

14129127 B: 11431 P: 9507 Total Pages: 56
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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

When recorded, return to:
Dykema Gossett PLLC
1717 Main Street
Suite 4200
Dallas, Texas 75201
Attn: Bob Feroze

Parcel No. 15-10-327-001

CT-168407-CAF

CONSTRUCTION DEED OF TRUST

CW SLC THE QUINCI, LLC,
a Delaware limited liability company,
Grantor,

to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**
Trustee,

for the benefit of

TREZ CAPITAL (2016) CORPORATION,
a British Columbia corporation,
Beneficiary

July 14, 2023

CONSTRUCTION DEED OF TRUST

This Construction Deed of Trust (as may be renewed, extended, modified and/or restated from time to time, this “**Deed of Trust**”), is entered into as of July 14, 2023, by **CW SLC THE QUINCI, LLC**, a Delaware limited liability company, as Grantor, whose mailing address for notice hereunder is 610 N 800 W, Centerville, Utah 84014, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, Trustee, whose address is 1996 East 6400 South, Suite 120, Murray, Utah 84121, for the benefit of the hereinafter described Beneficiary.

SECTION I **DEFINITIONS**

1.01 **Definitions.** As used herein, the following terms shall have the following meanings:

“***Affiliate***” has the meaning set forth in the Loan Agreement.

“***Anti-Terrorism Laws***” means any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders, and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 *et seq.*); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”) and the United States Treasury Department’s Office of Foreign Assets Control list of “Specifically Designated National and Blocked Persons” (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

“***Beneficiary***” means TREZ CAPITAL (2016) CORPORATION, a British Columbia corporation, whose address for notice hereunder is 1700-745 Thurlow Street, Vancouver, B.C. V6E 0C5, Attention: Mark Deer, and the subsequent holder or holders, from time to time, of the Note. Beneficiary may at times be referred to as “***Lender***” in this Deed of Trust.

“***Beneficiary’s Agent***” means Grantor, solely for the purpose of collecting Rents and applying Rents as set forth in **Section 7.1(h)** and **Section 9**, which agency shall never be deemed to be that of trustee and beneficiary for any purpose, and which agency relationship cannot be terminated by Grantor so long as the Loan Documents are in effect.

“***Charges***” means all fees, charges, and/or other things of value that are treated as interest under applicable law, and are contracted for, charged, received, taken, or reserved by Beneficiary pursuant to the Note and the Loan Documents.

“***Contracts***” means all of the right, title, and interest of Grantor, including equitable rights, in, to, and under all: (a) contracts for the purchase or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including without limitation, all earnest money or other deposits escrowed or to be escrowed or letters of

credit provided or to be provided by the purchasers under the contracts, including all amendments, supplements, and restatements thereof, and together with all payments, earnings, income, profits, and all other sums due or to become due arising from the sale of any portion of the Mortgaged Property or from the contracts, and together with any and all earnest money, security, letters of credit, or other deposits under any of the contracts; (b) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to the development, ownership, maintenance, or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or hereafter existing, including without limitation, all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required (i) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (ii) to develop and/or operate the Mortgaged Property as a residential project; (c) financing arrangements relating to the financing or purchase of any portion of the Mortgaged Property by future purchasers; (d) the Construction Contracts (as defined in the Loan Agreement); and (e) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management, or ownership of the Mortgaged Property (save and except the Leases), including without limitation maintenance and service contracts and management agreements.

“Control” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract, or otherwise.

“Debt” means as of any applicable date of determination, all items of indebtedness, obligation, or liability of a Person, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, including, without limitation, all items that should be classified as liabilities under Recognized Accounting Principles. In the case of Grantor, the term **“Debt”** shall include, without limitation, the Indebtedness and the Obligations.

“Debtor Relief Laws” has the meaning set forth in the Loan Agreement.

“Default Interest Rate” shall mean an interest rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the Maximum Rate.

“Disposition” means any sale, lease (other than pursuant to Leases), exchange, assignment, mortgage, conveyance, encumbrance, pledge or other hypothecation, transfer, trade, or other disposition of (a) all or any portion of the Mortgaged Property (or any interest therein) or (b) all or any part of the legal or beneficial ownership interest direct or indirect in Grantor except as may be expressly permitted under this Deed of Trust or other Loan Documents.

“Environmental Liabilities Agreement” means the Environmental Liabilities Agreement of even date herewith, executed by Grantor in favor of Beneficiary as it may from time to time be amended, supplemented, or restated.

“Environmental Laws” has the meaning set forth in the Environmental Liabilities Agreement.

“Equipment” has the meaning set forth in the UCC together with all of the following to the extent, if any, the same are not included within such definition: all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs, and office equipment, but if any of such types of property is leased, then only all rights and interests with respect thereto under such leases to the extent that any such lease does not prohibit or require a consent to the creation of a Lien in favor of the Beneficiary (including, without limitation, options to purchase) together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located to the extent that any of the foregoing are now owned or hereafter acquired by the Grantor.

“Event of Default” means any happening or occurrence described in ***Section 6***.

“Financial Statements” means all balance sheets, income statements, statements of profit and loss, surplus reconciliation statements, statements of cash flow, statements of sources and uses of funds, and all other financial data, statements, and reports (whether of Grantor or Guarantor) that are required to be furnished, have been furnished, or may from time to time be furnished to Beneficiary pursuant to or in connection with the Loan Documents.

“Fixtures” means all materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including without limitation, all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, call and sprinkler systems, alarm and security systems, intercom systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation systems (of people or things, including without limitation stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, and electric machinery, appurtenances, and equipment, disposals, dishwashers, refrigerators, ranges, recreational equipment and facilities of all kinds, lighting, traffic control, raw and potable water, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

“GAAP” means generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

“Governmental Authority” means all applicable courts, boards, agencies, commissions, offices, or authorities of any nature for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

“Grantor” means the individual or entity (or individuals or entities, if more than one) described as Grantor in the initial paragraph of this Deed of Trust and its successors and assigns, and all subsequent owners of all or any part of the Mortgaged Property (without hereby implying Beneficiary’s consent to any Disposition of all or any part of the Mortgaged Property).

“Guarantor” has the meaning set forth in the Loan Agreement.

“Guaranty” means any guaranty agreement (whether a full guaranty of payment and performance, or a limited guaranty of some but not all obligations of Grantor under the Loan Documents) executed by any party who is a Guarantor.

“Impositions” means (a) all Property Taxes; (b) any charges, fees, license payments, or other sums payable under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (c) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (d) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

“Improvements” means any and all buildings, covered garages, air conditioning towers, open parking areas, structures, and other improvements of any kind or nature, and any and all additions, alterations, betterments, or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

“Indebtedness” means the indebtedness evidenced by the Note or otherwise arising under any of the Loan Documents.

“Land” means all of that certain real property or interest therein situated in Salt Lake County, Utah, more particularly described in *Exhibit A*, together with all right, title, interest, and privilege of Grantor in and to: (a) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights, and public places, existing or proposed, abutting, adjacent, used in connection with, or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all air rights, all water and water rights, sands, gravel, rocks and soil, timber and crops pertaining to such real property; and (d) all other appurtenances, reversions, and remainders in or to such real property.

“Lease Rent Notice” has the meaning set forth in *Section 7.1(h)*.

“Leases” means all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security deposits and other deposits or payments made in connection therewith.

“Legal Requirements” means the requirements of all applicable laws, ordinances and regulations of any Governmental Authority.

“Lessee” means individually or collectively, a lessee or tenant under any of the Leases.

“License” has the meaning set forth in *Section 9.2*.

“Lien” means any valid and enforceable interest in any property securing an indebtedness, obligation, or liability owed to or claimed by any Person other than the owner of that property, whether that indebtedness is based on the common law, statute, or contract, including, without limitation, liens created by or pursuant to a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment, or bailment for security purposes.

“Loan” means the Indebtedness evidenced by the Note or otherwise arising under the Loan Documents.

“Loan Agreement” means the Loan Agreement dated of even date herewith executed by and between Grantor and Beneficiary in connection with the Loan.

“Loan Documents” means collectively, the Note, this Deed of Trust, the Loan Agreement and any and all other documents evidencing, securing or relating in any manner to the Loan as any of the same may be renewed, extended, modified and/or restated, from time to time.

“Loan Party” shall mean each party to the Loan Documents (other than Lender and Trez Capital Funding II, LLC).

“Losses” has the meaning set forth in *Section 8.4*.

“Material Adverse Event” means any act, event, condition, or circumstance which materially and adversely affects (a) the business condition (financial or otherwise), operations, results of operations, capitalization, liquidity, or any properties of Grantor, (b) the ability of Grantor or Guarantor to perform its obligations under any Loan Document to which it is a party or by which it is bound, or (c) the enforceability of any Loan Document.

“Maximum Rate” has the meaning set forth in the Loan Agreement.

“Minerals” means all substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide, and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron, and all other metallic substances or ores.

“Mortgaged Property” means the Land, Grantor’s interests in the Minerals, if any, Fixtures, Improvements, Personalty, Contracts, Leases, Grantor’s interest in the Plans, if any, and any interest of Grantor now owned or hereafter acquired therein, together with an interest in the Rents, and all other security and collateral of any nature now or hereafter given for the performance and discharge of the Obligations. Where the context permits or requires, the term **“Mortgaged Property”** means all or any portion of the above.

“Note” means the Promissory Note of even date herewith, secured by, among other things, this Deed of Trust, executed by Grantor and payable to the order of Beneficiary, in the stated principal amount of TWENTY-EIGHT MILLION, SIX HUNDRED THOUSAND, AND NO/100 U.S. Dollars (\$28,600,000.00), bearing interest as therein specified, containing an attorneys’ fee clause, with interest and principal being payable as therein specified, maturing on January 14, 2026 (or July 14, 2026 or January 14, 2027, as applicable, if extended in accordance with the provisions of the Note), as it may from time to time be renewed, extended, modified, restated and/or increased.

“Obligations” means any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantor, or any Loan Party to Lender or others in the Loan Documents.

“Operating Expenses” means all expenses related to the ownership, operation, management, repair, and leasing of the Land and Improvements, including Mortgaged Property insurance charges and premiums, ad valorem taxes and other Impositions, waste prevention costs, ordinary repairs and maintenance costs, environmental audit costs, property management fees, security fees, accountant fees, marketing and promotional expenses, legal expenses, Lease obligation costs, and Governmental Authority compliance costs.

“Permitted Disposition” means the disposition of any portion of the Mortgaged Property (or an interest therein) that is (i) a Lease, (ii) an easement or dedication that is necessary or desirable for the development of the Mortgaged Property as a townhome rental complex, or (iii) a sale or other disposition of Personalty or Fixtures provided that such sold or disposed item is replaced by an item of equal suitability and value.

No prepayment premium or other costs shall be payable to Beneficiary for a Permitted Disposition except for reimbursement of Beneficiary’s costs incurred.

“Permitted Exceptions” means, collectively, as of any particular time, (a) Liens for ad valorem taxes and special assessments not then delinquent; (b) this Deed of Trust and any Lien created thereby; (c) any Liens expressly permitted by the Loan Agreement, and (d) those exceptions to title set forth on Schedule B of the Proforma Loan Title Policy of Insurance prepared by Old Republic National Title Insurance Company (File No. 168407-CAF) with respect to this Deed of Trust.

“Person” means any individual, corporation, partnership (general or limited), joint venture, limited partnership, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision, political agency, or other entity.

“Personalty” means all of the right, title, and interest of Grantor in and to: (a) furniture, furnishings, equipment, machinery, and goods (including, without limitation, crops, farm products, timber and timber to be cut, and as-extracted collateral); (b) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (c) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts, or other funds or evidences of cash, credit, or indebtedness deposited by or on behalf of Grantor

with any governmental agencies, boards, corporations, providers of utility services, public or private, including, without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or other personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (d) the Plans, and (e) all other personal property of any kind or character as defined in and subject to the provisions of the UCC (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

“Plans” has the meaning set forth in the Loan Agreement.

“Prohibited Person” means any person or entity that (a) is specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (b) is owned or controlled by, or acting for or on behalf of any person or entity specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (c) beneficiary is prohibited from dealing with, or engaging in any transaction with, pursuant to any Anti-Terrorism Laws, or (d) is affiliated with any person or entity described in clauses (a) through (c) above.

