.

## EXHIBIT E

### NON-BORROWER OWNER RIDER

Exhibit E to that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (“*Deed of Trust*”) dated June 28, 2023, executed VANTAGGIO GABLERS TOWNS, L.L.C., a Utah limited liability company (“*Trustor*”), in favor of ZIONS BANCORPORATION, N.A., dba ZIONS FIRST NATIONAL BANK (“*Beneficiary*”).

To the extent the Deed of Trust secures any obligations (“*Obligations*”) contained in a promissory note and other loan documents (collectively “*Loan Documents*”) made by a party or parties other than Trustor, Trustor agrees as follows:

1. Incorporation of Terms into Deed of Trust. The terms of this Non-Borrower Owner Rider are hereby incorporated as an addendum to the Deed of Trust. Capitalized terms used herein which are not otherwise defined herein, are intended to have the definition given to them in the Deed of Trust.
2. Conditions to Exercise of Rights. Trustor hereby waives any right it may now or hereafter have to require Beneficiary, as a condition to the exercise of any remedy or other right against Trustor hereunder or under any other document executed by Trustor in connection with any Obligation: (a) to proceed against Borrower or other person, or against any other collateral assigned to Beneficiary by Trustor or Borrower or other person; (b) to pursue any other right or remedy in Beneficiary’s power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Beneficiary by Borrower or other person (other than Trustor), or otherwise to comply with the Utah Uniform Commercial Code (“*Utah UCC*”) (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Obligation or any collateral (other than the Property) for any Obligation.
3. Defenses. To the extent permitted by applicable law, Trustor waives any and all rights and defenses based upon or arising out of (a) any legal disability or other defense of Borrower, any other guarantor or other person or by reason of the cessation or limitation of the liability of Borrower from any cause other than full payment of all sums payable under the Loan Documents and satisfaction of all obligations under or in connection with any Swap Agreement between Borrower and Beneficiary; (b) any lack of authority of the officers, directors, partners, managers, members or agents acting or purporting to act on behalf of Borrower, Trustor or any principal of Borrower or Trustor, or any defect in the formation of Borrower, Trustor or any principal of Borrower or Trustor; (c) the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Beneficiary or intended or understood by Beneficiary or Trustor; (d) any act or omission by Beneficiary which directly or indirectly results in, or contributes to, the release of Borrower or any other person or any collateral for any Obligation; (e) the unenforceability or invalidity of any collateral assignment or guaranty with respect to any Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien which secures any Obligation; (f) any failure of Beneficiary to marshal assets in favor of Trustor or any other person; (g) any modification of any Obligation, including, without limitation, any renewal, extension, acceleration or increase in interest rate; (h) an election of remedies by Beneficiary, even though that election of remedies (such as a non-judicial foreclosure, if available and/or permitted, with respect to security for a guaranteed obligation) has or may have destroyed Trustor’s rights of subrogation, reimbursement and contribution against the principal by the operation of applicable law or otherwise; (i) Beneficiary’s failure to disclose to Trustor any information concerning Borrower’s financial condition or any other circumstances bearing on Borrower’s

ability to pay and perform its obligations under the Note or any of the other Loan Documents and any obligations under or in connection with any Swap Agreement between Borrower and Beneficiary, or upon the failure of any other principals of Borrower to guaranty the Loan or any obligations under or in connection with any Swap Agreement between Borrower and Beneficiary; (j) any statute or rule of law which provides that the obligation of a surety or guarantor must be neither larger in amount nor in any other respects more burdensome than that of a principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (k) any failure of Beneficiary to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (l) Beneficiary's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of § 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (m) any borrowing or any grant of a security interest under § 364 of the Federal Bankruptcy Code; (n) any right of subrogation, any right to enforce any remedy which Beneficiary may have against Borrower and any right to participate in, or benefit from, any security for the Note or the other Loan Documents or any obligations under or in connection with any Swap Agreement between Borrower and Beneficiary now or hereafter held by Beneficiary; (o) presentment, demand, protest and notice of any kind; (p) any statute of limitations affecting the liability of Trustor hereunder or the enforcement hereof; (q) use of cash collateral under § 363 of the United States Bankruptcy Code; and (r) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Trustor further specifically waives any and all rights and defenses that Trustor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Beneficiary may collect from Trustor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Beneficiary forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) Beneficiary may collect from Trustor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Trustor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Trustor may have because Borrower's debt is secured by real property. This understanding and waiver is made in addition to and not in limitation of any of the other terms and conditions of this Deed of Trust. These rights and defenses being waived by Trustor include, but are not limited to, any rights or defenses based upon deficiency limitation or anti-deficiency, redemption or other similar rights, if any. Trustor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Note or any of the other Loan Documents shall similarly operate to toll the statute of limitations applicable to Trustor's liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, Trustor further expressly waives to the extent permitted by law any and all rights and defenses, including, without limitation, any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Trustor under any applicable law.

