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**DEED OF TRUST**  
**(WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS)**

**STATE OF UTAH**                   §  
   §                   **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF SALT LAKE**       §

**2. Fixtures and Personal Property.** The following personal property of Trustor, wherever located, and now owned, or hereafter acquired or arising, including Proceeds and Supporting Obligations, which are now, or at any time hereafter are, a part of the Land; or situated in, on, or about the Land and utilized in connection therewith; or delivered to the Land or acquired for use in connection with the Land; or delivered to the Land or acquired for

use or incorporation in the construction of any improvements on the Land; or for the purchase of any Goods to be used in connection with the construction of any improvements on the Land: Accounts; Chattel Paper, including Tangible Chattel Paper and Electronic Chattel Paper; Deposit Accounts; Documents; General Intangibles, including Payment Intangibles, trademarks, trade names and symbols; Goods, including Equipment, Fixtures, Inventory, and Accessions; Instruments, including Promissory Notes; Records; Software; plans and specifications for improvements to be placed on the Land; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Land; and all renewals, replacements, and substitutions thereof and additions thereto (all property described or referred to in this paragraph is sometimes called "Accessories"). Trustor agrees that the Accessories are, or will be, a part of and affixed to the Land. Any capitalized term not otherwise defined herein shall have the meaning accorded thereto in the Uniform Commercial Code, as now enacted and hereinafter amended in the State of Utah.

3. **Other Property.** All other interest of every kind and character which Trustor now has or at any time hereafter acquires in and to the property described or referred to in paragraphs 1 and 2 preceding, including but not limited to proceeds from the condemnation or threatened condemnation of the Land and the proceeds of any and all insurance covering the Land, and all property which is used in connection with the operation of the Land and Accessories.

All properties, rights, and interests described or referred to in paragraphs 1, 2, and 3 preceding are sometimes referred to collectively as the "Property".

4. **Leasehold Estates.** In the event the estate of the Trustor in and to any of the Property is a leasehold estate, this conveyance shall include, and the lien, security interest, and assignment created hereby shall encumber and extend to all other further or additional title, estates, interest, or rights which may exist now or at any time be acquired by Trustor in or to the Property demised under the lease creating such leasehold estate and including Trustor's rights, if any, to the Property demised under such lease and, if fee simple title to any of such Property shall ever become vested in the Trustor such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Trustor had fee simple title to said Property as of the date of execution hereof.

**TO HAVE AND TO HOLD** the above-described Property, together with all improvements thereon and all the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Trustee, and his successors or substitutes in this trust, and his and their assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof.

Trustor, for Trustor and Trustor's successors, hereby agrees to warrant and forever defend, all and singular, the Property unto Trustee, and his successors or substitutes in this trust, and his and their assigns, in trust and for the uses and purposes hereinafter set forth, forever.

Trustor hereby grants to Beneficiary and its successors and assigns, a security interest in the Property, and each and every part thereof, and in all proceeds from the sale, lease, or other disposition thereof and in all sums, proceeds, funds, and reserves described or referred to in Section 5.7, 5.8, and 5.9 hereof; provided that the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein. The security interest created hereby is specifically intended to cover and include all Leases (as such term is defined in Section 4.1 hereof), together with all the right, title, and interest of Trustor, as lessor thereunder, including, without limiting the generality of the foregoing, the present, and continuing right to make claim for, collect, receive, and receipt for any and all of the rents, income, revenues, issues, and profits and monies payable as damages or in lieu of rent and monies payable as the purchase price of the Property or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Trustor or any lessor is or may become entitled to do under the Leases, provided, that this provision shall neither impair nor diminish any obligation of Trustor under the Leases, nor shall any obligation be imposed upon Beneficiary.

## ARTICLE I. The Obligation

**Section 1.1 Beneficiary and Obligation.** This Deed of Trust [as used herein, the expression "this Deed of Trust" shall mean this Deed of Trust (with Security Agreement and Assignment of Rents)] and all rights, title, interest, liens, security interest, powers, and privileges created hereto or arising by virtue hereof, are given to secure payment and performance of the following indebtedness, obligations, and liabilities: **(a)** the indebtedness(es) evidenced by that certain promissory note of even date herewith (the "Note") executed by Trustor, payable to the order of **GUILD MORTGAGE COMPANY LLC, a California limited liability company** ("Beneficiary") whose mailing address for payments is 5887 Copley Drive, 6th Floor, San Diego, California 92111, in the principal amount of **NINE MILLION FIVE HUNDRED EIGHTY-TWO THOUSAND ONE HUNDRED NINETY-FIVE AND NO/100 DOLLARS (\$9,582,195.00)** bearing interest as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified; **(b)** all indebtedness, obligations, and liabilities arising pursuant to the provisions of this Deed of Trust, the Note, any guaranty or such other documents evidencing, securing or pertaining to the indebtedness(es) referred to in subsection (a) of this Section 1.1, as shall from time to time be executed and delivered to Beneficiary by Trustor, any guarantor or any other party (collectively, the "Loan Documents"); **(c)** all other and any additional debts, obligations, and liabilities of every kind and character of Trustor whether now or hereafter existing in favor of Beneficiary, regardless of whether such debts, obligations, and liabilities be direct or indirect, primary, secondary, joint, several, joint and several, fixed, or contingent; and **(d)** any and all renewals, modifications, rearrangements, amendments, or extensions of all or any part of the indebtedness, obligations, and liabilities described or referred to in Subsections 1.1(a), 1.1(b), and 1.1(c) preceding. The word "Obligation", as used herein, shall mean all of the indebtedness, obligations, and liabilities described or referred to in Subsections 1.1(a), 1.1(b), and 1.1(c) preceding and as described and referred to in this subsection 1.1(d). The word "Beneficiary", as used herein, shall mean the Beneficiary named in Subsection 1.1(a) above and all subsequent owners of the Obligation at the time in question.