“Property Taxes” means all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time before or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto.

“Recognized Accounting Principles” means GAAP, income tax basis of accounting, or, with respect to Guarantor’s Statements of Financial Position, the basis set forth therein (which shall be substantially similar to that used in the Statement of Financial Position delivered to Beneficiary prior to the date hereof), or other accounting principles reasonably acceptable to Lender, applied on a consistent basis.

“Relative” means, with respect to a particular Person, any spouse, sibling, parent, grandparent, or descendant of such Person.

“Rents” means all rents, revenues, royalties, income, issues, proceeds, bonus monies, profits (including all oil and gas or other mineral royalties and bonuses), accounts, security deposits and other types of deposits (after Grantor acquires title thereto), and other benefits paid or payable by parties (other than Grantor) to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying the Mortgaged Property.

“Subordinate Mortgage” means any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance, charge, conditional sale agreement, or other title retention agreement covering all or any portion of the Mortgaged Property executed and delivered by Grantor, the lien of which is subordinate and inferior to the lien of this Deed of Trust.

“Tax Code” means the U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

“Trustee” means the Person described as Trustee in the initial paragraph of this Deed of Trust, or, upon appointment, any substitute trustee appointed pursuant to **Section 11.4**.

“UCC” means the Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

1.02 Additional Definitions; Interpretive Provisions. As used herein, the following terms shall have the following meanings:

(a) **“hereof,” “hereby,” “hereto,” “hereunder,”** and similar terms mean of, by, to, under, and with respect to, this Deed of Trust;

(b) **“heretofore”** means before, **“hereafter”** means after, and **“herewith”** means concurrently with, the date of this Deed of Trust;

(c) **“including”** means including without limitation;

(d) words of any gender shall include the other gender where appropriate;

(e) all terms used herein, whether or not defined in **Section 1.1**, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require;

(f) all references to a particular **Section** shall refer to a **Section** in this Deed of Trust, unless otherwise specifically stated; and

(g) all capitalized terms used but not otherwise defined herein shall have the meaning given such term in the Loan Agreement or the other Loan Documents.

SECTION II

GRANT

2.01 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor hereby GRANTS, BARGAINS, SELLS and CONVEYS, unto Trustee, in trust, the Mortgaged Property (but expressly excluding Rents), subject only to the Permitted Exceptions, TO HAVE AND TO

HOLD the Mortgaged Property (but expressly excluding Rents) unto Trustee forever, and Grantor hereby binds itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; *provided, however*, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations (other than the Obligations that expressly survive the full payment of the Indebtedness) on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Beneficiary confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

SECTION III **REPRESENTATIONS AND WARRANTIES**

Grantor hereby unconditionally represents and warrants to Beneficiary, as of the date hereof and at all times during the term of this Deed of Trust, as follows:

3.01 Organization and Power. Grantor (a) is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of its formation or existence; (b) has complied with all conditions prerequisite to its doing business in the state in which the Mortgaged Property is located; and (c) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.02 Validity of Loan Documents. The execution, delivery, and performance by Grantor of and under the Loan Documents (a) are within Grantor's powers and have been duly authorized by Grantor's partners, members, managers, venturers, or other necessary parties, and all requisite actions for such authorization have been taken, (b) have received all requisite prior governmental approvals in order to be legally binding and enforceable, and (c) does not violate, conflict with, result in a breach of, or constitute (with due notice, lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of Grantor's or Guarantor's property or assets, that would reasonably be expected to result in a Material Adverse Event, except as contemplated by the Loan Documents. The Loan Documents to which Grantor is a party constitute the legal, valid, and binding obligations of Grantor, enforceable pursuant to their respective terms.

3.03 Information. All Financial Statements given or to be given to Beneficiary by Grantor or any of its Affiliates regarding Grantor are, or at the time of delivery will be, accurate and correct in all material respects. Grantor acknowledges and understands that Beneficiary may be required, and hereby authorizes Beneficiary, to obtain, verify, and record information that identifies Grantor and/or Guarantor that may include the names and addresses of such parties and other information that will allow Beneficiary to identify such parties in accordance with the

requirements of Anti-Terrorism Laws. Grantor has no material guarantees, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, or transaction or obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

3.04 Title and Lien. Grantor has good and indefeasible title to the Land (in fee simple) and Improvements, and good and marketable title to the Fixtures and Personalty, in each case free of any Liens, charges, rights of first refusal or first offer, encumbrances, claims, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles or estates of any nature, except for the Permitted Exceptions. This Deed of Trust constitutes a valid, subsisting first priority lien on the Land, the Improvements, the Leases, Grantor's interest in the Minerals, and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, and Leases (to the extent that the term Leases include items covered by the UCC); and a valid, subsisting first priority security interest in and to the Rents; all in accordance with the terms hereof, and all subject to the Permitted Exceptions.

3.05 Business Purposes. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household, or agricultural purposes. The Mortgaged Property forms no part of any property owned, used, or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Mortgaged Property is located. Grantor disclaims and renounces all claims to all or any portion of the Mortgaged Property as a homestead.

3.06 Taxes. Grantor (a) has filed on or before their respective due dates all federal, state, county, municipal, city income, and other tax returns required to have been filed by them, including, without limitation, those required under the Tax Code, (or has obtained extensions for filing those tax returns), (b) is not delinquent in filing those returns or extensions, if any, and (c) has paid all taxes and related liabilities that are due pursuant to those returns or pursuant to any assessments received by Grantor to the extent those taxes have become due.

3.07 Mailing Address. Grantor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.08 Relationship of Grantor and Beneficiary. Notwithstanding any prior business or personal relationship between Grantor and Beneficiary or any officer, director, or employee of Beneficiary, the relationship between Grantor and Beneficiary is solely that of debtor and creditor. Beneficiary has no fiduciary or other special relationship with Grantor. Grantor and Beneficiary are not partners or joint venturers and nothing contained in the Loan Documents shall be construed to suggest that the relationship between Grantor and Beneficiary is other than that of debtor and creditor.

3.09 Experience; No Reliance on Beneficiary. Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property. Grantor and Beneficiary are relying upon Grantor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Grantor is not relying on Beneficiary's expertise or business acumen regarding the Mortgaged Property. In its transactions with Beneficiary, Grantor and its principals have been represented by (or have had the opportunity to

be represented by) legal counsel independent of Beneficiary and independent of counsel for Beneficiary.

3.10 No Litigation. Except as disclosed in writing to Beneficiary, there are no (a) judicial, administrative, mediation, or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or, to Grantor's knowledge, threatened against or affecting Grantor or the Mortgaged Property; (b) outstanding or unpaid judgments against Grantor or the Mortgaged Property; or (c) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator, in each case as would reasonably be expected to result in a Material Adverse Event.

3.11 Employees. Grantor has no employees (other than such party's duly appointed officers).

3.12 Labor Relations. Grantor is not a party to any collective bargaining agreement.

3.13 Compliance with Legal Requirements. The Land and the Improvements and the intended use thereof by Grantor comply in all material respects with all applicable Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, handicap or disability legislation, flood disaster laws, applicable health and environmental laws and regulations, and all other ordinances, orders or requirements issued by any state, federal, or municipal authorities having or claiming jurisdiction over the Mortgaged Property. Grantor has complied in all material respects with all Legal Requirements applicable to Grantor or the Mortgaged Property, including, without limitation, Environmental Laws.

3.14 Separate Parcel. The Mortgaged Property may be mortgaged, conveyed, or otherwise dealt with as an independent parcel.

3.15 Intentionally Omitted.

3.16 Money Laundering; Anti-Terrorism Laws.

(a) No funds for the purchase or operation of the Mortgaged Property have been or will be derived from sources that are described in 18 U.S.C.A. §§ 1956 and 1957 as funds or property derived from "specified unlawful activity."

(b) Grantor (and each person or entity owning a material interest in Grantor) (i) is not a Prohibited Person, and (ii) has not violated any Anti-Terrorism Laws. No Prohibited Person holds or owns any material interest of any nature in Grantor, as applicable, and none of the funds of Grantor have been derived from any activity in violation of Anti-Terrorism Laws.

3.17 No Foreign Person. Grantor is not a "foreign person" within the meaning of § 1445(f)(3) of the Tax Code.

3.18 No-Defaults. There exists no material default (or event that, with the giving of notice or passage of time, or both, would result in a material default) under the provisions of any

instrument or agreement evidencing, governing, securing, or otherwise relating to any Debt of Grantor, or pertaining to any of the Permitted Exceptions.

3.19 Non-contravention. The execution, delivery, and performance by Grantor of the Loan Documents to which Grantor is a party or otherwise bound are not in contravention in any material respect of the terms of any indenture, agreement, or undertaking to which Grantor is a party or bound, unless those terms have been waived.

3.20 Consents, Approvals and Filings, Etc. Except as previously obtained or expressly provided in this Deed of Trust, no authorization, consent, approval, license, qualification, or formal exemption from, nor any filing, declaration, or registration with, any Governmental Authority and no material authorization, consent, or approval from any other Person, is required in connection with the execution, delivery, and performance by Grantor of any Loan Document to which it is a party. All authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations that have previously been obtained or made are in full force and effect and are not the subject of any attack, or, to the best knowledge of Grantor, any threatened attack, in any material respect, by appeal, direct proceeding, or otherwise.

3.21 Contracts and Agreements. Grantor is not in default (beyond any applicable period of grace or cure) in any material respect under any material contract, agreement, indenture, or instrument to which it is a party or by which it or any of its properties or assets are bound.

3.22 No Margin Stock. Grantor is not engaged principally, or as one of its important activities, directly or indirectly, in the business of extending credit for the purpose of purchasing or carrying margin stock, and none of the proceeds of the Note shall be used, directly or indirectly, to purchase or carry any margin stock or made available by Grantor in any manner to any other Person to enable or assist that Person in purchasing or carrying margin stock, or shall be otherwise used or made available for any other purpose that might violate the provisions of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System.

3.23 Financial Statements. The Financial Statements previously furnished to Beneficiary by Grantor or any of its Affiliates have been prepared under Recognized Accounting Principles. The Financial Statements fairly present the financial condition of Grantor and the results of its operations as of the dates and for the periods covered by those Financial Statements. Since the date(s) of the Financial Statements, there has been no material adverse change in the financial condition of Grantor. Grantor has no material contingent obligations, liabilities for taxes, long-term leases, or long-term commitments not disclosed by, or reserved against in, those financial statements, since filed.

3.24 Single Purpose Entities; Nature of Grantor. Grantor is a single purpose entity the only business of which is the financing, ownership, maintenance and operation of the Mortgaged Property and whose only asset is the Mortgaged Property and other assets directly related to the operation of the Mortgaged Property.

3.25 **Commencement of Construction.** Beneficiary acknowledges and agrees that work has been commenced by Grantor on the Mortgaged Property. Grantor agrees to cooperate with Beneficiary and the Title Company (as that term is defined in the Loan Agreement) to obtain such lien waivers or similar documents as are required by the Title Company so that the Title Company can provide the Title Insurance Policy (as that term is defined in the Loan Agreement).

SECTION IV **AFFIRMATIVE COVENANTS**

Grantor hereby unconditionally covenants and agrees with Beneficiary, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.01 **Payment and Performance.** Grantor shall pay the Indebtedness as and when specified in the Loan Documents, and shall perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.02 **Existence.** Grantor shall (a) preserve and maintain its existence and preserve and maintain those rights, licenses, and privileges as are material to the business and operations conducted by it, (b) qualify and remain qualified to do business in each jurisdiction in which the Land is located and where that qualification is material to its business and operations or ownership of its properties, (c) continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year, and (d) at all times maintain, preserve, and protect all of its franchises and trade names and preserve all the remainder of its property and keep it in good repair, working order, and condition.

4.03 **Compliance with Legal Requirements.** Grantor shall promptly and faithfully comply in all material respects with, conform in all material respects to, and obey in all material respects all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property. Grantor shall apply for, obtain, and maintain in effect all authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations (whether with any Governmental Authority, securities exchange, or otherwise) that are necessary in connection with the execution, delivery, or performance by Grantor under the Loan Documents.

4.04 **Lien Status.** Grantor shall protect and preserve the first priority lien and security interest status of this Deed of Trust and the other Loan Documents; and shall not permit to be created or to exist concerning the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the lien for non-delinquent ad valorem taxes and the Permitted Exceptions.

4.05 **Payment of Property Taxes.** Grantor shall duly pay and discharge, or cause to be paid and discharged, when due all Property Taxes not later than the earlier to occur of (a) the due date thereof, (b) the date any fine, penalty, interest, or cost may be added thereto or imposed thereon or (c) the date before any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Grantor shall deliver to Beneficiary a

written receipt evidencing the payment of the installment of Property Taxes promptly upon request therefor.

4.06 Maintenance and Repair. Grantor shall keep the Mortgaged Property in good order and condition and shall make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary or reasonably appropriate to keep same in such order and condition. Grantor shall use reasonable commercial efforts to prevent any act, occurrence, or neglect which might materially impair the value or usefulness of the Mortgaged Property for its intended use. If repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, then Grantor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in **Section 5.2** hereof.

4.07 Insurance. Grantor shall, at Grantor's own expense, obtain and maintain and keep in full force and effect the insurance set forth on **Exhibit B**. Grantor shall furnish to Beneficiary, on or before thirty (30) days after the request of Beneficiary while this Deed of Trust is in force and effect, a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance with this **Section 4.07**, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. It is expressly understood and agreed that the insurance coverages required in this **Section 4.07** represent Beneficiary's minimum requirements and it is further understood and agreed that in any event the insurance coverages required in this **Section 4.07** are not to be construed to void or limit Grantor's indemnity obligations contained in this Deed of Trust. Neither (A) the insolvency, bankruptcy or failure of any insurance company covering Grantor or the Mortgaged Property, (B) the failure of any insurance company to pay claims occurring, nor (C) any exclusion from or insufficiency of coverage be held in any such events, to affect, negate or waive any of Grantor's indemnity obligations under this Deed of Trust or any other provision of this Deed of Trust.

Upon any foreclosure under this Agreement or transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness, all of Grantor's right, title, and interest in the insurance policies referred to in this Paragraph (including unearned premiums) and all proceeds payable under them shall vest in the purchaser at foreclosure or other transfer, to the extent permissible under those policies. The expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the Indebtedness, shall be due and payable to Beneficiary on demand, and shall bear interest from the date paid by Beneficiary until reimbursed at the highest rate of interest applicable to any of the Indebtedness. If pursuant to the terms hereof, Beneficiary is entitled to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property, Beneficiary and Beneficiary's employees are each irrevocably appointed attorney-in-fact for Grantor and are authorized to adjust and compromise each loss without the consent of Grantor, to collect, receive, and receipt for all insurance proceeds in the name of Beneficiary or Grantor. Beneficiary and Beneficiary's employees are authorized to endorse Grantor's name on any check in payment of a loss. Beneficiary is not liable or responsible for failure to collect or to exercise

diligence in the collection of any proceeds or for the obtaining, maintaining, or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor, under any circumstances.

TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE:

(a) **GRANTOR IS REQUIRED TO: (I) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNTS SPECIFIED IN THIS DEED OF TRUST, (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS;**

(b) **GRANTOR MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND**

(c) **IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), AFTER 30 DAYS NOTICE THEREOF, BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.**

4.08 Inspection. Grantor shall permit Trustee and Beneficiary, and their respective agents, representatives, and employees, to inspect the Mortgaged Property during normal business hours, with at least 24 hours' prior notice to Grantor, subject to the rights of Lessees.

4.09 Property Reports. Grantor shall maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and shall furnish, or cause to be furnished, to Beneficiary: (a) upon the commencement of leasing of the Mortgaged Property, within sixty (60) days after the end of each calendar quarter of Grantor, an operating statement for the Mortgaged Property, such report to be in the form and in reasonable detail as Beneficiary may reasonably request, setting forth the income and expenses for the Mortgaged Property for the immediately preceding calendar month or fiscal year, as applicable, and a certificate executed by Grantor certifying that the report has been prepared under Recognized Accounting Principles, applied on a consistent basis, and is correct in all material respects; (b) upon the commencement of leasing of the Mortgaged Property, within sixty (60) days after the end of each calendar quarter or more often upon request of Beneficiary, a written statement (rent roll) certified as true and correct in all material respects by Grantor, containing the information specified below as to each of the Leases; (c) on or before sixty (60) days before the start of each fiscal year an annual operating budget for the Mortgaged Property for the next fiscal year, in form and substance reasonably acceptable to Beneficiary; and (d) upon Beneficiary's reasonable request, and at Grantor's expense, such other operating, financial, and credit information that Beneficiary may reasonably request regarding the Mortgaged Property. The rent roll specified in clause (b) above shall contain the following: tenant name, unit number, unit type, commencement and expiration date, the date rental payments began, number of months

of free rent (if applicable) or other concessions, rent, vacancies, and other pertinent information. Grantor shall deliver to Beneficiary at any time and from time to time such other financial data that Beneficiary shall reasonably request regarding the maintenance, use, and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose at the address specified herein for Grantor or at any other location that Beneficiary may approve.

4.10 [Reserved].

4.11 Leases.

(a) Grantor shall utilize the form of tenant lease reasonably approved by Lender and commonly utilized by the Property Manager (as that term is defined in the Loan Agreement) in leasing all or any part of the Land or Improvements.

(b) Grantor shall use reasonable commercial efforts to (i) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (ii) maintain each of the Leases in full force and effect during the term thereof, (iii) appear in and defend any action or proceeding in any manner connected with any of the Leases, and (iv) upon the written request of Beneficiary at any time during the existence of an Event of Default, deliver to Beneficiary true, correct, and complete copies of all Leases. Grantor shall allow Beneficiary from time to time to inspect all Leases and to make and take away copies of Leases.

(c) Other than in the ordinary course of business, without Beneficiary's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the Rents more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, or (iv) amend, modify, rescind, conceal, surrender, assign, or terminate any of the Leases, other than for prudent business purposes.

4.12 Payment for Labor and Materials. Subject to certain contest rights contained in *Section 8.11*, Grantor shall promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and shall not permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the lien of non-delinquent ad valorem taxes and the Permitted Exceptions.

4.13 Further Assurances and Corrections. From time to time, at the request of Beneficiary, Grantor shall execute, acknowledge, deliver, record, and/or file such further

instruments (including, without limitation, further deeds of trust, pledges, mortgages, lien instruments, security agreements, consents, acknowledgments, subordinations, financing statements, continuation statements, and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, in Beneficiary's reasonable opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the absolute assignments, liens, and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including, without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property, (c) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including, without limitation, any financing statement) deemed advisable by Beneficiary in Beneficiary's reasonable discretion to protect the liens and the security interests herein granted against the rights or interests of third persons, (d) promptly deliver to Beneficiary any certification or other evidence reasonably requested by Beneficiary confirming compliance by Grantor with all Anti-Terrorism Laws, and confirming that neither Grantor nor any person or party owning any interest of any nature whatsoever in Grantor is a Prohibited Person, provided that Grantor shall not be required to provide any certification or evidence with a scope greater than that in the certifications or evidence provided prior to the date hereof, and (e) pay all reasonable costs connected with any of the foregoing.

4.14 Tax on Deed of Trust. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Grantor shall immediately pay all such taxes, *provided that*, if such law, as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax, but shall reimburse Beneficiary therefor.

4.15 Statement of Unpaid Balance. At any time and from time to time, no more than once per calendar year, Grantor shall furnish promptly, upon the request of Beneficiary, a written statement or affidavit, in form satisfactory to Beneficiary, stating the unpaid balance of the Indebtedness and that to the best of Grantor's knowledge, there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.16 Expenses. Subject to the provisions of **Section 8.12** hereof, Grantor shall pay on demand all reasonable and bona fide out-of-pocket costs, fees, expenses, and other expenditures, including, without limitation, title insurance fees, examination charges, survey costs, insurance premiums, filing and recording fees, expenses incurred by Beneficiary for reasonable visits by Beneficiaries' employees and agents to inspect the Mortgaged Property, and attorneys' fees and expenses, in each case paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval, or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any third party suit to which Beneficiary or Trustee is a party involving this Deed of Trust or the Mortgaged Property) or incident to the good faith and commercially reasonable enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Beneficiary under any Loan Document.

4.17 **Address.** Grantor shall give written notice to Beneficiary and Trustee of any change of address of Grantor at least five (5) business days prior to the effective date of such change of address. Absent such official written notice of a change in address for Grantor, Beneficiary and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Grantor's address as set forth in the initial paragraph of this Deed of Trust, as same may have been theretofore changed in accordance with the provisions hereof.

4.18 **Disclosures.** Grantor shall also give prompt notice to Beneficiary of (a) any litigation or dispute, threatened against Grantor or the Mortgaged Property which would reasonably be expected to result in Material Adverse Event, (b) any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party; and (c) any change in the character of Grantor's business as it existed on the date hereof, except as contemplated by the Loan Documents. If at any time Grantor obtains knowledge that Grantor or Guarantor is, or becomes, a Prohibited Person or are indicted, arraigned or custodially detained on charges or allegations involving or relating to any Anti-Terrorism Laws, Grantor shall immediately notify Beneficiary in writing of same.

4.19 **Delivery of Contracts.** Promptly after the execution of same by all parties thereto, Grantor shall deliver to Beneficiary a true, correct, and complete copy of each Contract (other than those terminable on thirty (30) or fewer days' notice without payment or penalty) that include payment of an aggregate amount greater than \$250,000. Within twenty (20) days after a request by Beneficiary, Grantor shall prepare and deliver to Beneficiary a complete listing of all Material Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and any other information specified by Beneficiary, regarding each of those Material Contracts.

4.20 **Personalty and Fixtures.** Grantor shall deliver to Beneficiary, promptly after reasonable request therefor, any contracts, bills of sale, statements, receipted vouchers, or agreements under which Grantor claims title to any Equipment, Fixtures, or other items of personal property incorporated into the Improvements or subject to the lien of this Deed of Trust or other security agreement that secures the Obligations.

4.21 **Management Agreement.** Grantor shall manage the Mortgaged Property directly or shall enter into a management agreement in form and substance, and with a manager, reasonably acceptable to Beneficiary, and, shall execute and cause that manager to execute a subordination agreement in form and substance acceptable to Beneficiary, subordinating the management agreement and any fees payable under such management agreement to the Loan Documents and to the rights of Beneficiary under the Loan Documents.

4.22 **Notice of Construction.** Grantor shall notify Beneficiary at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will, upon request of Beneficiary, furnish to Beneficiary advance assurances satisfactory to Beneficiary that Grantor can and will pay the cost of such Improvements.

SECTION V

NEGATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.01 Use Violations. Grantor shall use commercially reasonable efforts to not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner that (a) violates in any material respect any Legal Requirement, (b) may be unreasonably dangerous, unless safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancelable any insurance then in force regarding the Mortgaged Property.

5.02 Waste; Alterations. Grantor shall not commit or permit any waste of the Mortgaged Property and, following the initial construction of the Improvements, shall not (subject to the provisions of *Sections 4.03* and *4.06* hereof or as otherwise contemplated by or permitted under the Loan Documents), without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.03 Replacement of Fixtures and Personalty. Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless (a) such item is removed temporarily for maintenance and repair, (b) such item is removed in part of Grantor's ordinary course of business, or (c) if removed permanently, such item is replaced by an article of equal suitability and value, owned by Grantor, free of any lien or security interest except as may be approved in writing by Beneficiary.

5.04 Change in Zoning. Without Beneficiary's prior written consent, Grantor shall not (a) seek or acquiesce in a zoning reclassification, zoning variance, or special exception to zoning of all or any portion of the Mortgaged Property which would alter approvals necessary to operate the then existing Improvements, (b) other than the Permitted Exceptions, grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription) other than those that are necessary or desirable for the development of the Land as a townhome rental complex, or (c) other than the Permitted Exceptions, seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property other than those that are necessary and customary for the development of the Land as a townhome rental complex.

5.05 No Drilling. Grantor shall not, without the prior written consent of Beneficiary, permit any drilling or exploration for any Minerals or any extraction, removal, or production of any Minerals from the surface or subsurface of the Land (other than by pooling, directional drilling, or by means of mines or wells situated on property other than the Land).

5.06 No Subordinate Mortgages. Grantor shall not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly

subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

5.07 Additional Debt.

(a) Guaranties. Grantor shall not guarantee, endorse, or otherwise become contingently liable in connection with any obligation of any other Person, guaranties in favor of and satisfactory to Beneficiary and endorsements for deposit or collection in the ordinary course of business.

(b) Debt. Grantor shall not create or incur any additional Debt, whether contingent or non-contingent, with respect to either Grantor or the Mortgaged Property, except (a) the Indebtedness and other debt from time to time outstanding and owing to Beneficiary, (b) unsecured trade, utility, or non-extraordinary accounts payable arising in the ordinary course of business, (c) Debt subordinated to the prior payment in full of the Indebtedness on terms and conditions approved in writing by Beneficiary, (d) Debt outstanding as of the date of this Deed of Trust that is shown on the Financial Statements previously delivered to Beneficiary, and (e) any other Debt that is specifically allowed or contemplated under the Loan Documents. Other provisions of the Deed of Trust are not intended to permit Grantor to incur Debt prohibited under this **Section 5.07**.

5.08 Encumbrances. Grantor shall not create, incur, assume, or (subject to certain contest rights under **Section 8.11**) suffer to exist any Lien on all or any part of the Mortgaged Property, except for the Permitted Exceptions.

5.09 Mergers or Dispositions. Grantor shall not (a) enter into any merger or consolidation, whether or not Grantor shall be the surviving entity, or (b) other than a Permitted Disposition, make a Disposition of all, substantially all, or any material part of its assets (whether in a single transaction or in a series of transactions).

5.10 Acquisitions. Grantor shall not purchase, acquire, or become obligated for the purchase of all or substantially all of the assets or business interests of any Person or any ownership interests of any Person.

5.11 Dividends. Upon the occurrence and during the continuance of an Event of Default, Grantor shall not declare or pay dividends on, or make any other distribution (whether by reduction of capital or otherwise) regarding any shares of its capital stock or other ownership interests, except (a) dividends payable by an Affiliate of Grantor to Grantor, (b) dividends payable solely in stock, and (c) the redemption, repurchase, or acquisition of any shares of its capital stock payable on an employee's termination pursuant to its employee stock option, repurchase, or similar plan; provided, however, that after giving effect to that redemption, repurchase, or acquisition, Grantor shall be in full compliance with the terms of the Loan Documents.

5.12 Investments. Grantor shall not make or allow to remain outstanding any investment in (whether that investment is of the character of investment in shares of stock, evidences of indebtedness, other securities, or otherwise) any loans, advances, or extensions of credit to any Person other than any investment in direct obligations of the United States of

America, any agency of the United States of America, or in certificates of deposit; *provided, however*, that no investment shall mature more than ninety (90) days after the date when made or issued.

5.13 Transactions with Affiliates. Other than as contemplated by transactions described in the Loan Documents, Grantor shall not enter into any transaction with any of its stockholders, officers, employees, partners, members or any of its Affiliates, except transactions in the ordinary course of business and on terms not less favorable than would be usual and customary in similar transactions between Persons dealing at arm's length.

5.14 Defaults on Other Obligations. Grantor shall not fail to duly perform, observe, or comply with any covenant, agreement, or other obligation to be performed, observed, or complied with by Grantor, subject to any applicable grace periods, which failure would reasonably be expected to result in Material Adverse Event.

5.15 Prepayment of Debt. Grantor shall not prepay any Debt (or take any actions that impose an obligation to prepay any Debt), except for prepayment of the Indebtedness subject to the terms of the Loan Documents, payment of unsecured trade, utility, or other accounts payable arising in the ordinary course of business.

5.16 Subordinate Debt. Grantor shall not subordinate any Debt due to Grantor from any Person to Debt of other creditors of that Person.

5.17 No Further Negative Pledges. Grantor shall not enter into or become subject to any agreement (other than the Loan Documents) that (a) prohibits Grantor or Guarantor from guaranteeing any obligations, (b) prohibits the creation or assumption of any Lien on the properties or assets of Grantor, whether now owned or later acquired; or (c) requires an obligation to become secured (or further secured) if another obligation is secured or further secured.

5.18 Accounts Receivable. Grantor shall not sell or assign any account (as defined in the UCC), account receivable, note or trade acceptance, except to Beneficiary.

5.19 No License Restrictions. Grantor shall not permit any restriction in any license or other agreement that restricts Grantor or Guarantor from granting a Lien to Beneficiary on any such parties' rights under that license or agreement.

SECTION VI

EVENTS OF DEFAULT

The term "*Event of Default*," as used in this Deed of Trust and in the other Loan Documents, shall have the same meaning as in the Loan Agreement.

SECTION VII REMEDIES

7.01 Beneficiary's Remedies Upon Default. Upon the occurrence of an Event of Default, and during the continuation thereof, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself, or otherwise, do any one or more of the following:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant contained in this Deed of Trust or the other Loan Documents, Beneficiary may, but shall have no obligation to, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall constitute part of the Indebtedness, and Grantor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest at the Default Interest Rate from the date when paid or incurred by Beneficiary. No performance or payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Beneficiary makes any payment or advance.

(b) Right of Entry. Beneficiary may, before or after the institution of any foreclosure proceedings, enter upon the Mortgaged Property and take exclusive possession of the Mortgaged Property and all related books, records, and accounts and may exercise, without interference from Grantor, all rights of Grantor regarding the management, possession, operation, protection, or preservation of the Mortgaged Property, including, without limitation, the rights to lease the same for the account of Grantor and to apply the Rents as set forth in the Utah Uniform Assignment of Rents Act (Utah Code Annotated § 57-26-101 *et seq.*) (the "**Utah Assignment of Rents Act**"). All costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as set forth in the Utah Assignment of Rents Act, shall be added to the Indebtedness and shall bear interest at the Default Interest Rate from the date of expenditure until paid. If necessary to obtain the possession provided for above, Beneficiary may invoke all legal remedies to dispossess Grantor, including, without limitation, one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, (i) Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to lease the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of Beneficiary, and (ii) Beneficiary shall not be obligated to perform or discharge any obligation, duty, or liability under this Deed of Trust, or to exercise any rights or remedies hereunder. **GRANTOR SHALL INDEMNIFY BENEFICIARY FOR, AND DEFEND AND HOLD BENEFICIARY HARMLESS FROM, ALL LIABILITY, LOSS, OR DAMAGE, THAT BENEFICIARY MAY INCUR FROM THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ALL CLAIMS AND DEMANDS THAT MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY**

ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE EVEN IF RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE OR ARISING IN STRICT LIABILITY. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT OF LOSSES ARISING FROM BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, all costs, expenses, and reasonable attorneys' fees, together with interest at the Default Interest Rate from the date of expenditure until paid, shall be added to the Indebtedness, and Grantor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the performance of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties other than Lender or its agents, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence (other than gross negligence) in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss, injury, or death to any tenant, licensee, employee, or stranger. Grantor hereby ratifies, confirms, and agrees with all actions that Beneficiary takes under this subsection with respect to the Mortgaged Property.

The remedies in this subsection are in addition to other remedies available to Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to Beneficiary. The remedies in this **Section VII** are available under and governed by the real property laws of Utah and are not governed by the personal property laws of Utah, including, without limitation, the power to dispose of personal property in a commercially reasonable manner under Section 9.610 of the UCC. No action by Beneficiary, taken pursuant to this subsection, shall be deemed to be an election to retain personal property under Section 9.620 of the UCC. Any receipt of consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Beneficiary may declare the entire unpaid balance of the Indebtedness immediately due and payable, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner on the Indebtedness. Upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law, or in equity. Notwithstanding the foregoing, in the case of an Event of Default under **Section 6.05**, and notwithstanding the lack of any notice, demand or declaration by Lender, the entire Indebtedness remaining unpaid and

outstanding shall automatically become due and payable in full, and any commitment by Lender to make any further Advances under the Loan Agreement shall be automatically and immediately terminated without any requirement of notice or demand by Beneficiary upon Grantor or any other Person, all of which are expressly waived by Grantor.

(d) Foreclosure-Power of Sale. Beneficiary may request Trustee to proceed with foreclosure under the power of sale as set forth below:

(i) Public Sale. Upon request of Beneficiary, Trustee is authorized and empowered, and it shall be Trustee's special duty, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of the Mortgaged Property. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of applicable law governing sales of Utah real property under powers of sale conferred by deeds of trust.

(ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time prior to or during the bidding, Trustee may require a bidding party, as conditions for submitting bids at the foreclosure sale, (A) to disclose its full name, state and city of residence, occupation, specific business office location, and the name and address of the principal who the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the bidding party's principal). If any such bidding party (the "Questioned Bidder") declines to comply with the above conditions, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the responses to be inadequate, then Trustee may continue the bidding with reservation. If the Trustee continues the bidding with reservation, then (1) Trustee may caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid is in the best interest of Grantor and Beneficiary, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; *provided, however*, that Trustee shall have no obligation to accept any bid except an all-cash bid. If Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee, but in no event later than 3:45 p.m., Dallas, Texas time, on the day of sale, then such sale shall be void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Intentionally Deleted.

(iv) Partial Foreclosure. Trustee, under the power of sale granted in this **Section 7.01(d)**, after any request or direction by Beneficiary, (A) may sell the Land, Improvements, Fixtures, Personalty, and other interests constituting a

part of the Mortgaged Property, as a unit and as part of a single sale, or (B) may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, and sales may be made from time to time until the Obligations are performed and discharged in full. It shall not be necessary to have present or to exhibit any of the Mortgaged Property at any sale.

(v) Trustee's Deeds. In any deeds, assignments, or other conveyances given by Trustee, all statements of fact or other recitals therein made regarding the identity of Beneficiary, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and any other action by or on behalf of Beneficiary or Trustee shall be taken by all courts of law and equity as *prima facie* evidence that such statements or recitals are true, correct, and complete and are to be accepted without further question, and Grantor does hereby ratify and confirm all acts that Trustee may lawfully do in the premises by virtue hereof.

(e) Beneficiary's Judicial Remedies. Beneficiary, or Trustee, upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations pursuant to this Deed of Trust, the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Beneficiary.

(f) Beneficiary's Right to Appointment of Receiver. Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and the performance and discharge of the Obligations, without notice to Grantor and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the rents, and Grantor irrevocably consents to the appointment of a receiver or receivers. Any such appointed receiver shall have the usual powers and duties of receivers in such matters.

(g) Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the UCC, and in conjunction with, in addition to, or in substitution for the rights and remedies under the UCC:

(i) Beneficiary may, without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;

(ii) Beneficiary may require Grantor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty;

(iii) reasonable written notice shall be delivered to Grantor as provided herein at least ten (10) days before (A) the date of public sale of the Personalty or (B) the date after which a private sale of the Personalty will be made;

(iv) any sale of Personalty made pursuant to this **Section 7.01(g)** shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty or Fixtures hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9.604(a) of the UCC;

(v) if a foreclosure sale occurs, whether made by Trustee under the power of sale, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Beneficiary, be sold as a whole;

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

(vii) after notice to Grantor, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Grantor shall be liable for all expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of **Section 7.04**. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty;

(viii) all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder regarding the nonpayment of the Indebtedness, the occurrence of any Event of

Default, Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other action by Beneficiary, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Beneficiary may dispose of the Personalty or Fixtures “as-is”, has no duty to repair or clean the Personalty or Fixtures before sale, and may disclaim warranties of title, possession, quiet enjoyment, and the like with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale;

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

(xi) Beneficiary shall have the right at any time to enforce Grantor’s rights against account debtors and obligors; and

(xii) This Deed of Trust is a “construction mortgage” for the purposes of Section 9-334 and 2A-309 of the Utah Uniform Commercial Code.

(h) Rights Relating to Rents. Grantor has, pursuant to **Section 9.01**, assigned absolutely to Beneficiary all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Beneficiary, or Trustee on Beneficiary’s behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Beneficiary may (in its sole discretion), upon the occurrence of an Event of Default, and during the continuation thereof, terminate the limited license granted to Grantor in **Section 9.02**, and thereafter direct the Lessees by written notice (“Lease Rent Notice”) to pay directly to Beneficiary the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder directly to Beneficiary, or Trustee on Beneficiary’s behalf, without any obligation on the part of Lessee to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Beneficiary, or Trustee acting on Beneficiary’s behalf, shall be applied as provided for in **Section 9.03**, *provided, however*, that if the costs, expenses, and attorneys’ fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Interest Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents, and the application thereof as set forth above shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Beneficiary, or Trustee on Beneficiary’s behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary’s behalf, of the right, power, and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary, or Trustee on Beneficiary’s behalf, shall be, or

shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Grantor to Beneficiary. In addition, from time to time during the continuation of an Event of Default, Beneficiary may elect, and notice hereby is given to each Lessee of such right, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; *provided, however*, in each instance, such subordination will not affect or be applicable to (and will expressly exclude any) lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests, or estates of any nature regarding all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(i) Other Rights. Beneficiary (i) may surrender the insurance policies, or any part thereof, maintained pursuant to **Section 4.07**, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of **Section 7.04**, and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such premiums; (ii) may apply the reserve for Property Taxes and insurance premiums, if any, required under this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the UCC, or otherwise.

(j) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under Trustee's power of sale, upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the purchased Mortgaged Property, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied to the Indebtedness pursuant to **Section 7.04**.

7.02 Other Rights of Beneficiary. Should any part of the Mortgaged Property come into the possession of Beneficiary, whether before or after default, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making any repairs, alterations, additions, and improvements thereto and taking any other action that Beneficiary may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of competent jurisdiction, or pursuant to any other rights held by Beneficiary regarding the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Beneficiary on

demand, at the place where the Note is payable, the amount of all reasonable out-of-pocket expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Mortgaged Property, together with interest at the Default Interest Rate from the date incurred by Beneficiary; and all such expenses, costs, taxes, interest, and other charges shall constitute a part of the Indebtedness. The risk of loss or damage to the Mortgaged Property, however, is on Grantor, and Beneficiary shall have no liability for a decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether the insurance in force is adequate in amount or for the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, regarding any Mortgaged Property or collateral not in Beneficiary's possession.

7.03 Possession After Foreclosure. If the liens or security interests in this Deed of Trust are foreclosed by Trustee's power of sale, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the purchased property, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.04 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this *Section VII*, or the proceeds from the surrender of any insurance policies pursuant to *Section 7.01(i)*, or any Rents collected by Beneficiary from the Mortgaged Property (following any application of such Rents in accordance with *Section 9.03*), or the reserve for Property Taxes and insurance premiums, required by the provisions of this Deed of Trust, or condemnation proceeds which Beneficiary is entitled to apply to the Indebtedness pursuant to *Section 8.01*, or insurance proceeds which Beneficiary is entitled to apply to the Indebtedness pursuant to *Section 8.02*, shall be applied by Trustee, or by Beneficiary, as the case may be, to the Indebtedness in the following order and priority: (a) to the payment of all expenses of advertising, selling, leasing, and conveying all or any part of the Mortgaged Property, and/or prosecuting or otherwise collecting rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed five percent (5%) of the proceeds thereof or sums so received; (b) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (c) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (*provided that* Trustee and Beneficiary are entitled to rely exclusively upon a commitment for title insurance or abstractor's certificate issued to determine such priority); and (d) the cash balance, if any, to Grantor. The application of proceeds of sale or

other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or other Loan Documents.

7.05 Abandonment of Sale; Dismissal of Suit. If Trustee commences a foreclosure sale pursuant to **Section 7.01(d)**, then Trustee may, at any time before completion of the sale, abandon such sale and Beneficiary may then institute a suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests in this Deed of Trust and the other Loan Documents. Alternatively, if Beneficiary institutes a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, then Beneficiary may, at any time before the entry of a final judgment, dismiss the suit and require Trustee to sell all or any part of the Mortgaged Property in accordance with the terms of this Deed of Trust.

7.06 Payment of Fees. If the Note or any other part of the Indebtedness is collected by, or if any of the Obligations are enforced by, legal proceedings in a probate or bankruptcy court or otherwise, or is placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit in which this Deed of Trust or the Mortgaged Property or any part thereof is involved, then Grantor shall pay Beneficiary's reasonable attorneys' fees and out-of-pocket expenses incurred, and such fees and expenses shall be added to the Indebtedness and shall bear interest at the Default Interest Rate from the date such costs are incurred.

7.07 Miscellaneous.

(a) Discontinuance of Remedies. If Beneficiary invokes any right, remedy, or recourse permitted under the Loan Documents, then Beneficiary may discontinue or abandon same for any reason and Grantor and Beneficiary shall be restored to their former positions regarding the Indebtedness, the Loan Documents, the Mortgaged Property, or otherwise, and the rights, remedies, recourses, and powers of Beneficiary shall continue as if they had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this **Section VII**, upon the occurrence of an Event of Default and during the continuation thereof, Beneficiary and Trustee shall have all other remedies available at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Beneficiary granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity (including, without limitation, those granted by the UCC and applicable to the Mortgaged Property or any portion thereof): (i) are cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of same shall not be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) are nonexclusive; (v) are not conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property before bringing suit to recover the

Indebtedness or suit on the Obligations; and (vi) if Beneficiary elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor before exercising any remedies in relation to the Mortgaged Property, then all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Beneficiary's option.

(d) Partial Release; Change of Security; Etc. Beneficiary may release from time to time any part of the Mortgaged Property, regardless of consideration, without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder of the Mortgaged Property, and without affecting the obligations of Grantor or any other party to perform and discharge the Obligations. The taking of additional collateral, or the amendment, extension, renewal, restatement or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted in this Deed of Trust, or affect the liability of any endorser or guarantor, or improve the right of any junior lien holder, and all collateral shall be considered taken and held as cumulative. This Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, restatement or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first priority lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is indefeasibly paid in full and the Obligations are fully performed and discharged. Beneficiary may resort to any collateral, in such order and manner as Beneficiary may elect, for payment of the Indebtedness.

(e) Waiver and Release by Grantor. Grantor irrevocably and unconditionally waives and releases: (i) all benefits that Grantor might accrue under any present or future law exempting the Mortgaged Property from attachment, levy, or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default (unless such notice is expressly required under any of the Loan Documents); and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. There are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. If Beneficiary elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property, then the remedies in this **Section VII** shall be available under and governed by the real property laws of Utah and not the personal property laws of Utah.

SECTION VIII

SPECIAL PROVISIONS

8.01 Condemnation Proceeds. Beneficiary shall be entitled to receive all sums that may be awarded or become payable to Grantor for condemnation of all or any part of the

Mortgaged Property, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Beneficiary, and Grantor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents that may be necessary from time to time to enable Beneficiary to collect any such sums. Beneficiary shall not be liable or responsible for failing to collect, or to exercise diligence in the collection of, any such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to the Indebtedness pursuant to **Section 7.04**. Notwithstanding the foregoing, Beneficiary shall make such sums available to Grantor to restore or rebuild the Mortgaged Property so taken or damaged *provided that* all of the following conditions are satisfied: (i) Beneficiary determines in good faith that it is economically, financially, and practically feasible to repair and restore the Mortgaged Property to substantially its previous condition, with such repairs and restorations being completed prior to the Maturity Date (as defined in the Note); (ii) the total cost of repairing and restoring the Mortgaged Property to substantially its previous condition, as estimated by an architect approved by Beneficiary, shall not be greater than the amount of such casualty condemnation awards together with any sums that Grantor deposits with Beneficiary in advance, for the purpose of paying for the cost of such repairs and restoration including any soft costs relating thereto; (iii) such restoration and repair shall be accomplished in accordance with the requirements and conditions of **Section 8.02(c)** hereof; and (iv) no Event of Default has occurred and is continuing, other than as may be related to the condemnation itself. To the extent Beneficiary makes such proceeds available to restore or rebuild, the Improvements shall be repaired and restored so as to be of at least equal value as prior to such damage or destruction on or before the Maturity Date. If such proceeds are made available by Beneficiary to Grantor, any surplus which may remain out of said proceeds after payment of all costs and expenses of such repair and restoration shall be applied to the Indebtedness pursuant to **Section 7.04**.

8.02 Insurance Proceeds.

(a) Grantor shall give prompt notice to Beneficiary of any material damage, destruction or casualty to the Mortgaged Property or any part thereof, whether or not covered by insurance.

(b) Beneficiary may collect the proceeds of any and all insurance required to be carried under this Deed of Trust that may become payable with respect to the Mortgaged Property or any portion thereof (and Grantor hereby authorizes and directs each insurance company to make payment of such proceeds directly to Beneficiary at Beneficiary's request) and, at Beneficiary's sole option exercised reasonably, may apply the same to the Indebtedness in the order and manner as Beneficiary may determine. Notwithstanding the foregoing, Beneficiary shall make such insurance proceeds available to Grantor to restore or rebuild the Mortgaged Property so damaged *provided that* all of the following conditions are satisfied: (i) Beneficiary determines in good faith that it is economically, financially, and practically feasible to repair and restore the Mortgaged Property to substantially its previous condition, with such repairs and restorations being completed prior to the Maturity Date (as defined in the Note); (ii) the total cost of repairing and restoring the Mortgaged Property to substantially its previous condition, as estimated by an architect approved by Beneficiary, shall not be greater than the amount

of such casualty insurance proceeds together with any sums that Grantor deposits with Beneficiary in advance, for the purpose of paying for the cost of such repairs and restoration including any soft costs relating thereto; and (iii) such restoration and repair shall be accomplished in accordance with the requirements and conditions of **Section 8.02(c)** hereof; (iv) no Event of Default has occurred and is continuing, other than as may be related to the damage, destruction or casualty itself. To the extent Beneficiary makes such proceeds available to restore or rebuild, the Improvements shall be repaired and restored so as to be of at least equal value as prior to such damage or destruction on or before the Maturity Date. If such casualty proceeds are made available by Beneficiary to Grantor, any surplus which may remain out of said insurance proceeds after payment of all costs and expenses of such repair and restoration shall, at the option of Beneficiary, be applied as a payment or prepayment of the Indebtedness.

(c) Any restoration or repair shall be commenced with due diligence and in good faith by Grantor and all funds held by Beneficiary in accordance with the terms of this **Section 8.02** shall be paid out from time to time as such restoration and repair progresses upon the written approval of Beneficiary and the written request of Grantor, which requests shall be submitted in form and substance, and with supporting notices, documentation and waivers as required for an advance of the proceeds of the Loan under the Loan Agreement.

(d) Prior to application or disbursement of any casualty insurance proceeds under this **Section 8.02**, or condemnation proceeds under **Section 8.01**, Beneficiary may deduct therefrom any third party expenses reasonably incurred in connection with the collection or handling of such proceeds, it being understood and agreed that Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, and Beneficiary shall provide Grantor a written summary of all expenses deducted from such proceeds.

(e) In the event this Deed of Trust is foreclosed, or title to any of the Mortgaged Property is transferred in extinguishment, in whole or in part, of the indebtedness secured thereby, or by transfer or conveyance in lieu of foreclosure, and in connection therewith all right, title, and interest of Grantor in and to all Insurance policies passes to (i.e., is purchased by) such transferee or purchaser, the Insurance policies shall inure to the benefit of and pass to such successor in interest of Grantor or the purchaser.

8.03 Reserve for Property Taxes and Insurance Premiums.

(a) At Beneficiary's request, upon the occurrence of an Event of Default and during the continuation thereof Grantor shall fund a reserve for the payment of all Property Taxes against or affecting the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, an amount equal to (a)(i) Property Taxes next due on the Mortgaged Property or any part thereof as reasonably estimated by Beneficiary, less (ii) all sums paid previously to Beneficiary therefor, divided by (b) the number of months to elapse until one month before the date when such Property Taxes will become due; such amount to be held by Beneficiary without interest to Grantor, unless interest is required by applicable law, to pay such

Property Taxes. Beneficiary has the discretion to credit any excess reserve against subsequent reserve payments or subsequent payments on the Note, and Grantor shall pay any deficiency in the reserve amounts to Beneficiary on or before the date when Beneficiary demands such payment to be made, but in no event after the date when such Property Taxes become delinquent. If there is a deficiency in such reserve at any time when Property Taxes are due and payable, then Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall be added to the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Interest Rate from the date of such advance through and including the date of repayment.

(b) At Beneficiary's request upon the occurrence of an Event of Default and during the continuation thereof, Grantor shall fund a reserve for the payment of all insurance premiums for the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, an amount equal to (a)(i) premiums that will next become due and payable on the insurance policies covering Grantor, the Mortgaged Property or any part thereof, or such other insurance policies required hereby or by the Loan Documents, less (ii) all sums paid previously to Beneficiary therefor, divided by (b) the number of months to elapse until one month before the date when such premiums will become due; such amount to be held by Beneficiary without interest to Grantor, unless interest is required by applicable law, to pay such premiums. Beneficiary has the discretion to credit any excess reserve against subsequent reserve payments or subsequent payments on the Note, and Grantor shall pay any deficiency in the reserve amounts to Beneficiary on or before the date when Beneficiary demands such payment to be made, but in no event after the date when such premiums become delinquent. If there is a deficiency in such reserve at any time when insurance premiums are due and payable, then Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall be added to the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Interest Rate from the date of such advance through and including the date of repayment.

8.04 INDEMNITY. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS BENEFICIARY AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM, OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED AND EVEN IF ARISING IN STRICT LIABILITY, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED (COLLECTIVELY "LOSSES"), REGARDING THE FOLLOWING: (A) ANY THIRD PARTY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR BENEFICIARY THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR BENEFICIARY, WHETHER OR NOT

ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; (B) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES, OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY; AND (C) ANY ACTION TAKEN OR NOT TAKEN BY BENEFICIARY OR TRUSTEE THAT IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES, OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, OR OTHER RIGHT, REMEDY, OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

BENEFICIARY AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES, AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE BENEFICIARY AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE THIRD PARTY ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BENEFICIARY AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN THIRTY (30) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT INTEREST RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS *SECTION 8.04* SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OF ITS RIGHT, TITLE, AND INTEREST IN OR TO THE MORTGAGED PROPERTY, AND THE EXERCISE BY BENEFICIARY OF ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT OF LOSSES ARISING FROM BENEFICIARY'S, TRUSTEE'S OR ANY OTHER INDEMNIFIED PERSON'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OR ANY LIABILITY WITH RESPECT TO WHICH APPLICABLE LAW IMPOSES STRICT LIABILITY ON BENEFICIARY, TRUSTEE OR OTHER INDEMNIFIED PERSON.

8.05 Grantor's Waiver of Subrogation. Grantor waives, only until such time as the Indebtedness is paid in full, all right to claim, recover, or subrogation that arises or may arise in its favor against Beneficiary or its officers, directors, employees, agents, attorneys, or representatives for all loss or damage to Grantor, the Mortgaged Property, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the Loan Documents. This waiver is in addition to, and not in limitation or derogation of, any other waiver or release contained in this Deed of Trust regarding any loss or damage to the parties' property. Because the above waivers preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Grantor shall immediately give to each insurance company that has issued Grantor an insurance policy (whether or not such policy is required by the Loan Documents) written notice of the terms of the above waivers, and to have all insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage because of the above waivers.

8.06 Grantor's Waiver of Setoff. Grantor shall pay the Indebtedness, or any part thereof, without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (a) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (b) any interference with any use of the Mortgaged Property; (c) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Beneficiary, or Grantor, or any action taken under this Deed of Trust by any trustee or receiver of Beneficiary or Grantor, or by any court, in any such proceeding; (e) any claim that Grantor has or might have against Trustee or Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with this Deed of Trust, the Loan Documents, or any other agreement with Grantor; or (g) any other occurrence, whether similar or dissimilar to the foregoing, whether or not Grantor has notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

8.07 Beneficiary's Setoff. Beneficiary shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Grantor in and to each and every account and other property of Grantor that are in the possession of Beneficiary to the full extent of the outstanding balance of the Indebtedness. Grantor hereby grants to Beneficiary a Lien on and security interest in, and assigns to Beneficiary, all deposits (general or special, time or demand, provisional or final) at any time held by Grantor and other indebtedness at any time owing by Beneficiary to or for the credit or for the account of Grantor, and any property of Grantor from time to time in the possession or control of Beneficiary.

8.08 Consent to Disposition. Beneficiary may base its decision to grant or withhold consent to a Disposition on such terms and conditions as Beneficiary may require, in its sole discretion, including, without limitation, (a) consideration of the creditworthiness of the proposed transferee and its management ability with respect to the Mortgaged Property; (b) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Beneficiary's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition;

(c) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents; (d) reimbursement of Beneficiary for all expenses incurred by Beneficiary in investigating the creditworthiness and management or consulting ability of the proposed transferee and in determining whether Beneficiary's security will be impaired by the proposed Disposition; (e) payment to Beneficiary of a transfer fee to cover the cost of documenting the Disposition in its records; (f) payment of Beneficiary's reasonable third party attorneys' fees in connection with such Disposition; (g) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the transferee (with or without the release of Grantor from liability for such Obligations, such release, if any, to be in Beneficiary's sole discretion); (h) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, reasonably satisfactory in form and substance to Beneficiary; (i) endorsements (to the extent available under applicable law) to any existing loan title insurance policies insuring Beneficiary's liens and security interests covering the Mortgaged Property; and (j) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.09 Consent to Subordinate Mortgage. If Beneficiary consents to the granting of a Subordinate Mortgage, or if Beneficiary's right to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Beneficiary is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, then Grantor shall not execute or deliver any Subordinate Mortgage unless (a) it shall contain express covenants to the effect that: (i) the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Deed of Trust and each term and provision hereof; (ii) if any judicial or non-judicial action or proceeding shall be instituted to foreclose the Subordinate Mortgage, then no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary; (iii) the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (iv) if any judicial or non-judicial action or proceeding shall be brought to foreclose the Subordinate Mortgage, then written notice of the commencement thereof (including, without limitation, contemporaneous delivery of copies of notices thereof) will be given to Beneficiary contemporaneously with the commencement of such action or proceeding; and (b) Grantor shall deliver a copy thereof to Beneficiary not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

8.10 Payment After Acceleration. If, after an Event of Default, and after any or all of the Indebtedness is accelerated, but before a foreclosure sale of the Mortgaged Property, and Grantor tenders to Beneficiary the payment of an amount sufficient to satisfy the accelerated Indebtedness, then such tender shall be deemed a voluntary prepayment of the Indebtedness and accordingly, Grantor, to the extent permitted by applicable law, shall also pay to Beneficiary any prepayment fee required under the Note or other Loan Documents to exercise the prepayment privilege contained therein.

8.11 Contest of Certain Claims. Notwithstanding the provisions of *Sections 4.04, 4.05, 4.12, or 5.08*, Grantor shall not be in default for failure to pay or discharge any Property Taxes or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Grantor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (b) with respect to mechanic's or materialmen's liens, Grantor shall have furnished to Beneficiary a cash deposit, endorsement or an indemnity bond reasonably satisfactory to Beneficiary with a surety reasonably satisfactory to Beneficiary, in the amount of the mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (c) Grantor shall promptly upon final determination thereof pay the amount of any such Property Taxes or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (d) the failure to pay the Property Taxes or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (e) notwithstanding the foregoing, Grantor shall immediately upon request of Beneficiary pay (and if Grantor shall fail so to do, Beneficiary may, but shall not be required to, pay or cause to be discharged or bonded against) any such Property Taxes or claim notwithstanding such contest, if in the reasonable opinion of Beneficiary the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed. Beneficiary may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Beneficiary, the entitlement of such claimant is established.

8.12 Maximum Interest. It is the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum non-usurious rate or non-usurious amount of interest payable on the Note (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to the Note, any other Loan Documents, or any other communication or writing by or between Grantor and Beneficiary related to the Indebtedness or to the transaction or transactions that are the subject matter of the Loan Documents; (b) contracted for, charged, taken, reserved, or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note; or (c) Grantor has paid or Beneficiary has received by reason of any voluntary prepayment by Grantor of the Note, then it is Grantor's and Beneficiary's intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Rate that have been collected by Beneficiary shall be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Grantor), and that the provisions of the Note and the other Loan Documents immediately be deemed reformed to reduce the amounts thereafter collectible under the Note and other Loan Documents, without the necessity of the execution of any new document, to comply with the applicable law, but to permit the recovery of the fullest amount otherwise called for; *provided, however*, if the Note has been paid in full before the end of the stated term of the Note, then Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Grantor. As a condition precedent to any claim seeking usury penalties

against Beneficiary, Grantor agrees that it shall provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by refunding such excess interest to Grantor. All sums contracted for, charged, taken, reserved, or received by Beneficiary for the use, forbearance, or detention of any debt evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note (including all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note does not exceed the Maximum Rate from time to time in effect and applicable to the Note for so long as debt is outstanding. The provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) shall not apply to the Note. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

8.13 Construction Loan. If some or all of the proceeds of the Loan are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the Maturity Date of the Note (or such earlier date as Beneficiary may reasonably establish) and Grantor shall pay in full all costs and expenses in connection with the work. Beneficiary will disburse loan proceeds under such terms and conditions as Beneficiary may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Beneficiary may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Beneficiary may reasonably request.

SECTION IX

ASSIGNMENT OF RENTS

9.01 Present Assignment. Grantor hereby absolutely and unconditionally GRANTS, BARGAINS, SELLS, and CONVEYS, the Rents unto Beneficiary to provide a source of future payment of the Indebtedness, subject only to the License and any applicable Permitted Exceptions, it being the intention of Grantor and Beneficiary that this conveyance be absolute, unconditional, presently, and immediately effective, and not a security for the repayment of the Indebtedness; TO HAVE AND TO HOLD the Rents unto Beneficiary forever and Grantor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Rents unto Beneficiary against every Person whomsoever lawfully claiming or to claim the same or any part thereof; *provided, however*, that upon the delivery and recording of a release, satisfaction, or discharge of this Deed of Trust duly executed by Beneficiary, this assignment shall terminate.

9.02 Grantor's License. Beneficiary hereby grants to Grantor a limited license (the "License"), subject to termination of the License and to the other terms and provisions of **Section 7.01(h)**, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including, without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Under the

License, Grantor shall receive all Rents and hold the same on behalf of Beneficiary as Beneficiary's Agent, and will apply the Rents so collected first to the payment of Operating Expenses, next to the performance and discharge of the Obligations then due, and next to the payment of the Indebtedness then due. Thereafter, Grantor may use the balance of the Rents collected in any manner that is not in violation of the Loan Documents. Neither this assignment nor the receipt of Rents by Beneficiary (except to the extent, if any, that Beneficiary actually receives and applies such Rents to the Indebtedness) shall effect a *pro tanto* payment of the Indebtedness. Rents actually received by Beneficiary shall be applied by Beneficiary as provided in **Section 9.3**. Beneficiary shall not be deemed to have received Rents or to have applied Rents to the Indebtedness until the money is actually received by Beneficiary. Beneficiary shall not apply Rents to the Indebtedness after foreclosure or any other transfer of all or any part of the Mortgaged Property to Beneficiary or any third party.

9.03 Reliance Upon Lease Rent Notice. Upon receipt from Beneficiary of a Lease Rent Notice, each Lessee is authorized and directed to pay directly to Beneficiary all Rents thereafter accruing, and the receipt of Rents by Beneficiary shall be a release of such Lessee to the extent of all amounts so paid. The receipt by a Lessee of a Lease Rent Notice shall be sufficient authorization for such Lessee to make all future payments of Rents directly to Beneficiary and each such Lessee shall be entitled to rely on the Lease Rent Notice and shall have no liability to Grantor for any Rents paid to Beneficiary after receipt of the Lease Rent Notice. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all Operating Expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. The Indebtedness will not be reduced under this **Section 9.03** except to the extent, if any, that Beneficiary actually receives and applies any Rents to the Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor any Rents so received by Beneficiary. As between Grantor and Beneficiary, and any Person claiming through or under Grantor, other than any Lessee who has not received a Lease Rent Notice, this assignment is intended to be absolute, unconditional, presently, and immediately effective, and not a security for the repayment of the Indebtedness and the Obligations. The Lease Rent Notice is intended solely for the benefit of the Lessees and shall never inure to the benefit of Grantor or any Person claiming through or under Grantor, other than a Lessee who has not received such Lease Rent Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER.

9.04 Utah Assignment of Rents Act. It is the intention of Grantor and Beneficiary that the assignment set forth herein comply with the Utah Assignment of Rents Act, as amended, and that Lender have all rights and remedies set forth therein.

SECTION X

SECURITY AGREEMENT

10.01 **Security Interest.** This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a “Security Agreement” on personal property within the meaning of the UCC, and (c) until terminated pursuant to **Section II**, shall constitute a first priority security interest under the UCC as to property within the scope thereof. To this end, Grantor GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS, and SETS OVER, unto Trustee and Beneficiary, a security interest in all of Grantor’s right, title, and interest in, to, under, and with respect to the Personalty, Fixtures, Contracts, and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Grantor, Beneficiary, and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of “Leases” that are governed by the UCC be covered by the security interest granted in this **Section 10**; and all items contained in the definition of “Leases” that are not governed by the UCC be covered by the provisions of **Section II**.

10.02 **Financing Statements.** Grantor shall execute and deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary, such “Financing Statements” and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary’s security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest. Grantor authorizes Beneficiary to prepare and file new financing statements, financing statement amendments, and financing statement continuations that describe all or any portion of the Mortgaged Property as collateral thereunder, and Beneficiary may file such statements without any signature of Grantor or of a representative of Grantor appearing thereon, where such filings are permitted by applicable law.

10.03 **No Changes.** Grantor shall not change its state of its organization or registration, or change its name, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Beneficiary’s consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements, and other instruments that may be necessary to effectively evidence or perfect Beneficiary’s security interest in the Mortgaged Property as a result of such changes.

10.04 **Fixture Filing and Construction Mortgage.** This Deed of Trust secures future advances to be used for construction of improvements on the Land. Accordingly, this Deed of Trust constitutes a “construction mortgage” under the UCC. This Deed of Trust shall also constitute a “fixture filing” under the UCC. All or part of the Mortgaged Property may be or become fixtures; information concerning the security interest herein granted may be obtained from the debtor (Grantor) at the address set forth in the first paragraph of this Deed of Trust and from the secured party (Beneficiary) at the address set forth in **Section I**.

SECTION XI **CONCERNING TRUSTEE**

11.01 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust created in this Deed of Trust or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested to do so by a written instrument signed by Beneficiary and Trustee is tendered security and indemnity satisfactory to Trustee against all cost, expense, and liability arising therefrom. Trustee is not responsible for the execution, acknowledgment, or validity of the Loan Documents, for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation regarding such matters or regarding the rights, remedies, and recourses of Beneficiary.

11.02 Certain Rights. With the approval of Beneficiary, Trustee may take any or all of the following actions: (a) select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and Trustee shall be fully protected in relying on the advice of counsel regarding such legal matters; (b) execute any of the trusts and powers hereof and perform any duty hereunder either directly or through its agents or attorneys; (c) select and employ, regarding the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances, except for Trustee's gross negligence or bad faith; and (d) all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. If Trustee, or anyone under Trustee's powers, enters upon the Mortgaged Property, then Trustee shall not be personally liable for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee may rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for services rendered by Trustee. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

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

11.04 Successor Trustees. Trustee may resign by giving written or verbal notice of resignation to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute

trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of Trustee, then Beneficiary has the full power to appoint any such substitute trustees that shall succeed to all the estates, rights, powers, and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustee is requested or required pursuant to this Deed of Trust or applicable law.

11.05 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates, rights, powers, and duties of Trustee, then, upon request by Trustee or substitute trustee, Grantor shall make, execute, acknowledge, deliver, and cause to be recorded and/or filed all such deeds, conveyances, and instruments.

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

11.07 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

SECTION XII

MISCELLANEOUS

12.01 Release. If the Indebtedness is paid in full pursuant to this Deed of Trust, the Note, and the other Loan Documents, and if Grantor shall perform all of the Obligations (other than Obligations that expressly survive the full payment of the Indebtedness) to be performed and discharged pursuant to this Deed of Trust, the Note and the other Loan Documents, then this conveyance shall become void and be released at Grantor's request and expense. Upon release of

this Deed of Trust, all obligations, if any, of Beneficiary to make advances under this Deed of Trust or the other Loan Documents shall terminate.

12.02 Performance at Grantor's Expense. Subject to the maximum interest provisions of **Section 8.12**, Grantor shall (a) pay all reasonable third party legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (b) reimburse Beneficiary, promptly upon demand, for all reasonable third party amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Grantor under the Loan Documents, including, without limitation, all court costs, attorneys' fees (including, without limitation, fees for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters in connection with the Loan Documents; and (c) all other reasonable third party expenses of performing or complying with the Obligations. Except for the expenses that are included within the definition of "Indebtedness," the payment of any expenses, including, without limitation, those set forth above, shall not be credited against any installment on or portion of the Indebtedness.

12.03 Survival of Obligations. The Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness has been paid in full; *provided, however*, that any Obligations that expressly survive the full payment of the Indebtedness shall continue in full force and effect until otherwise terminated.

12.04 Recording and Filing. Grantor shall cause the Loan Documents requested by Beneficiary and any amendments, supplements, and restatements thereof to be recorded, filed, re-recorded, and refiled in such manner and in such places that Trustee or Beneficiary shall reasonably request, and Grantor shall pay all recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.05 Notices. Whenever any notice is required or permitted to be given under the terms of this Deed of Trust, the same shall, except as otherwise expressly provided for in this Deed of Trust, be given in writing, and sent by: (a) certified mail, return receipt requested, postage pre-paid; (b) a national overnight delivery service; (c) hand delivery with written receipt acknowledged; or (d) facsimile, followed by a copy sent in accordance with **clause (b)** or **(c)** of this **Section 12.05** sent the same day as the facsimile, in each case to the address or facsimile number (together with a contemporaneous copy to each copied addressee), as applicable, set forth in the opening paragraph of this Deed of Trust and, the definition of "Beneficiary" set forth in **Section 1.01**. Beneficiary and Grantor shall not conduct communications contemplated by this Deed of Trust by electronic mail or other electronic means, except by facsimile transmission as expressly provided in this **Section 12.05**, and the use of the phrase "in writing" or the word "written" shall not be construed to include electronic communications except by facsimile transmissions as expressly provided in this **Section 12.05**. Any notice required or given hereunder shall be deemed received the same Business Day if sent by hand delivery or facsimile, the next Business Day if sent by overnight courier, or upon deposit thereof in the U.S. Mail if sent by certified mail, return receipt requested; *provided that* any notice received after 5:00 p.m. local time at the location of delivery on any Business Day or received on any day that is not a Business Day shall be deemed to have been received on the following Business Day. Notwithstanding the foregoing, notices in connection with posting for foreclosure delivered

pursuant to **Section 7.01(d)** shall be effective when given in accordance with the requirements of Utah Code Annotated § 57-1-25 or any successor statute.

12.06 Covenants Running with the Land. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Beneficiary.

12.07 Successors and Assigns. Subject to the provisions of **Sections 6.07** and **6.08** hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through or under them.

12.08 No Waiver; Severability. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor or others of all such terms, provisions, and conditions. No Event of Default shall be waived by Beneficiary except by written instrument specifying the scope and terms of that waiver, signed by an authorized officer of Beneficiary. Any written waiver shall be effective only for the purpose(s) and time(s) given. No waiver shall extend to any other or further event or circumstance. Grantor expressly agrees that this **Section 12.08** may not be waived or modified by Beneficiary by course of performance, estoppel or otherwise. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances, nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.09 Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 Waiver of Fraudulent Inducement. Neither Beneficiary nor any Affiliate of Beneficiary has made any representation, warranty, or statement to Grantor to induce Grantor to execute this Deed of Trust. Grantor expressly waives any claim of fraudulent inducement to

execute this Deed of Trust and further disclaims any reliance on statements or representations of Beneficiary in waiving such claim.

12.11 Governing Law; Service of Process. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Texas; provided, however, that all provisions of this Deed of Trust relating to the creation, perfection, foreclosure and enforcement of the liens and security interests created pursuant hereto shall be governed by and construed according to the laws of the State of Utah. Each of the parties hereto agree that service of process upon it may be made by certified or registered mail, return receipt requested at the address for notices contained in the recitals hereof, as provided in *Section 12.05* above.

12.12 Waiver of Consequential, Punitive and Speculative Damages. In connection with any action, suit, or proceeding relating to or arising out of this Deed of Trust or any other Loan Documents, Grantor and Beneficiary each mutually waive to the fullest extent permitted by applicable law any claim for consequential, punitive, or speculative damages.

12.13 Controlling Agreement. If the loan evidenced by the Note is made pursuant to a loan agreement regarding the construction of Improvements on the Land and the funding of the principal amount of the Note, the terms of the loan agreement shall control over any conflicting provision of this Deed of Trust. If this Deed of Trust conflicts with any of the other Loan Documents, then this Deed of Trust shall control. The parties acknowledge that they were represented by competent counsel in connection with the negotiation, drafting, and execution of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the drafting party.

12.14 Subrogation. If any of the proceeds of the Note are used to extinguish, extend, or renew any previous indebtedness against the Mortgaged Property, then Beneficiary, to the extent of such funds so used, shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property previously held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather continue in full force and effect in favor of Beneficiary and shall merge with the lien and security interest created herein as cumulative security for the performance and discharge of the Obligations.

12.15 Payments. Payment of any part of the Indebtedness other than of the required amount in immediately available funds at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in immediately available funds at the place where the Note is payable (or such other place that Beneficiary, in Beneficiary's sole discretion, has established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due, and the continuation of such failure beyond the Cure Period provided in *Section 6.01* shall be and continue to be an Event of Default.

12.16 **Exceptions to Covenants.** Grantor shall not be permitted to take any action or to fail to take any action with regard to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

12.17 **Reliance.** Grantor acknowledges (a) that Beneficiary, by entering into the loan transaction evidenced by the Loan Documents and by accepting this Deed of Trust, is expressly and primarily relying on the material truth and accuracy of the foregoing warranties and representations set forth in *Section III*, without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property that may have been conducted by Beneficiary; (b) that Beneficiary has relied on such warranties and representations before entering into this Deed of Trust; (c) that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and accepting this Deed of Trust; and (d) that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

12.18 **Headings.** The Section and Subsection headings in this Deed of Trust are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Sections or Subsections.

12.19 **Entire Agreement.** **THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

12.20 **Amendment.** The provisions hereof and of the other Loan Documents may be amended or waived only by an instrument in writing signed by Grantor and Beneficiary.

12.21 **WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE**

FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.21.

12.22 Counting of Days. The term “*days*” when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or other day not a business day, the period shall be deemed to end on the next succeeding business day. The term “*business day*” or “*Business Day*” when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in British Columbia, Canada and national banks located in the State of Utah are authorized by law to be closed.

12.23 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee, or any third party purchaser or otherwise.

12.24 USA Patriot Act Notice. Beneficiary hereby notifies Grantor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Beneficiary is required to obtain, verify and record information that identifies Grantor, which information includes the name and address of Grantor and other information that will allow Beneficiary to identify Grantor in accordance with the Act.

12.25 Revolving Credit. The Loan is a revolving credit facility and amounts repaid by Grantor may be re-borrowed but only at the option of Beneficiary and upon terms and conditions acceptable to Beneficiary at its option, it being understood and agreed that Grantor may make a request to Beneficiary to re-borrow amounts previously repaid by Grantor under the Loan; provided, however, Beneficiary shall have no obligation to permit any such re-borrowing and if Beneficiary elects, at its option, to permit such re-borrowing, the terms and conditions upon which such re-borrowing shall occur shall be those determined by Beneficiary at its option.

SECTION XIII **LOCAL LAW PROVISIONS**

To the extent any provision of this Section XIII is in direct conflict with any other term and condition of this Deed of Trust, the terms of this Section XIII shall control, govern and prevail, to the extent of any such conflict.

13.01 Assignment of Rents & Security Agreement. This Deed of Trust constitutes an assignment of rent pursuant to the Utah Uniform Assignment of Rents Act (Utah Code Annotated § 57-26-101 *et seq.*). This Deed of Trust also constitutes a Security Agreement with Grantor being the Debtor and Beneficiary being the Security Party pursuant to the Utah Uniform Commercial Code (Utah Code Annotated § 70A-9a-101 *et seq.*). This Deed of Trust also constitutes and is filed as a fixture filing under Section 334 of the Utah Uniform Commercial Code (Utah Code Annotated § 70A-9a-334). Grantor further agrees that none of the Mortgaged Property constitutes, or is the proceeds of, “farm products” as defined in Section 9-102(a)(34) of

the Uniform Commercial Code of the State of Utah. To the extent that this Deed of Trust is subject to the Utah Assignment of Rents Act, and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Deed of Trust and the provisions of the Act, to the extent permitted under applicable law, the Deed of Trust shall control.

13.02 Remedies. In addition to the remedies set forth in Section VII herein, upon the occurrence of an Event of Default, Beneficiary 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 or concerning water rights (such as stock in irrigation, canal, or water companies) in accordance with Utah Code Annotated § 57-1-30 or other applicable law.

13.03 Exercise of Trustee's Power of Sale.

(a) Should Beneficiary elect to have Trustee exercise the power of sale herein contained, Beneficiary shall deliver to Trustee a written declaration of default and demand for sale in accordance with applicable law;

(b) In accordance with applicable law, Trustee shall cause to be recorded, published and/or delivered to Grantor such notice of default and election to sell as may then be required by law and by this Deed of Trust. After giving notice of default and notice of sale, and the lapse of such time period as may be required by law, Trustee may, without demand on Grantor, at the time and place of sale fixed in the notice of sale, either as a whole or in separate parcels or items or through two (2) or more successive sales, sell the Mortgaged Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Grantor shall have no right to direct the order in which the Mortgaged Property is sold and Grantor hereby waives any and all rights under Utah Code Annotated § 57-1-27 to direct the order in which the Mortgaged Property, if consisting of several known lots or parcels, shall be sold. Beneficiary may, in its sole discretion, designate the order in which the Mortgaged Property shall be offered for sale or sold and determine if the Mortgaged Property shall be sold in a single sale or in two (2) or more successive sales or in any other manner Beneficiary deems to be in its best interests. If Beneficiary determines that the Mortgaged Property shall be sold in two (2) or more sales, Beneficiary may, at its option, cause such sales to be conducted simultaneously or successively on the same day or on different days and times and in such order as Beneficiary shall determine, and no such sale shall extinguish or otherwise affect the lien of this Deed of Trust on any part of the Mortgaged Property not then sold until all indebtedness secured hereby has been fully paid. Grantor shall pay the costs and expenses of each such sale and any judicial proceeding in which any such sale may be made. Trustee shall deliver to such purchaser its deed conveying the portion of the Mortgaged Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive

proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at such sale;

(c) After deducting all costs, fees and expenses of Trustee and of the sale, including costs of evidence of title in connection with the sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Interest Rate, next to all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Annotated § 57-1-29;

(d) For purposes of Utah Code Annotated § 57-1-28, Grantor agrees that all default interest, late charges, any prepayment premium, and similar amounts, if any, owing from time to time under the Loan shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Mortgaged Property, and Beneficiary may add all default interest, late charges, any prepayment premium, and similar amounts owing from time to time under the Loan to the principal balance of the Loan, 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 Mortgaged Property pursuant to this Deed of Trust;

(e) In accordance with applicable law, Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place first fixed for sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale; and

(f) Upon any sale pursuant to this Section, Grantor shall be completely and irrevocably divested, to the maximum extent permitted by law, of all its right, title, interest, claims and demands at law or in equity in and to the Mortgaged Property sold or any part thereof, and such sale shall be a perpetual bar both at law and in equity against Grantor and any and all other persons claiming any such right, title, interest, claims or demands by, through or under Grantor.

13.04 Rescission of Notice of Default. Beneficiary, from time to time, before any Trustee's sale, may rescind any notice of default and of election to cause the Mortgaged Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of Beneficiary to execute and deliver to Trustee, as provided above, other declarations of default and demand for sale, notices of default and of election to cause the Mortgaged Property to be sold to satisfy the obligations hereof, or otherwise affect any provision, agreement, covenant or

condition of the Note or this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder.

13.05 Full Reconveyance by Trustee. Upon written request of Beneficiary and upon payment by Grantor of Trustee's fees for all services involved in the preparation, execution and recordation of the reconveyance, Trustee shall reconvey the Mortgaged Property or portions thereof then held hereunder, in whole or in part, as designated by Beneficiary and in such portions as designated by Beneficiary to Grantor, to the person or persons legally entitled thereto, without recourse or warranty. Beneficiary is not obligated to request partial reconveyances except as otherwise expressly agreed in writing by Beneficiary.

13.06 Substitution of Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Mortgaged Property is located and by otherwise complying with the provisions of the laws of Utah, substitute a successor or successors to the Trustee named herein or acting hereunder. Without conveyance of the Mortgaged Property, a successor Trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

(Signatures on next page)

EXECUTED as of the date first above written.

GRANTOR:

CW SLC THE QUINCI, LLC,
a Delaware limited liability company

By: CW THE QUINCI MANAGER, LLC,
a Utah limited liability company,
its Manager

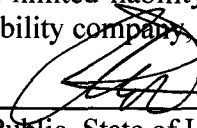
By: CW THE MANAGER, LLC,
a Utah limited liability company,
its Manager

By: CW DEVELOPMENT GROUP, LLC,
a Utah limited liability company,
its Manager

By: 
Colin H. Wright, Manager

STATE OF UTAH §
 §
COUNTY OF Davis §

The foregoing instrument was acknowledged before me on this 13th day of July, 2023 by Colin H. Wright, the Manager of CW Development Group, LLC, a Utah limited liability company, the Manager of CW The Manager, LLC, a Utah limited liability company, the Manager of CW The Quinci Manager, LLC, a Utah limited liability company, the Manager of CW SLC THE QUINCI, LLC, a Delaware limited liability company, on behalf of said entities.



Notary Public, State of Utah

List of Attachments:

Exhibit A - Land Description
Exhibit B - Insurance

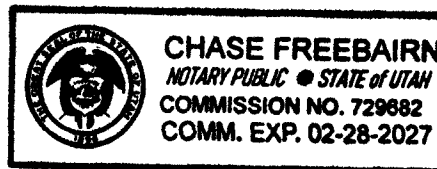


EXHIBIT A
LAND DESCRIPTION

PARCEL 1:

ALL OF A PARCEL OF LAND, BEING PART OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL WHICH LIES ON THE WESTERLY RIGHT OF WAY LINE OF REDWOOD ROAD, SAID POINT BEING N00°10'02"E 1455.63 FEET AND N89°49'58"W 41.76 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 10 (SAID SOUTH QUARTER CORNER OF SECTION 10 BEING S00°10'02"W 5304.16 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 10); THENCE S89°45'13"W 609.99 FEET; THENCE N00°03'08"W 263.81 FEET; THENCE N89°44'48"E 609.99 FEET; THENCE S00°03'08"E 263.88 FEET TO THE POINT OF BEGINNING.

PARCEL 1A:

A NON-EXCLUSIVE, RECIPROCAL CROSS-ACCESS EASEMENT, AS DESCRIBED AND DISCLOSED BY THAT CERTAIN EASEMENT AND MAINTENANCE AGREEMENT RECORDED AUGUST 8, 2022, AS ENTRY NO. 13997302, IN BOOK 11362, AT PAGE 8610, OF OFFICIAL RECORDS.

EXHIBIT B
INSURANCE REQUIREMENTS

While any Indebtedness or Obligations of Grantor or any Guarantor under any Loan Document remains outstanding, Grantor, at Grantor's own expense, shall procure and maintain or shall cause to be procured and maintained continuously in effect policies of insurance in form and amounts and issued by companies, associations or organizations licensed to do business in the state where the Mortgaged Property is located, with a Best's Rating of no less than A-XI and otherwise satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards required by Beneficiary, unless Beneficiary waives this requirement in writing. All policies shall expressly protect or recognize Beneficiary's interest as required by Beneficiary. Without limiting the generality of the foregoing, Grantor shall provide or cause to be provided the following types of insurance coverage:

(a) During construction of the Improvements or any subsequent renovation of the Improvements: (i) Builder's Risk Insurance on an "special" form basis including flood (if the Mortgaged Property is in a flood zone), and earthquake (if the Mortgaged Property is subject to quake) for a limit of not less than \$10,000,000 per occurrence, and all other perils, including windstorm, for a limit of no less than full replacement cost. Coverage shall be included for Stored Materials and materials while in transit. The Builder's Risk policy shall have deductibles not greater than \$250,000 for flood, \$50,000 for earthquake and \$25,000 for all other perils and 5% for windstorm for each occurrence. Beneficiary shall be named as mortgagee under a standard form mortgagee clause and shall name Beneficiary as loss payee, utilizing form CP 12 18 or similar wording. Grantor shall furnish Beneficiary with a certified copy of an original policy or an Evidence of Mortgaged Property Insurance, ACCORD 28. Grantor and the general contractor constructing the Improvements ("Contractor") shall both carry (i) Commercial General Liability Insurance and Commercial Auto Liability Insurance in a minimum amount of \$1,000,000 each occurrence carried by Grantor and by the Contractor; and (ii) Statutory Workers' Compensation and Employer's Liability Insurance in the minimum amounts of \$1,000,000 each accident, \$1,000,000 each employee disease, \$1,000,000 policy limit disease, covering Contractor and all other contractors or subcontractors who may have occasion to be at the job site. Grantor and Contractor shall carry Umbrella or Excess Liability Insurance in the amount of \$5,000,000 for each occurrence.

(b) After the Improvements have been completed and until repayment of the Loan and satisfaction of all obligations under the Guaranty:

(i) Mortgaged Property insurance on an "special" replacement cost basis, including flood (if the Mortgaged Property is determined to be in a flood zone), earthquake (if the Mortgaged Property is subject to quake) and all other perils, including windstorm, for a limit of no less than full replacement cost, and Business Income and Extra Expense Insurance against loss of income by reason of any hazard covered under the insurance required under this subparagraph (b) in an amount sufficient to avoid any co-insurance penalty, but in any event for not less than two (2) years' gross receipts from all sources of income from the

Mortgaged Property. The property policies shall have a deductible not greater than \$250,000 for flood, \$50,000 for earthquake and \$25,000 for all other perils and 5% for windstorm for each occurrence. Policy(ies) shall name Beneficiary as mortgagee under a standard form mortgagee clause. Grantor shall notify Beneficiary if the property policy(ies) are written on a "shared limit" or "loss limit" basis. In such cases, Beneficiary may require a copy of the policy(ies) for review.

(ii) Commercial General Liability Insurance and Commercial Auto Liability Insurance in a minimum amount of \$1,000,000 each occurrence.

(iii) Statutory Workers' Compensation and Employer's Liability Insurance in the minimum amounts of \$1,000,000 each accident, \$1,000,000 each employee disease, \$1,000,000 policy limit disease.

(c) Umbrella or Excess Liability Insurance in the amount of (\$1,000,000 for loans up to \$5,000,000; \$5,000,000 for loans up to \$15,000,000; \$10,000,000 for loans over \$15,000,000) each occurrence.

(d) Such additional insurance as may be reasonably required by Beneficiary from time to time in the event that the Mortgaged Property is exposed to hazards and risks with respect to which Beneficiary deems the existing insurance inadequate to properly protect its interests.

All property insurance policies shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary as loss payee, utilizing Form CP 12 18 or comparable wording. General Liability policies and Umbrella/Excess Liability policies shall name Beneficiary and Beneficiary's directors, officers, representatives, agents and employees (the "**Beneficiary Parties**") as additional insured's using Form CG 2018 or comparable wording. Such policies shall be endorsed to be primary and noncontributory as regards to any other insurance available to the Beneficiary. Grantor shall furnish Beneficiary with a certified copy of an original or a certificate of insurance of all policies of insurance required, including Evidence of Property Insurance, ACORD 28 and Certificate of Liability Insurance, ACORD 25. All policies or certificates, as the case may be, of insurance shall set forth the coverage, the limits of liability, the name of the carrier, the policy number, the Best's Rating of the carrier and the period of coverage. In addition, all policies of insurance required under the terms hereof shall (i) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor or any party holding under Grantor which might otherwise result in a forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Grantor, and (ii) indemnify Beneficiary and Beneficiary Parties against losses due to Grantor's sole or contributory negligence. At least 15 days prior to the expiration of each required policy, Grantor shall deliver to Beneficiary evidence of the renewal or replacement of such policy, continuing such insurance in the form as required by this Deed of Trust. All such policies shall contain a provision that notwithstanding any contrary agreement between Grantor and the applicable insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or amended (which provision shall include any reduction in the scope or limits of coverage) without at least 30 days' prior written notice to Beneficiary.