4. Subrogation. Trustor hereby waives, until such time as all Obligations are fully performed: (a) any right of subrogation against Borrower that relates to any Obligation; (b) any right to enforce any remedy Trustor may now or hereafter have against Borrower that relates to any Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Beneficiary with respect to any Obligation.

5. Borrower Information. Trustor warrants and agrees: (a) that Trustor has not relied, and will not rely, on any representations or warranties by Beneficiary to Trustor with respect to the credit worthiness of Borrower or the prospects of repayment of any Obligation from sources other than the Property; (b) that Trustor has established and/or will establish adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of Borrower; (c) that Trustor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition; (d) that Beneficiary shall have no duty to disclose or report to Trustor any information now or hereafter known to Beneficiary with respect to Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial

condition; and (e) that Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

6. Reinstatement of Lien. Beneficiary's rights hereunder shall be reinstated and revived, and the enforceability of the Deed of Trust shall continue, with respect to any amount at any time paid on account of any Obligation which Beneficiary is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to Borrower.

7. Subordination.

7.1 Until all of the Obligations have been fully paid and performed: (a) Trustor hereby agrees that all existing and future indebtedness and other obligations of Borrower to Trustor (collectively, the "***Subordinated Debt***") shall be and are hereby subordinated to all Obligations which constitute obligations of Borrower, and upon the occurrence and during the continuation of an Event of Default the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Obligations; (b) upon the occurrence and during the continuation of an Event of Default, Trustor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, Borrower with respect to any Subordinated Debt is received by Trustor during the continuation of an Event of Default, such payment or distribution shall be held in trust and immediately paid over to Beneficiary, is hereby assigned to Beneficiary as security for the Obligations, and shall be held by Beneficiary in an interest bearing account until all Obligations have been fully paid and performed.

8. Hazardous Materials.

8.1 Special Representations and Warranties. Without in any way limiting the other representations and warranties set forth in the Deed of Trust, and after reasonable investigation and inquiry, Trustor hereby represents and warrants to the best of Trustors knowledge as of the date of hereof as follows:

(a) Hazardous Materials. Except as disclosed in writing by Borrower and Trustor to Lender, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, mold, toxic mold, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants or contaminates" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "***Hazardous Materials***"). "Hazardous Materials" shall not include commercially-reasonable amounts of such materials used in the ordinary course of operation of the Property which are used and stored in accordance with all applicable Hazardous Materials Laws (as defined below).

(b) Hazardous Materials Laws. The Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("***Hazardous Materials Laws***"), including, without limitation: the Clean Air Act, as amended,



42 U.S.C. § 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. § 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*; the Hazardous Materials Transportation Act, as amended 49 U.S.C. § 1801, *et seq.*; the Atomic Energy Act, as amended, 42 U.S.C. § 2011, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136, *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. § 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001, *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. § 300f, *et seq.*; each as now and hereafter amended, and the regulations thereunder, and any other applicable local, state and/or federal laws or regulations that govern (i) the existence, cleanup and/or remedy of contamination on the Property; (ii) the protection of the environment from released, spilled, deposited or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Materials, including any and all building materials.