**ARTICLE II.**  
**Certain Representations;**  
**Warranties, and Covenants of Trustor**

**Section 2.1 Warranties and Representations.** Trustor represents, warrants, and undertakes that **(a)** Trustor has full right and authority to execute and deliver this Deed of Trust; and **(b)** unless specifically provided herein to the contrary, Trustor has in its own right good and indefeasible title in fee simple to the Property free from any encumbrance superior to the indebtedness hereby secured.

**Section 2.2 Covenants.** Trustor and Trustor's successors and permitted assigns hereunder, covenants, agrees, and undertakes to: **(a)** pay, or cause to be paid, before delinquent, all taxes and assessments of every kind or character in respect to the Property, or any part thereof, from time to time, upon request of Beneficiary, to furnish to Beneficiary evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments and governmental charges; **(b)** purchase policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Beneficiary, including, but not limited to, **(1)** owner's and contractors' policies of comprehensive general public liability insurance; **(2)** hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Trustor from becoming a co-insurer, such insurance prior to completion of the Improvements to be in builder's risk form on a non-reporting basis and including coverage for all materials and equipment, wherever located, intended to be installed in or utilized in the construction of the Improvements; **(3)** if the Property is in a "Flood Hazard Area", a flood insurance policy, or binder therefor, in an amount equal to the principal amount of the Note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirements" of that act; **(4)** such policies of mortgagee's title insurance insuring the validity and priority of this Deed of Trust and any future renewals or extensions of this Deed of Trust, including any such mortgagee's title insurance which the Beneficiary may require during the term of the Obligation to supplement or replace any mortgagee's title policy earlier provided to Beneficiary insuring the validity and priority of the Deed of Trust; and **(5)** such other insurance, if any, as Beneficiary may require from time to time, or which is required by the Loan Documents; **(c)** cause all insurance carried in accordance with Section 2.2(b) to be payable to Beneficiary as a mortgagee, to deliver the original policies of insurance carried by each Lessee (as that term is hereinafter defined) for the benefit of Trustor, and to cause all such policies to be payable to Beneficiary as its interest may appear; **(d)** pay, or cause to be paid, all premiums for such insurance at least ten (10) days before such premiums become due, furnish to Beneficiary satisfactory proof of the timeliness of such payments and deliver all renewal policies to Beneficiary at least ten (10) days before the expiration date of each expiring policy; **(e)** comply with all federal, state, or municipal laws, rules, ordinances, and regulations applicable to the Property and its ownership, use and operation, including but not limited to maintenance of the Property in compliance with the Americans with Disabilities Act of 1990, and comply with all, and not violate any, easements, restrictions, agreements, covenants, and conditions with respect to or affecting the Property or any part thereof; **(f)** at all times maintain, preserve, and keep the Property in good repair and condition and

presenting a first-class appearance, and from time to time make all necessary and proper repairs, replacements, and renewals, and not commit or permit any waste on or of the Property, and not do anything to the Property that may impair its value; **(g)** promptly pay all bills for labor and materials incurred in connection with the Property and never permit to be created or to exist in respect to the Property or any part thereof any lien or security interest even though inferior to the liens and security interest hereof for any such bill, and in any event never permit to be created or exist in respect to the Property or any part thereof any other or additional lien or security interest on a parity with or superior to any of the liens or security interest hereof; **(h)** at any time, and from time to time, upon request of Beneficiary, forthwith, execute and deliver to Beneficiary any and all additional instruments and further assurances, and do all other acts and things, as may be reasonably necessary or proper, in Beneficiary's opinion, to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens, and security interests herein created or intended to be created and to protect the rights, remedies, powers, and privileges of Beneficiary hereunder; **(i)** from time to time, upon request of Beneficiary, promptly furnish to Beneficiary financial statements and reports and appraisals relating to the Trustor and the Property as required in the Loan Documents; **(j)** continuously maintain Trustor's existence and its right to do business in Utah; **(k)** pay and perform all of the Obligation in accordance with the terms thereof or of this Deed of Trust; **(l)** 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 Obligation, or any part thereof, immediately pay all such taxes; provided that, in the alternative, Trustor may, in the event of the enactment of such a law, and must, if it is unlawful for Trustor to pay such taxes, prepay the Obligation in full within sixty (60) days after demand therefor by Beneficiary; **(m)** at any time and from time to time, furnish promptly upon request of Beneficiary a written statement or affidavit, in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the Obligation and that there are no offsets or defenses against full payment of the Obligation and the terms hereof, or, if there are any such offsets or defenses, specifying them; **(n)** punctually and properly perform all of Trustor's covenants, duties, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, or assignment of any kind now or hereafter existing as security for or in connection with payment of the Obligation, or any part thereof (each such security agreement being herein called "other security instrument"; **(o)** allow Beneficiary from time to time to inspect the Property and all records relating thereto or to the Obligation, and to make and take away copies of such records; **(p)** not cause or permit the Accessories, or any part thereof, to be removed from the county and state where the Land is located, except items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new; **(q)** not without the prior written consent of Beneficiary sell, trade, transfer, assign, or exchange or otherwise dispose of (or suffer or permit any of the same to occur with respect to) **(1)** any capital stock of Trustor if Trustor is a corporation or **(2)** any partnership interest either general or limited if Trustor is a partnership, except by devise, descent, or operation of law upon the death of a shareholder, partner, or joint venturer, as the case may be; and **(r)** pay, or cause to be paid, any and all attorneys' fees, filing fees and expenses incurred by Beneficiary for the preparation and recordation of any and all legal instruments which the Beneficiary may require at the time of the creation of this Obligation (including this Deed of Trust and/or any and all other instruments which Lender may require in connection herewith) or which Beneficiary may require during the term of the Obligation.

### **Section 2.3 Hazardous Waste Warranty and Representation of Trustor.**

Trustor represents and warrants that after making all appropriate inquiries, the following statements are true:

- (1) No industrial activities that could have resulted in environmental contamination of the Property have occurred on the Property to Trustor's knowledge, including without limitation, storage, treatment or disposal of hazardous substances;
- (2) no report, analysis, study or other document identifies any harmful or friable asbestos or hazardous contaminants on the Property to Trustor's knowledge; and
- (3) the Property contains no harmful or friable asbestos, hazardous wastes or other hazardous substances to Trustor's knowledge.

At its sole cost and expense Trustor shall comply with all federal, state and local laws, regulations and orders with respect to the discharge and removal of hazardous or toxic substances, pay immediately when due the cost of removal of any such substances, and keep the Property free of any lien imposed pursuant to such laws, regulation and orders. In addition, Trustor shall not install or permit to be installed in the Property any friable asbestos or any substance containing asbestos and deemed hazardous by applicable federal, state and local laws, regulations and orders. In addition to the remedies set forth elsewhere in the Deed of Trust or other collateral documents concerning the Obligation herein secured as to default by Trustor, Beneficiary may cause the Property to be freed from the hazardous wastes, contaminants or asbestos, and in such event, the cost of the removal shall be secured by this Deed of Trust, shall be payable by Trustor on demand and shall bear interest at the default interest rate provided in the Promissory Note secured by this Deed of Trust from the date advanced until paid. Trustor shall give to Beneficiary and its agents and employees access to the Property for such purpose, and hereby grants to Beneficiary a license to remove the hazardous wastes, contaminants or asbestos from the Property. Trustor shall indemnify, defend and hold Beneficiary harmless from and against any and all liability, loss or damage (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion against Trustor of any claim relating to the presence or removal of any hazardous wastes, contaminants or asbestos from the Property, or relating to compliance with any applicable federal, state or local laws, regulations or orders relating thereto.

Trustor warrants and represents that to Trustor's knowledge there are no toxic wastes or hazardous substances in the building materials used to construct the improvements located on the Property, and that Trustor shall indemnify and hold Beneficiary and Trustee harmless from any and all claims, costs or expenses (including defense costs and reasonable attorneys' fees) arising out of, relating to or in any manner connected with the breach of any such warranty or representation. Further, Trustor shall indemnify and hold Beneficiary and Trustee harmless from any and all claims, costs or expenses (including defense costs and reasonable attorneys' fees)

arising out of, relating to, or in any manner connected with any toxic wastes, brought onto or made on the Property by Trustor, its agents, employees, invitees, partners, or tenants, their agents, employees or invitees. Trustor agrees that any violation of Trustor's warranties in this paragraph will entitle Beneficiary to specific performance or any other remedy available at law and parties agree that any applicable statute of limitations is hereby tolled from date of execution hereof until Beneficiary has actual knowledge of any such violation of warranty.

### **ARTICLE III.**

#### **Respecting Defaults and Remedies of Beneficiary**

**Section 3.1 Default.** The term "default", as used herein, shall mean the occurrence of one or more of the following events: (a) the failure of Trustor to pay any sum of money in accordance with the Obligation, or any part thereof, on the date on which the payment is due ; or (b) the failure of Trustor punctually and properly to perform any covenant, agreement, undertaking, or condition contained herein, or in the Note, or any renewal, modification, rearrangement, amendment, or extension thereof, or in the Loan Documents, or in any other security instrument which secures the Note or the Obligation due; or (c) a default under any mortgage or security interest which covers or affects the Property; or (d) Beneficiary believes that the prospect of payment or the prospect of performance of any other of Trustor's agreements under the Obligation or any documents collateral thereto is impaired.

**Section 3.2 Beneficiary's Remedies Upon Default.** Upon a default, Beneficiary may, at its option, do any one or more of the following:

(a) If Trustor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust, Beneficiary may, but shall not be obligated to any person to do so, 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 be a part of the Obligation, and Trustor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, or at such other place as Beneficiary may direct by written notice, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the rate provided in the Note. No such payment by Beneficiary shall constitute a waiver of any default. In addition to the liens and security interest hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interest securing the payment of any debt, claim, tax, or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Unless otherwise modified herein, Beneficiary may, without notice, demand, or presentment, which are hereby waived by Trustor and all other parties obligated in any manner whatsoever on the Obligation, declare the entire unpaid balance of the Obligation immediately due and payable, and upon such declaration, the entire unpaid balance of the Obligation shall be immediately due and payable. Trustor hereby waives all notices allowed by law, including without limitation, default, demand, presentment, notice of dishonor, protest, notice of intent to accelerate maturity and notice of acceleration.

(c) Beneficiary may request Trustee to proceed with foreclosure, and in such event Trustee is hereby authorized and empowered, and it shall be his special duty, upon such request of Beneficiary, to sell the Property, or any part thereof, to the highest bidder or bidders for cash, in accordance with applicable law.

After such sale, Trustee shall make good and sufficient deeds and assignments to the purchaser or purchasers thereunder in the name of Trustor, conveying the Property, or any part thereof, so sold to the purchaser or purchasers with general warranty of title by Trustor. Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid and performed in full. It shall not be necessary to have present or to exhibit at any such sale any of the Accessories. In addition to the rights and powers of sale granted under the preceding provisions of this Subsection 3.2(c), if default is made in the payment of any installment of the Obligation, Beneficiary may, at its option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligation to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured indebtedness and the liens and security interest securing its payment, in the same manner, all as provided in the preceding provisions of this Subsection 3.2(c). After such sale, Trustee shall make due conveyance to the purchaser or purchasers. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Subsection 3.2(c), the unmatured balance of the Obligation (except as to any proceeds of any sale which Beneficiary may apply as prepayment of the Obligation) or the liens and security interests securing payment of the Obligation. It is intended by each of the foregoing provisions of this Subsection 3.2(c) that Trustee may, after any request or direction by Beneficiary, sell, not only the Land but also the Accessories and other interests constituting a part of the Property, or any part thereof, along with the Land, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It is agreed that, in any deed or deeds given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to any other act or thing having been duly done by Beneficiary or by Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof. In the event of the resignation or death of Trustee, or his failure, refusal, or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or, at the option of Beneficiary, with or without cause, then Beneficiary may appoint, in writing, but without the necessity of recordation, notice or any other formality, a substitute trustee, who shall thereupon succeed to all the estates, titles, rights, powers, and trusts herein granted to and vested in Trustee. If



Beneficiary is a corporation or an association, such appointment may be made on behalf of such Beneficiary by any person who is then the president, or a vice-president, or the cashier or secretary, or any other authorized officer or agent of Beneficiary. In the event of the resignation or death of any such substitute trustee, or his failure, refusal, or inability to make any such sale or perform such trusts, or, at the option of Beneficiary, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used, the same shall mean the person who is the duly appointed trustee or substitute trustee hereunder at the time in question.

(d) Beneficiary may, or Trustee may upon written request of Beneficiary, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Note or other instruments evidencing it, to foreclose the liens, security interest and this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Beneficiary, as a matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud, or mismanagement on the part of Trustor, 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 Property, or any part thereof, and of the income, rents, issues, and profits thereof.

(f) Beneficiary may enter upon the Land, take possession of the property and remove the Accessories, or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Beneficiary, take possession of any property located on or in the Property which is not a part of the Property and hold or store such property at Trustor's expense.

(g) Beneficiary may require Trustor to assemble the Accessories, or any part thereof, and make them available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to Trustor and Beneficiary.

(h) After notification, if any, hereafter provided in this Subsection 3.2(h), Beneficiary may sell, lease, or otherwise dispose of, at the office of Beneficiary, or on the Land, or elsewhere, as chosen by Beneficiary, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any such sale, lease, or other disposition made pursuant to this Subsection 3.2(h)) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and at any Sale, it shall not be necessary to exhibit the Accessories, or part thereof, being sold. The Sale of any part of the Accessories shall not exhaust Beneficiary's power of Sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection 3.2(h), or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection 3.2(h), shall

be sent to Trustor and to any other person entitled under the Uniform Commercial Code for the State of Utah (the "Code") to notice; provided that if the Accessories or part thereof being sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Beneficiary may sell, lease, or otherwise dispose of the Accessories, or part thereof, without notification, advertisement, or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purposes of this Subsection 3.2(h).

(i) Beneficiary may surrender the insurance policies maintained pursuant to Subsection 2.2(b) hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Obligation, and in connection therewith, Trustor hereby appoints Beneficiary as the agent and attorney-in-fact for Trustor to collect such premiums.

(j) Beneficiary may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Beneficiary is entitled to do so under the Code.

(k) Beneficiary may buy the Property, or any part thereof, at any public or judicial sale.

(l) Beneficiary may buy the Accessories, or any part thereof, at any private sale if the Accessories, or part thereof, being sold are a type customarily sold in a recognized market or are a type which is the subject of widely distributed standard price quotations.

(m) Beneficiary shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any other security instrument, or under the Code, or otherwise.

(n) Beneficiary may apply the reserves, if any, required by Section 5.9 hereof, toward payment of the Obligation.

**Section 3.3 Beneficiary as Purchaser.** If Beneficiary is the purchaser of the Property, or any part thereof, at any sale thereof, whether such sale be under the power of sale hereinabove vested in Trustee, or upon any other foreclosure of the liens and security interest hereof, or otherwise, Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interest of these presents.

**Section 3.4 Other Rights of Beneficiary.** Should any part of the Property come into the possession of Beneficiary, whether before or after default, Beneficiary may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction, or in accordance with any other rights held by Beneficiary in respect to the Property. Trustor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges), incurred by Beneficiary in connection with its

custody, preservation, use, or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the rate provided in the Note, and all such expenses, costs, taxes, interest, and other charges (including reasonable attorney's fees) shall be a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on Trustor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, or for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured.

**Section 3.5 Possession After Foreclosure.** In case the liens or security interest hereof shall be foreclosed by Trustee's sale or by judicial action, the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of the property purchased, and if Trustor or Trustor's successors shall hold possession of said Property, or any part thereof, subsequent to foreclosure, Trustor and Trustor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale, and anyone occupying the 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.

**Section 3.6 Application of Sales Proceeds Upon Foreclosure.** The proceeds from any sale, lease, or other disposition made pursuant to this Article III, or the proceeds from surrendering any insurance policies pursuant to Subsection 3.2(i) hereof, or any rental collected by Beneficiary pursuant to Article IV hereof, or the reserves required by Section 5.9 hereof, or sums received pursuant to Section 5.7 hereof, or proceeds from insurance which Beneficiary elects to apply to the Obligation pursuant to Section 5.8 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, as follows: First, to the payment of all expenses of advertising, preserving, selling, and conveying the Property, or part thereof, including reasonable attorney's fees, and including a reasonable commission to Trustee not to exceed five percent (5%) of the proceeds of the sale; second, to interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation, to the person or persons legally entitled thereto.

**Section 3.7 Abandonment of Sale.** In the event a foreclosure hereunder should be commenced by Trustee in accordance with Subsection 3.2(c) hereof, Beneficiary may at any time before the sale, direct Trustee to abandon the sale, and may then institute suit for the collection of the Note, and for the foreclosure of the liens and security interest hereof. If Beneficiary should institute a suit for the collection of the Note, and for a foreclosure of the liens and security interest hereof, it may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee to sell the Property, or any part thereof, in accordance with the provisions of this Deed of Trust.

## ARTICLE IV

### Leases and Assignment of Rental

**Section 4.1 Definitions.** As used in this Deed of Trust: **(a)** "Lease" means any lease, sublease, or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or any interest therein, including all extended or renewal terms thereof and all modifications or amendments thereto and replacements therefor; **(b)** "Lessee" means the lessee, sublessee, tenant, or other person having the right to occupy or use a part of the Property under a Lease; and **(c)** "Rental" means the rents, royalties, and other consideration payable to Trustor by the Lessee under the terms of a lease.

**Section 4.2 Assignment of Rental.** Trustor hereby absolutely and not only as collateral assigns to Beneficiary all Rental payable under each Lease now or at any time hereafter existing, such assignment being upon the following terms **(a)** until receipt from Beneficiary of notice of the occurrence of a default each Lessee may pay Rental directly to Trustor as licensee of Beneficiary, but Trustor covenants that any Rental received by Trustor after receipt of such notice shall be held by Trustor in trust for the use and benefit of Beneficiary and paid to Beneficiary immediately upon request therefore; **(b)** upon receipt from Beneficiary of notice that a default exists, or at any other time in the sole discretion of Beneficiary that notice is given to a Lessee, each Lessee is hereby authorized and directed to pay directly to Beneficiary all Rental thereafter accruing, and a receipt for such payment from Beneficiary shall be a release of such Lessee to the extent of all amounts so paid; **(c)** Rental so received by Beneficiary shall be applied by Beneficiary, first, to the expenses, if any, of collection and then in accordance with Section 3.6; **(d)** without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Trustor Rental so received by Beneficiary, or any part thereof; **(e)** Beneficiary shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of Rental, but shall be accountable only for Rental that it shall actually receive; **(f)** this assignment shall terminate upon the release of this Deed of Trust but no Lessee shall be required to take notice of termination until a copy of such release shall have been delivered to such Lessee. As between Beneficiary and Trustor, and any person claiming through or under Trustor, other than a Lessee who has not received notice of default pursuant to Section 4.2(b), the assignment contained in this Section 4.2 is intended to be absolute, unconditional, and presently effective and the provisions of Subsection 4.2(a) and 4.2(b) are intended solely for the benefit of each Lessee and shall never inure to the benefit of Trustor or any person claiming through or under Trustor, other than a Lessee who has not received such notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section 4.2.

**Section 4.3 No Subordination.** Nothing in this Article IV shall ever be construed as subordinating this Deed of Trust to any Lease; provided, however, that any proceedings by Beneficiary to foreclose this Deed of Trust, or any action by way of its entry into possession after default, shall not operate to terminate any Lease which has been approved by Beneficiary, and Beneficiary will not cause any Lessee under any such approved Lease to be disturbed in his possession and enjoyment of the leased premises so long as such Lessee shall continue to fully and promptly perform all of the terms, covenants, and provisions of its Lease.

**Section 4.4 Trustor's Obligations.** Trustor shall: (a) upon demand by Beneficiary, assign to Beneficiary, by separate instrument in form and substance satisfactory to Beneficiary, any or all Leases, or the Rental payable thereunder, including but not limited to, any Lease which is now in existence or which may be executed after the date hereof; (b) neither accept from any Lessee, nor permit any Lessee to pay, Rental for more than one month in advance not including a customary security deposit; (c) comply, as lessor, with the terms and provisions of each Lease; (d) not waive, excuse, release, or condone any nonperformance of any covenants of any Lessee; (e) give to Beneficiary duplicate notice of each default by each Lessee given by Trustor; and (f) cause each lessee to agree (and each Lessee under each Lease executed after the date hereof does so agree) to give to Beneficiary written notice of each and every default by Trustor under his Lease and not to exercise any remedies under such Lease unless Beneficiary fails to cure such default within ten days, or within such longer period as may be reasonably necessary if such default cannot be cured within ten (10) days, after Beneficiary has received such notice, provided that Beneficiary shall never have any obligation or duty to cure any such default.

**Section 4.5 Beneficiary's Collection of Rental.** In the event Beneficiary ever collects Rental through an agent, Beneficiary shall be entitled to pay its agent as compensation for collecting such Rental, from sums so collected, a sum not to exceed five percent (5%) of the Rental so collected.

## **ARTICLE V. Miscellaneous**

**Section 5.1 Release.** If the Obligation is paid in full in accordance with the terms of this Deed of Trust and the Note and other instruments evidencing or securing such Obligation, and if Trustor shall well and truly perform all of Trustor's covenants contained herein, then this conveyance shall become null and void and be released at Trustor's request and expense.

**Section 5.2 Rights Cumulative.** All rights, remedies, powers, and privileges and all liens, titles, and security interests herein expressly conferred are cumulative, and shall not be deemed to deprive Beneficiary or Trustee of any other legal or equitable rights, remedies, powers, privileges, liens, titles, or security interests by or through judicial proceedings or otherwise appropriate to enforce the conditions, covenants, and terms of this Deed of Trust, the Note, and other security instruments.

**Section 5.3 Waiver.** Any and all covenants in this Deed of Trust may from time to time, by instrument in writing signed by Beneficiary and delivered to Trustor, be waived to such extent and in such manner as Beneficiary may desire, but no such waiver shall ever affect or impair Beneficiary's rights, remedies, powers, privileges, liens, titles, and security interest hereunder, except to the extent so specifically stated in such written agreement. Neither the exercise of, nor the failure to exercise any option or remedy under the terms of this Deed of Trust shall be considered as a waiver of the right to exercise same, or any other option or remedy given herein.

**Section 5.4 Maximum Rate of Interest.** Trustor and Beneficiary intend to comply with the applicable law governing the Maximum Rate (hereafter defined). All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged, or received by Beneficiary hereunder or otherwise exceed the Maximum Rate. If, in any contingency whatsoever, Beneficiary shall receive anything of value deemed interest under applicable law which would cause the interest contracted for, charged, or received by the Beneficiary to exceed the Maximum Rate, the excessive interest shall be applied to the reduction of the unpaid principal balance of the Obligation and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Trustor, and the provisions herein and any demand on Trustor shall immediately be deemed reformed, and the amounts thereafter collectible hereunder shall be reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder. All interest paid or agreed to be paid to the Beneficiary, to the extent permitted by applicable law, shall be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full (including the period of any renewal or extension hereof) so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate.

The term "Maximum Rate," as used herein, shall mean the maximum nonusurious interest rate, if any, that at any time, or from time to time, may under applicable law be contracted for, taken, reserved, charged or received on the Obligation, or any portion thereof, under the laws which are presently in effect of the United States and the State of Utah applicable to such holder and such indebtedness or, to the extent allowed by law under such applicable laws of the United States of America and the State of Utah which may hereafter be in effect, which allow a higher maximum non-usurious interest rate than applicable laws now allow; provided, that in determining the Maximum Rate, due regard shall be given, to the extent required by applicable law, to any and all relevant payments, fees, charges, deposits, balances, agreements and calculations which may constitute or be deemed to constitute interest, or be deducted from principal to calculate the interest rate or otherwise affect interest rate determinations, so that in no event shall the Beneficiary contract for, charge, receive, take, collect, reserve or apply, on the Obligation, or any portion thereof, any amount in excess of the maximum non-usurious rate of interest permitted by applicable law. The Maximum Rate shall not be limited to the applicable laws enacted in the State of Utah or such successor statute(s) if Federal laws or other state laws now or hereafter in effect and applicable to Obligation, or any portion thereof (and the interest contracted for, charged and collected hereunder) shall permit a higher rate of interest.

**Section 5.5 Effect of Transfer on Trustor's Liability.** If the ownership of the Property or any part thereof becomes vested in a person other than Trustor or in the event of a change in ownership of any Trustor other than an individual, Beneficiary may, without notice to Trustor or Trustor's successors, deal with such successor or successors in interest with reference to this Deed of Trust and the Obligation, either by way of forbearance on the part of Beneficiary, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise,

without in any way modifying or affecting Beneficiary's rights and liens hereunder or the liability of Trustor or any other party liable for payment of the Obligation, in whole or in part.

**Section 5.6 Waiver of Right to Marshal.** Trustor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

**Section 5.7 Condemnation Proceeds.** Beneficiary shall be entitled to receive any and all sums which may be awarded or become payable to Trustor for the condemnation of the Property, or any part thereof, for public or quasipublic use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Trustor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Beneficiary, and Trustor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such sums. Any sums received by Beneficiary in the event of condemnation shall be applied to installments on the Obligation in inverse order of maturity.

**Section 5.8 Insurance Proceeds.** The proceeds of any and all insurance upon the Property shall be collected by Beneficiary, and Beneficiary shall have the option, in Beneficiary's sole discretion, to apply any proceeds so collected either to the restoration of the Property or to the liquidation of the Obligation.

**Section 5.9 Reserve for Taxes and Insurance Premiums.** At the request of Beneficiary, Trustor shall create a fund or reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Property, or any part thereof, plus taxes and assessments next due on the Property, or any part thereof, as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes, and assessments will become due, such sums to be held by Beneficiary, without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes, and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and all deficiency shall be paid by Trustor to Beneficiary on or before the date when such premiums, taxes, and assessments shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when taxes, assessments, or insurance premiums are due and payable, Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of the Trustor, and such amounts so advanced shall become a part of the Obligation, shall be immediately due and payable and shall bear interest at the rate provided in the Note from the date of such advance through and including the date of repayment. Transfer of legal title to the Property shall automatically transfer the interest of Trustor in all sums deposited with Beneficiary under the provisions hereof or otherwise. In the event that Beneficiary does not request that such a fund be established, Trustor hereby agrees that he will promptly pay all premiums, taxes, and assessments when

due, and will furnish to Beneficiary proof of payment within 45 days of the due date by submitting canceled checks along with the statement concerning such taxes, premiums, or assessments.

**Section 5.10 Right to Accelerate Upon Transfer.** If Trustor shall sell, convey, assign, or transfer all or any part of the Property or any interest therein or any beneficial interest in the Trustor, Beneficiary may at Beneficiary's option, declare the Obligation to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, or transfer. Beneficiary may in its sole discretion and at Trustor's request decide not to exercise said option in which event Beneficiary's forbearance may be predicated on such terms and conditions as Beneficiary may in its sole discretion require, including but not limited to Beneficiary's approval of the transferee's credit worthiness and management ability, and the execution and delivery to Beneficiary by transferee, prior to the sale, transfer, assignment, or conveyance of a written assumption agreement containing such terms as Beneficiary may require, including but not limited to, a payment of a part of the principal amount of the Obligation, the payment of an assumption fee, a modification of the term of the Obligation, and such other terms as Beneficiary may require. Should the Property be sold, traded, transferred, assigned, exchanged, or otherwise disposed of without the prior written consent of Beneficiary and payment of any portion of the Obligation is thereafter accepted by the Beneficiary such acceptance shall not be deemed a waiver of the requirement of Beneficiary's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, or other disposition.

**Section 5.11 Prohibition Against Subordinate Financing.** If Trustor without the prior written consent of Beneficiary, executes or delivers any pledge, security agreement, mortgage, or deed of trust covering all or any portion of the Property (hereafter called "Subordinate Mortgage") Beneficiary may, at Beneficiary's option, which option may be exercised at any time following such pledge, security agreement, mortgage, or deed of trust, declare the Obligation to be immediately due and payable. In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Trustor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect: **(a)** that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest, and assignment evidenced by this Deed of Trust and each term and provision hereof; **(b)** that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Property will be named as a party defendant, or will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior written consent of Beneficiary; **(c)** that the rents and profits, if collected through a receiver or by the Beneficiary of the Subordinate Mortgage, shall be applied first to the Obligations, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Property; and **(d)** that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, (regardless



of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

**Section 5.12 Subrogation.** It is understood and agreed that the proceeds of the Note, to the extent the same are utilized to renew or extend any indebtedness or take up any outstanding liens against the Property, or any portion thereof, have been advanced by Beneficiary at Trustor's request and upon Trustor's representation that such amounts are due and payable. Beneficiary shall be subrogated to any and all rights, remedies, powers, privileges, liens, titles, and security interests owned or claimed by any owner or holder of said outstanding indebtedness or lien, however remote, regardless of whether said indebtedness or lien is acquired by assignment or is released by the holder thereof upon payment.

**Section 5.13 Covenant to Perform.** Trustor and each and every subsequent owner of the Property, or any part thereof, covenants and agrees that Trustor will perform or cause to be performed, each and every condition, term, provision, and covenant of this Deed of Trust, except that Trustor shall have no duty to pay the indebtedness evidenced by the Note except in accordance with the terms of the Note and all renewals and extensions thereof, and this Deed of Trust or in accordance with the terms of the transfer to Trustor.

**Section 5.14 Notice.** Except as otherwise provided herein, wherever this Deed of Trust requires notice to Trustor, such notice shall be deemed to have been given on the day it is deposited in the United States mail in a post paid wrapper addressed to Trustor at the address stated on the first page hereof, or at such other address as Trustor may designate by notice in writing and previously actually received by Beneficiary.

**Section 5.15 Enforceability.** If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Obligation, the unsecured portion of the Obligation shall be completely paid prior to the payment of the remaining and secured portion of the Obligation, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

**Section 5.16 Successors and Assigns.** This Deed of Trust is binding upon Trustor and Trustor's successors, and shall inure to the benefit of Beneficiary, and its successors and assigns, and the provisions hereof shall be covenants running with the Land. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and Trustor's successors.

**Section 5.17 Counterparts.** This Deed of Trust may be executed in a number of identical counterparts, each of which, for all purposes, shall be deemed an original. If any Trustor is a corporation, this instrument is executed, sealed, and attested by Trustor's officers hereunto duly authorized.

**Section 5.18 Financing Statement.** This Deed of Trust is intended to be a financing statement filed as a fixture filing with respect to the Accessories and the goods described at the beginning of this Deed of Trust which are or are to become fixtures relating to the Land.

The address of Trustor (Debtor) is set forth on the first page hereof and the address of Beneficiary (Secured Party) is set forth in Section 1.1 hereof. This Deed of Trust is to be filed for record in the real property records of the county clerk of the county or counties where the Land is located. Trustor is the record owner of the Land. A carbon, photographic, or other reproduction of this Deed of Trust or of a financing statement pursuant hereto is sufficient as a financing statement.

**Section 5.19 Partial Invalidity.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

**Section 5.20 Appraisal.** Beneficiary may from time to time obtain, or require Trustor to obtain for Beneficiary, an appraisal performed by a licensed or certified appraiser acceptable to Beneficiary of any real property securing any extension of credit by Beneficiary to Trustor. Trustor shall insure that such appraiser has free and full access to the subject real property for the purpose of making an appraisal. Trustor consents to such access by appraiser. If Trustor is not in possession of the real property at the time of the appraisal, Trustor shall obtain any consent and cooperation of any person in possession of the real property at the time of the appraisal. *Unless prohibited by applicable law*, Trustor shall pay to Beneficiary, on demand, any fees incurred by Beneficiary in obtaining any appraisal required under a regulation or policy of any applicable governmental authority or required under Beneficiary's loan policy. Trustor's obligation under this paragraph shall be secured by Beneficiary's lien upon the subject real property unless the real property is the homestead of the Trustor.

**Section 5.21 Attorneys' Fees.** If this Deed of Trust or any document related to it is given by Beneficiary to an attorney for enforcement, or if suit is brought for collection or enforcement, or if this Deed of Trust or any document related to it is collected or enforced through probate, bankruptcy or other judicial proceeding (or Beneficiary takes action to protect its interests through probate, bankruptcy or other judicial proceedings), Trustor shall pay Beneficiary reasonable attorneys' fees, court costs and expenses in addition to other amounts due hereunder.

**Section 5.22 Severability.** Except as expressly provided to the contrary herein, each section, part, term, or provision of this Deed of Trust shall be considered severable, and if for any reason any article, section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Deed of Trust as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Deed of Trust.

**Section 5.23 No Agency, Partnership or Joint Venture.** Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the Beneficiary or by any other party as creating the relationship between them of (i) principal and agent, (ii) a partnership, or (iii) a joint venture.

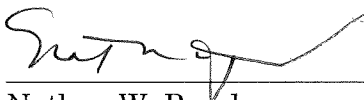
**Section 5.24 Cross-Default Provision.** It is expressly understood and agreed that, should Trustor default or commit an event of default under or pursuant to any agreement which is secured by a lien or liens on any portion of the Property, the Obligation hereby secured, at the option of the Beneficiary, shall become due and payable.

**Section 5.25 APPLICABLE LAW.** EXCEPT FOR MATTERS RELATING TO THE FORECLOSURE OF THE SECURITY INTEREST GRANTED HEREIN BY BENEFICIARY (WHICH PROVISION WILL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH) THIS DOCUMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, PROVIDED THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

**Section 5.27 Construction Mortgage.** This Deed of Trust is a construction mortgage, as that term is used in the Code.

**EXECUTED** as of the date first above written.

COTTONWOOD TOWNS MURRAY, LLC  
a Utah limited liability company

By:   
Nathan W. Pugsley  
Manager

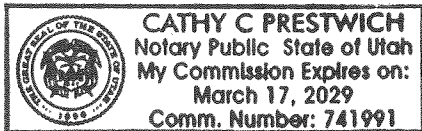
STATE OF UTAH


§  
§  
§

COUNTY OF SALT LAKE

**BEFORE ME**, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Nathan W. Pugsley, Manager of COTTONWOOD TOWNS MURRAY, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 15<sup>th</sup> day of May, 2025.



  
\_\_\_\_\_  
NOTARY PUBLIC, State of Utah  
Residing at: Salt Lake City Utah  
\_\_\_\_\_

## EXHIBIT "A"

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### Parcel 1:

Beginning at a point due South 908.432 feet and due East 1004.986 feet from Northwest corner of Section 8, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 0°50'00" East 300.19 feet (in some prior deeds 325.78 feet, more or less) to the Southerly line of Big Cottonwood Creek; thence South 82°30'00" East 139.50 feet; thence South 49°00'00" East 66.00 feet; thence South 72°12'30" East 318.96 feet (in some prior deeds 320.453 feet) to the West right-of-way line of 4800 South Street, said point being on a 426.833 foot radius (in some prior deeds 427.46 foot radius) curve to the right, the radius point of which bears North 66°29'44" West (in some prior deeds North 66°16'13" West); thence Southwesterly along the arc of said curve and said right-of-way line 313.543 feet (in some prior deeds 314.04 feet, more or less) to a point on a 340.00 foot radius curve to the right, the radius point of which bears North 33°46'52" West (in some prior deeds North 33°30'19" West); thence Southwesterly along the arc of said curve 224.995 feet (in some prior deeds 224.925 feet); thence North 0°50'00" East 133.80 feet (in some prior deeds 132.725 feet); thence West 69.53 feet to the Point of Beginning.

Tax Parcel 22-08-108-022-0000

### Parcel 2:

Beginning at a point in the center of a County Road which is 14.54 chains South and South 83°20'00" East 13.90 chains from the Northwest corner of Section 8, Township 2 South, Range 1 East, Salt Lake Meridian, and running thence South 83°20'00" East 92.48 feet; thence North 0°50'00" East 468.5 feet, more or less, to the center of creek; thence North 82°30'00" West down the center of the creek, 98.1 feet; thence South 7.25 chains to the Point of Beginning.

Tax Parcel 22-08-108-016-0000