- 8.2 Hazardous Materials Claims. There are no claims, actions, proceedings or investigations (“**Hazardous Materials Claims**”) pending or threatened against Trustor, the Property or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.
- 8.3 Hazardous Materials Covenants. Trustor agrees as follows:
- (a) No Hazardous Activities. Trustor shall not cause or permit the Property or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
  - (b) Compliance. Trustor shall comply, and cause the Property, the Improvements and the Project tenants to comply, with all Hazardous Materials Laws.
  - (c) Notices. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property and Improvements; (ii) any knowledge by Trustor that the Property and Improvements do not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to violate Hazardous Materials Laws.
  - (d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property or Improvements, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws, regulatory agency, governing body or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

8.4 Inspection by Beneficiary. Upon reasonable prior notice to Trustor, Beneficiary and its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Improvements for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Improvements.

8.5 Hazardous Materials Indemnity. **TRUSTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNITEES FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH INDEMNITEES MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF (a) THE USE, GENERATION, MANUFACTURE, STORAGE, TREATMENT, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, TRANSPORTATION OR PRESENCE OF ANY HAZARDOUS MATERIALS WHICH ARE FOUND IN, ON, UNDER, ABOUT OR MIGRATING FROM THE PROPERTY; (b) ANY VIOLATION OR CLAIM OF VIOLATION OF ANY HAZARDOUS MATERIALS LAWS WITH RESPECT TO THE PROPERTY; (c) ANY INDEMNITY CLAIM BY A THIRD PARTY AGAINST ONE OR MORE INDEMNITEES IN CONNECTION WITH ANY OF THE FOREGOING; OR (d) THE BREACH OF ANY COVENANTS (OR REPRESENTATIONS AND WARRANTIES) OF TRUSTOR UNDER THIS INDEMNITY. SUCH INDEMNITY SHALL INCLUDE, WITHOUT LIMITATION: (i) THE COSTS, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY REPAIR, CLEANUP OR DETOXIFICATION OF THE PROPERTY, OR THE REMOVAL OR REMEDIATION OF ANY HAZARDOUS MATERIALS (REGARDLESS OF THE MEDIUM) FROM THE PROPERTY, OR THE TAKING OF ANY EMERGENCY ACTION, WHICH IS REQUIRED BY ANY GOVERNMENTAL ENTITY OR IS OTHERWISE NECESSARY TO RENDER THE PROPERTY IN COMPLIANCE WITH ALL HAZARDOUS MATERIALS LAWS AND REGULATIONS; (ii) ALL OTHER DIRECT OR INDIRECT CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY THIRD-PARTY TORT CLAIMS OR GOVERNMENTAL CLAIMS, FINES OR PENALTIES AGAINST ANY AND ALL INDEMNITEES); AND (iii) ALL COURT COSTS AND ATTORNEYS' FEES AND EXPENSES PAID OR INCURRED BY ANY AND ALL INDEMNITEES. EACH INDEMNITEE SHALL HAVE THE RIGHT AT ANY TIME TO APPEAR IN, AND TO PARTICIPATE IN AS A PARTY IF IT SO ELECTS, AND BE REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN, ANY ACTION OR PROCEEDING INITIATED IN CONNECTION WITH ANY HAZARDOUS MATERIALS LAWS THAT AFFECT THE PROPERTY. TRUSTOR SHALL IMMEDIATELY PAY TO THE APPLICABLE INDEMNITEES UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. NOTWITHSTANDING THE FOREGOING, TRUSTOR SHALL NOT BE OBLIGATED TO INDEMNIFY HEREUNDER FOR INDEMNIFIED MATTERS TO THE EXTENT THEY RESULT SOLELY FROM BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL NON-APPEALABLE JUDGMENT. FURTHERMORE, TRUSTOR SHALL NOT BE OBLIGATED TO**

INDEMNIFY HEREUNDER WITH REGARD TO ANY HAZARDOUS MATERIALS WHICH TRUSTOR CAN CONCLUSIVELY PROVE WERE: (a) FIRST USED, GENERATED, MANUFACTURED, STORED, TREATED, RELEASED, DISCHARGED OR DISPOSED IN, ON, UNDER OR ABOUT THE PROPERTY BY ANY THIRD PARTY AFTER THE LATER OF: (i) THE DATE OF FORECLOSURE ON THE DEED OF TRUST (OR BENEFICIARY'S ACCEPTANCE OF A DEED IN LIEU THEREOF) OR (ii) THE DATE BENEFICIARY HAS ASSUMED ACTUAL AND DIRECT PHYSICAL POSSESSION OR CONTROL OF THE PROPERTY; AND (b) NOT THE RESULT OF ANY ACTION OR OMISSION OF TRUSTOR, ITS AGENTS OR AFFILIATES, IN, ON, UNDER OR NEAR THE PROPERTY; *PROVIDED, HOWEVER,* NOTWITHSTANDING THE FOREGOING, IF ANY HAZARDOUS MATERIALS ARE DISCOVERED IN, ON UNDER OR ABOUT THE PROPERTY AFTER SUCH APPLICABLE DATE THAT ARE CONSISTENT WITH THE OWNERSHIP, OCCUPANCY, USE OR OPERATION OF THE PROPERTY WHICH OCCURRED DURING TRUSTOR'S OWNERSHIP, OCCUPANCY, USE OR OPERATION OF THE PROPERTY, THEN THERE IS A PRESUMPTION THAT THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL OF, TRANSPORTATION OR PRESENCE OF ANY OF SAID HAZARDOUS MATERIALS IN, ON, UNDER, ABOUT, OR MIGRATING FROM, THE PROPERTY OCCURRED DURING TRUSTOR'S OWNERSHIP, OCCUPANCY, USE OR OPERATION OF THE PROPERTY, AND TRUSTOR SHALL CONTINUE TO BE OBLIGATED TO INDEMNIFY HEREUNDER UNLESS TRUSTOR OVERCOMES SAID PRESUMPTION WITH THE BURDEN OF PROOF. FOR PURPOSES HEREOF, "INDEMNITEES" SHALL MEAN BENEFICIARY, BENEFICIARY'S PARENTS, SUBSIDIARIES AND AFFILIATES, ANY HOLDER OF OR PARTICIPANT IN THE LOAN, AND EACH OF THEIR RESPECTIVE DIRECTORS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING.

8.6 Legal Effect. Trustor and Beneficiary agree that each provision in this **Article 8** (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of applicable law. The term of the indemnity provided for herein will commence on the date hereof. Without in any way limiting the above, it is expressly understood that Trustor's duty to indemnify the Indemnitees hereunder shall survive: (a) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof; (b) the cancellation of the Note and the release, satisfaction or reconveyance or partial release, satisfaction or reconveyance of the Deed of Trust; and (c) the satisfaction of all of Borrower's obligations under the Loan Documents.

9. Lawfulness and Reasonableness. Trustor warrants that all of the waivers in the Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Trustor may destroy or impair rights which Trustor would otherwise have against Beneficiary, Borrower and other persons, or against collateral. Trustor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

10. Enforceability. Trustor hereby acknowledges that: (a) the obligations undertaken by Trustor in this Non-Borrower Owner Rider are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Beneficiary's consideration for entering into this transaction and any Swap Agreement between Borrower and Beneficiary, Beneficiary has specifically bargained for the waiver and relinquishment by Trustor of all such defenses, and (d) Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Trustor does hereby represent and confirm to Beneficiary that Trustor is fully informed regarding, and that Trustor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Trustor, and (iv) the legal consequences to Trustor of waiving such defenses. Trustor acknowledges that Trustor makes this Non-Borrower Owner Rider with the intent that this Non-Borrower Owner Rider and all of the informed waivers herein shall each and all be fully enforceable by Beneficiary, and that Beneficiary is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

11. Miscellaneous Provisions.

11.1 Loan Sales and Participations; Disclosure of Information. Trustor agrees that Beneficiary may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities (each, a "**Participant**"), at Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such actual or potential Participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Beneficiary with respect to: (a) the Property and collateral for the Loan and its operation; (b) any party connected with the Loan (including, without limitation, Trustor, Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Beneficiary may have with any party connected with the Loan.

**Anything in this Non-Borrower Owner Rider to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Non-Borrower Owner Rider, including this Section 11.1, Beneficiary and any Participant may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such party from its obligations thereunder.**

11.2 Waiver of Right to Trial by Jury. **TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, EACH OF BENEFICIARY AND TRUSTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO**

**OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.**

- 11.3 Integration; Interpretation. The Loan Documents, including this Non-Borrower Owner Rider, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing.