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When Recorded Return To:

Cannon Law Group, PLLC
53 S 600 E
Salt Lake City, UT 84102

E# 2963112 PG 1 OF 25
Leann H. Kilts, WEBER COUNTY RECORDER
29-Jan-19 03:04 PM FEE \$58.00 DEP TN
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

109592-JMP
10-038-0014

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS (as it may be amended and modified from time to time, the "Deed of Trust") is made as of January 25, 2019, by and among **BLUEMOUNTAIN, INC**, a Utah corporation, whose mailing address for notice purposes is 2441 S 1560 W Woods Cross, UT 84087 ("Trustor"), **COTTONWOOD TITLE COMPANY** 1554 N Woodland Park Dr Suite 300 Layton, UT 84041 ("Trustee"), and **ACTION COMMERCIAL PARK, LLC** a Utah limited liability company, whose mailing address is 53 S 600 E Salt Lake City, UT 84102, as beneficiary.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to that certain real property located in Utah County, Utah, with an address of 791 South 9300 West Ogden, UT 84404, and more particularly described in **Exhibit A** to this Deed of Trust (the "Property"), which is expressly made part of the Trust Estate;

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

TOGETHER WITH all right, title or interest of Trustor in all rents, subrents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and the Improvements (collectively, the "Rents"), subject to the terms and provisions of **Article 2** of this Deed of Trust with respect to all leases and subleases of the Property or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

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

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

TOGETHER WITH all right, title or interest of Trustor in all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Property or the Improvements, or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

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

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

TOGETHER WITH all right, title, and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

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

TOGETHER WITH all right, title or interest of Trustor in all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims, of any of the foregoing.

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

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

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

(a) Payment of indebtedness of Trustor in the total principal amount of up to **FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00)** (the "*Loan*"), plus all accrued interest and fees outlined in the Secured Promissory Note & Memorandum of even date herewith, all other amounts due under Trustor's obligations to Beneficiary, and attorney's fees thereon, executed by Trustor, as Borrower, in favor of Beneficiary (as it may be amended, modified, extended, refinanced, consolidated, renewed, or otherwise modified from time to time, the "*Note*" or "*Loan Agreement*") evidencing the Loan, pursuant to which Beneficiary may make advances of Loan proceeds from time to time subject to the conditions and limitations therein;

(b) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the Default Interest rate specified in the Note (which rate of interest is hereinafter referred to as the "*Agreed Rate*");

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

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

(e) performance of every obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor regardless of whether the agreement, document, or instrument recites that the obligations thereunder are secured by this Deed of Trust;

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

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

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

For purposes of *Utah Code Annotated* Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Estate and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Trust Estate pursuant to this Deed of Trust. For purposes of *Utah Code Annotated* Section 57-1-25 and 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1

COVENANTS AND AGREEMENTS OF TRUSTOR

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

1.2 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Trustor agrees to improve the Trust Estate, make necessary repairs, and ensure that the Trust Estate is in a better condition than when it received title. Trustor shall not remove, demolish, or substantially alter any of the Improvements in a manner that would lessen the value of the Trust Estate, except with the prior written consent of Beneficiary. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Property and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Legal Requirements (as defined below) and shall not suffer to occur or exist any violation of any Legal Requirement. Trustor shall not commit or permit any material physical waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease. "*Legal Requirement*" and "*Legal Requirements*" mean, respectively,

each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (a) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (b) such obligations and requirements of, in, or in respect of (i) any consent, authorization, license, permit, or approval relating to the Trust Estate, (ii) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (iii) any Lien or Encumbrance, and (iv) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.3 Required Insurance. Trustor shall keep all of the Property (except land, paving and roads) insured by a general liability policy to a commercially reasonable standard and value, but in no event for less than the amount of the Loan secured hereby, against loss by fire and such other hazards, casualties, and contingencies as are customarily insured against by persons owning similar properties in the locality of the Property or customarily required by prudent institutional lenders making loans secured by such properties for such periods and in such amounts as Beneficiary may reasonably require from time to time. Trustor will pay all premiums for such insurance promptly when due and prior to delinquency. All policies shall be written without any co-insurance clause and shall include a lender's loss payable endorsement or standard mortgagee clause, without contribution, in favor of and in form reasonably acceptable to Beneficiary. Should Beneficiary agree to the inclusion of a co-insurance or an average clause, the policy shall also include a stipulated value endorsement for such amount as Beneficiary may require. All policies shall contain an endorsement or agreement by the insurer that (A) any loss shall be payable in accordance with the terms of the policy notwithstanding any act or negligence by Trustor which might otherwise result in forfeiture or cancellation of the policy, and (B) waiving all rights of setoff, counter-claim, deduction or subrogation against Trustor. Trustor waives any and all right to claim or recover against Beneficiary, its directors, officers, employees, agents and representatives for any loss or damage to Trustor, the Property, or any property of others under Trustor's control resulting from any cause insured against or required to be insured against under this **Section 3**. All policies shall be issued by companies approved by Beneficiary and having an A+ or better rating from Alfred M. Best Company, Inc.; all policies and renewals thereof are hereby assigned to Beneficiary. All policies (or, at Beneficiary's election, evidence of satisfactory insurance coverage and copies of the policies) shall be delivered to and held by Beneficiary. All policies shall provide that they may not be canceled or materially amended (including any reduction in the scope or limits of coverage) without at least thirty (30) days' prior direct written notice to Beneficiary from the relevant insurance companies. All renewal policies shall be delivered to Beneficiary, premiums prepaid for a term of at least one (1) year, at least ten (10) days before the expiration of the policies being renewed. Acceptance of policies tendered by Trustor shall not preclude Beneficiary from requiring other or additional insurance against the same or other hazards. Certificates of casualty or hazard insurance shall be on an ACORD 28 Form and certificates of liability insurance shall be on an ACORD 25 Form.

1.4 Delivery of Policies, Payment of Premiums.

(a) Trustor shall furnish Beneficiary with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party holding under Trustor; provided, however, all such policies shall meet the requirements referred to in **Section 1.3**. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) If Trustor fails to obtain, maintain, or deliver to Beneficiary the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Beneficiary may, at Beneficiary's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon within thirty (30) days of demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "*Insurance Impounds*"). In such event Trustor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time during the continuation of an Event of Default and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Trustor set forth in **Section 1.3** to obtain and maintain insurance. Beneficiary may commingle Insurance Impounds with its own funds, and Trustor shall not be entitled to interest thereon. Beneficiary may reserve for future payments of premiums such portion of Insurance Impounds as Beneficiary in its absolute and sole discretion deems proper. If during the continuation of an Event of Default Trustor fails to deposit with Beneficiary sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand with interest from the date advanced at the Agreed Rate, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Beneficiary may, at any time, at Beneficiary's option, apply any Insurance Impounds or Impositions Impounds under this **Section 1.3** or **Section 1.8**, any funds paid as Rents, and any other funds of Trustor held by Beneficiary to payment of any of the Obligations, in such manner and order as Beneficiary may elect, notwithstanding that such Obligations may not yet be due.

1.5 Casualties; Insurance Proceeds.

(a) Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Trust Estate, or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. All proceeds of insurance will be applied by Beneficiary to payment of the Obligations in such order as Beneficiary shall determine.

(b) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** hereof and as required by the master plans, site plans, declarations of covenants, conditions and restrictions, reciprocal easements and related documents pertaining to the Trust Estate or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust, or invalidate any act done pursuant to such default or notice of default.

1.6 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by **Section 1.3** shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.7 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach. Notwithstanding the foregoing, if any lawsuit or arbitration is commenced which arises out of or relates to this Deed of Trust, the Loan Documents, or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees in the action or arbitration, in addition to costs and expenses otherwise allowed by law.

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

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; in each case, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, limited liability company, limited liability partnership, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.8 Impositions.

(a) Trustor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever (including, without limitation, non-governmental levies or assessments such as maintenance charges,

levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "*Imposition*" and collectively as "*Impositions*"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Beneficiary which is measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "*Impositions*" as defined in **Section 1.8(a)** and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Obligations, immediately due and payable. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

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

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this **Section 1.8**, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's good faith discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, or (ii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "*Impositions Impounds*"). In such event, Trustor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time during the continuation of an Event of Default and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this **Section 1.8(e)**. Beneficiary may commingle Imposition Impounds with its own funds and shall not be obligated to pay any interest on any

Impositions Impounds. Beneficiary may reserve for future payment of Impositions such portion of Impositions Impounds as Beneficiary may in its absolute and sole discretion deem proper. If during the continuation of an Event of Default Trustor fails to deposit with Beneficiary sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary within thirty (30) days of demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due.

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

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

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

1.11 Actions By Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its good faith discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days' prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation following and during the continuation of an Event of Default, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, within thirty (30) days of demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the Loan, Trustor agrees that, except as permitted by the Loan Agreement, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder from

and after the date of such Transfer and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, “*Transfer*” shall mean:

- (a) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise;
- (b) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Trustor or any partner in Trustor to or in any Person (if Trustor or any partner in Trustor is a partnership, whether general or limited) whether voluntary, involuntary, by operation of law, or otherwise;
- (c) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any membership interest in Trustor or any member in Trustor to or in any Person (if Trustor or any member in Trustor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise;
- (d) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Trustor or any partner in Trustor to or in any Person or any consolidation or merger of Trustor or any partner in Trustor into or with any Person (if Trustor or any partner or member in Trustor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise; or
- (e) the execution of any agreements to do any of the foregoing.

1.13 Eminent Domain.

(a) In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a “*Taking*”), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the “*Condemnation Proceeds*”) are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary’s option and in Beneficiary’s sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

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

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the Obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for

the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

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

1.16 Inspections. Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time after reasonable prior notice upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents. Beneficiary shall use commercially reasonable efforts not to disrupt the tenants of the Trust Estate and to minimize interference with the day to day operation of the Property or Trustor's business in exercising its rights under this Agreement.

1.17 Ownership and Liens and Encumbrances.

(a) Liens in General. Beneficiary acknowledges that there are preexisting mortgage liens on the Property, and this Trust Deed is subject to any preexisting lien. Trustor will, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions, not encumber the Property with any further liens until the Loan is paid in full. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances which occur after the date of this Trust Deed ("Excluded Lien or Encumbrance"), and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Except in the case of mechanic's and materialmen's liens which are governed by **Section 1.17(b)** below, Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first obtain title insurance insuring over such Lien, or deposit with Beneficiary a bond or other security reasonably satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150.0%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Excluded Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Excluded Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, within thirty (30) days of demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Excluded Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "*Excluded Lien or Encumbrance*" and "*Excluded Liens and Encumbrances*" mean, respectively, each and all of the following that occur after the date of this Trust Deed, but not preexisting liens or encumbrances, in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether

voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust.

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

(i) Trustor shall timely comply with all requirements of Title 38 Part 1 of *Utah Code Annotated* with regard to filings and notices and further agrees that Beneficiary may file a Notice of Intent to Obtain Final Completion, and Notice of Completion as contemplated by *Utah Code Annotated* § 38-1-33, and *Utah Code Annotated* § 38-1-40, in each case in the State Construction Registry of the State of Utah. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Trust Estate in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1-27(3). Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contactor or subcontractor with respect to the Trust Estate that are included in the State Construction Registry and/or received by Trustor. Trustor shall, upon completion of the Improvements, promptly file a Notice of Intent to File Notice of Completion, and Notice of Completion in the State Construction Registry as permitted by *Utah Code Annotated* § 38-1-33 and *Utah Code Annotated* § 38-1-40.

(ii) Trustor represents and warrants that to its knowledge no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Trust Estate or recorded against the Trust Estate.

(iii) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to UCA § 38-1-5(3)(b)(ii) and Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished before the recording of this Deed of Trust pursuant to UCA § 38-1-5(3)(b)(i) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

(iv) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Trust Estate free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of Mortgagee's Title Insurance Policy.

(v) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein created by or on behalf of Trustor whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Trust Estate regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice

of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1-28 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1-28 to release the Trust Estate from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1-28(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(vi) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Trust Estate from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* § 38-1-28 or other applicable law, or otherwise by giving security for such claim. Trustor shall, within thirty (30) days of demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

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

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

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

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

1.22 Leasehold. If a leasehold estate constitutes any portion of the Trust Estate, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Beneficiary, which consent may be withheld by Beneficiary in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to timely pay any sums due under any lease creating the leasehold estate on or before the date due and to timely perform all obligations and agreements under said leasehold. Trustor shall not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor, within three days of its receipt, with respect to any such default or alleged default. Beneficiary shall have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be due and payable within thirty (30) days of demand and shall bear interest from date of expenditure at the Agreed Rate.

ARTICLE 2

ASSIGNMENT OF RENTS

2.1 Assignment of Rents. Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, and to enforce the Leases, so long as an Event of Default shall not have occurred hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this **Article 2** is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the Rents are not contingent upon and may be exercised without possession of the Trust Estate.

2.2 Collection Upon an Event of Default. Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of, and/or renew existing leases collectively, the "*Leases*", and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth, and except for the illegal acts, gross negligence, willful misconduct or fraud of Beneficiary.

2.3 Application of Rents.

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

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

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

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

(b) Reference to Assignment. All Leases hereafter executed with respect to the Property or any portion thereof shall contain a reference to this Deed of Trust and the assignment of leases hereunder and shall state that such lessee shall be bound by and shall comply with the provisions of **Article 2** hereof.

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

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

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

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

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

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

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

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

2.7 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor

shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

2.8 Uniform Assignment of Rents Act. This **Article 2** is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Article 2 and the provisions of the Act, the provisions of the Act shall control.

ARTICLE 3

REMEDIES UPON DEFAULT

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

(a) Failure by Trustor to pay any monetary amount when due hereunder or under the Loan Documents.

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

(c) The occurrence of any Transfer, unless prior to such Transfer the holder of the Note has delivered to Trustor the written consent of such holder to such Transfer.

(d) The occurrence of (i) any default and the failure to cure such default during applicable cure periods, if any, or (ii) any Event of Default (as such term is defined in any other Loan Document) under any other Loan Document, including, but not limited to the Note.

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

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law,

appoint a receiver as more particularly described in **Section 4.5**, or specifically enforce any of the covenants hereof;

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

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

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

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

SECOND: To payment of the obligations secured by any preexisting lien.

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

FOURTH: To the balance, if any, to the person or person's legally entitled to the proceeds, 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.

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

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust

Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Property pursuant to this Deed of Trust.

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

3.4 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefore and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated.

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

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

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

3.8 One Action Rule and Deficiency Statute. Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* §§ 78-37-1 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

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

3.11 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale be mailed to it at the address set forth in **Section 7.4.**

ARTICLE 4

RELEASE AND RECONVEYANCE OF TRUST ESTATE

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

ARTICLE 5

SURETYSHIP MATTERS

5.1 Suretyship Matters

(a) Waivers. Trustor waives and agrees not to assert or take advantage of: (a) the provisions of any statutory or common laws or procedural rules of any jurisdiction relevant to guarantors, indemnitors, sureties, co-makers or accommodation parties; (b) any right to require Beneficiary to proceed against Borrower or any other person or entity, to proceed against or exhaust any security held by Beneficiary at any time for the guaranteed obligation or to pursue any other remedy in Beneficiary's power before proceeding against such Trustor; (c) any defense of any statute of limitations which may be asserted by Borrower; (d) any defense that may arise by reason of the incapacity, lack of authority, death, disability, dissolution or termination of, involvement in any bankruptcy or reorganization proceeding by, or other similar occurrence or happening with respect to, Borrower or any successor in interest to Borrower with respect to any of the collateral for the Obligations; (e) any "one action" or "deficiency" or "anti-deficiency" law or any other law which may prevent Beneficiary from bringing any action, including a claim for deficiency, against Trustor, before or after Beneficiary's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (f) any election of remedies by Beneficiary which destroys or otherwise adversely affects Trustor's subrogation rights or Trustor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Trustor may suffer by reason of any law limiting, qualifying, or discharging the Obligations; or (g) any right to receive any demand or any notice, including any notice of any Event of Default under the Loan Documents. If, notwithstanding the choice of law set forth herein, at any time the law of any jurisdiction other than the State of Utah is determined to be applicable to this Deed of Trust, then to the maximum extent permitted by law, Trustor expressly waives any and all benefits of the law and rules of such jurisdiction that conflict with any provision of

this Deed of Trust and to the extent that the same are applicable.

(b) Authority to Take Actions Without Consent of Trustor. Trustor authorizes Beneficiary, without notice to or demand upon, and without affecting the liability of, Trustor hereunder, but with any necessary consent or joinder of Borrower, from time to time, to: (a) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Obligations or any part thereof, including increase or decrease of any applicable rate of interest with respect thereto; (b) take and hold, release or waive any security (including the Deed of Trust) for the Obligations; (c) release or substitute any person or entity that is or may be directly or indirectly liable (or whose property is directly or indirectly liable) for satisfaction of all or any portion of the Obligations; (d) foreclose or otherwise realize upon any security for all or any portion of the Obligations, regardless of the effect upon Trustor's subrogation, contribution or reimbursement rights against Borrower or any other guarantor or pledgor; (e) accept or make compromises or other arrangements, or file or refrain from filing a claim in any bankruptcy proceeding of Borrower or any other guarantor or pledgor; (f) otherwise deal with Borrower or any other guarantor or party relating to the Obligations or any security therefor as Beneficiary may determine in its discretion. The rights of Beneficiary and the obligations of Trustor under this Deed of Trust shall not be impaired, reduced or discharged by any modifications or amendments of or to any of the Loan Documents or other guaranties, including changes in the terms of disbursement or repayment of the Obligations, modifications, extensions, substitutions or renewals of payment dates, releases of security or other guarantors in whole or in part, changes in interest rate, or the advance of additional funds by Beneficiary as permitted under the Loan Documents.

(c) Trustor Duty to Keep Informed. Trustor confirms to Beneficiary that Trustor is and will remain fully informed regarding the financial status and situation of Borrower, the collateral serving as security for the Obligations and its value, and any other guarantors of the Obligations or any portion thereof, and agrees that Beneficiary has no duty to disclose to Trustor any facts or information it may now have or may hereafter obtain about or with respect to Borrower, any collateral for the Obligations or any other guarantors of the Obligations or any portion thereof.

(d) No Right of Subrogation, Reimbursement or Contribution. Notwithstanding any statutory or common law or procedural rule: (a) no Trustor shall have any right of subrogation or reimbursement with respect to any of the Obligations, any security for any portion of the Obligations or any remedy of Beneficiary to collect any of the Obligations, regardless of any payment directly or indirectly made by Trustor pursuant to the provisions of this Deed of Trust or otherwise; and (b) no Trustor shall have any right of contribution against any other guarantor or pledgor. To the extent that the foregoing waiver of the rights of subrogation, reimbursement or contribution are determined by a court of competent jurisdiction to be void or voidable for any reason, Trustor agrees that Trustor's rights of subrogation and reimbursement against Borrower and against any collateral or security will be junior and subordinate to Beneficiary's rights against Borrower and to Beneficiary's right, title and interest in such collateral or security, and Trustor's right of contribution against any other guarantor or pledgor shall be junior and subordinate to Beneficiary's rights against such other guarantor or pledgor. Trustor acknowledges that Beneficiary does not and shall not make any representation or warranty of any nature as to the existence, value, priority or non-impairment of any such rights or any such security, and waives any and all claims of any nature that it may now have or hereafter acquire against Beneficiary that may result from the nonexistence, lack or loss of value or priority or impairment of any such rights or security.

(e) Subordination of Obligations to Trustor. All existing and future obligations of Borrower to Trustor are hereby subordinated and made junior and inferior to all rights of Beneficiary to have the Obligations fully paid and satisfied and the Obligations performed.

(f) Continuation of Deed of Trust if Payments Avoided or Recovered From Beneficiary. Notwithstanding any other provision of this Deed of Trust or the Loan Documents to the contrary, if all

or any portion of the Obligations is paid or performed, the obligations of Trustor hereunder shall continue and remain in full force and effect if all or any part of such payment or performance is avoided or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, regardless of whether the Obligations had theretofore been paid in full or whether Trustor had provided notice of revocation of this Deed of Trust to Beneficiary prior to such avoidance or recovery, or if additional Advances from the Note are requested and disbursed as a result of the non-revolving line of credit nature of the Loan.

(g) Amount of Obligations; Effect on Deed of Trust. Trustor acknowledges and agrees that the Obligations (and/or other indebtedness or obligations of Borrower) to Beneficiary may exceed the principal amount set forth in this Deed of Trust. No increase in the Obligations in excess of such amount, no other loans or financial accommodations by Beneficiary to Borrower, and no other loans or financial accommodations by Beneficiary to Trustor shall in any way affect or diminish the obligations of Trustor under this Deed of Trust.

(h) Lien and Setoff Rights Against Deposits. To secure Trustor's obligations under this Deed of Trust, Beneficiary shall have a lien upon and a right of setoff against all deposit accounts of Trustor with Beneficiary.

(i) No Effect on Other Obligations; Rights and Remedies Cumulative. Nothing in this Deed of Trust shall in any way affect any other present or future direct or indirect obligations of Trustor or Borrower to Beneficiary. By way of expansion and not limitation of the provisions of the preceding sentence, all rights and remedies of Beneficiary and all obligations of Borrower under the Loan Documents, and all obligations of Trustor hereunder, shall be cumulative and not duplicative, and Beneficiary may take any actions and resort to any rights and remedies under or provided by this Deed of Trust and/or any one or more other Loan Documents, in such order as Beneficiary shall in its sole discretion elect, provided that Beneficiary shall have no duty or obligation to take any such actions or resort to any such rights or remedies. Beneficiary may, in its sole discretion, exercise any rights and remedies available to it against Borrower or any other guarantor or pledgor without impairing Beneficiary's rights and remedies under this Deed of Trust. Trustor acknowledges that Beneficiary's exercise of certain rights or remedies may impair or eliminate Trustor's right of subrogation or recovery against Borrower, and that Trustor may incur a partially or totally non-reimbursable liability under this Deed of Trust.

(j) Covenants. Each of the terms, conditions and covenants of the Loan Documents are hereby incorporated herein by this reference.

ARTICLE 6

MISCELLANEOUS

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

6.2 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert under applicable law pertaining to the rights and remedies of sureties or guarantors.

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

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

To Beneficiary:	Action Commercial Park, LLC 53 S. 600 E. Salt Lake City, Utah 84102
with a copy to:	Cannon Law Group, PLLC 53 S. 600 E. Salt Lake City, Utah 84102 Attn: Cole S. Cannon, Esq.
To Trustor:	BLUEMOUNTAIN, INC 2441 S 1560 W WOODS CROSS, UT 84087

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

6.6 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto. All exhibits hereto are incorporated herein by reference.

6.7 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the obligations, and all payments made on the obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

6.8 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

6.9 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court

proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate. Notwithstanding the foregoing, if any lawsuit or arbitration is commenced which arises out of or relates to this Deed of Trust, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorney's fees in the action or arbitration, in addition to costs and expenses otherwise allowed by law.

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

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

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

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

6.14 Counterparts. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

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

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

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

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

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

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

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

BLUEMOUNTAIN, INC a Utah corporation

By: [Signature]
Name: Kenneth Truman Thomson
Title: President

“Trustor”

STATE OF UTAH)
 : ss.
County of Davis)

The foregoing instrument was acknowledged before me this 29th day of January 2019, by Kenneth Truman Thomson, the President of BlueMountain Fin Inc., on behalf of such corporation.

[Signature]
NOTARY PUBLIC

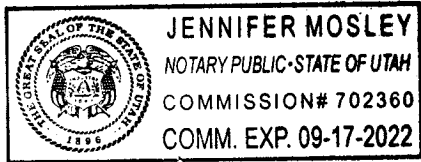


Exhibit "A"

The land referred to herein is located in Weber County, Utah with an address of 791 S 9300 W Ogden, UT 84404, and with a legal description of:

PART OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT WHICH IS 25 FEET NORTH 89D50' EAST AND NORTH 0D02'24" EAST 50 FEET FROM THE INTERSECTION OF THE CENTERLINE OF 900 SOUTH STREET (BEING THE SOUTH SECTION LINE OF SECTION 17) AND THE WEST LINE OF THE EAST 1/2 OF SECTION 17; RUNNING THENCE NORTH 89D50' EAST ALONG THE NORTH LINE OF 900 SOUTH STREET 949.8 FEET TO THE WESTERLY LINE OF 9300 WEST STREET; THENCE NORTH 0D02'24" EAST ALONG THE WESTERLY LINE OF 9300 WEST STREET 2219.25 FEET; THENCE SOUTH 89D50' WEST 949.80 FEET TO THE CENTERLINE OF EASEMENT AS DEEDED IN BOOK 1229, PAGE 641, PARCEL 1, SAID POINT BEING ON EAST LINE OF THE PROPERTY DEEDED TO THE WESTERN ZIRCONIUM INC IN BOOK 1265, PAGE 698; THENCE SOUTH 0D02'24" WEST ALONG SAID EASTERLY LINE 2219.25 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM: THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT A POINT IN THE CENTER OF SPUR RAIL SAID POINT BEING 24.85 FEET NORTH 89D50' EAST ALONG THE SECTION LINE AND 1181 .94 FEET NORTH 0D02'24" EAST FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION, RUNNING THENCE NORTH 0D02'24" EAST 255.62 FEET ALONG THE CENTERLINE OF SAID SPUR RAIL, THENCE NORTH 89D45'54" EAST 268.03 FEET TO AN EXISTING FENCE LINE EXTENDED, THENCE SOUTH 1D16'45" WEST 255.71 FEET ALONG SAID FENCE AND FENCE LINE EXTENDED THENCE SOUTH 89D45'54" WEST 262.50 FEET TO THE POINT OF BEGINNING.

(Part of 10-038-0014)

LESS AND EXCEPTING THE FOLLOWING:

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF LAND, SITUATED IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, INCIDENT TO THE CONSTRUCTION OF 1200 SOUTH STREET, WEBER COUNTY, STATE OF UTAH ALSO KNOWN AS PROJECT NO. LG-WC1200S. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING NORTH RIGHT OF WAY LINE OF 1200 SOUTH STREET, SAID POINT LIES 25.00 FEET NORTH 89°50'00" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17 AND 50.00 FEET NORTH 00°02'24" EAST TO THE WEST LINE OF THE GRANTOR'S PROPERTY FROM THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 17; AND RUNNING THENCE NORTH 00°03'49" EAST 1.29 FEET ALONG THE WEST LINE OF SAID GRANTOR'S PROPERTY; THENCE SOUTH 89°51'13" EAST 236.38 FEET TO A POINT ON THE SOUTH LINE OF SAID GRANTOR'S PROPERTY; THENCE SOUTH 89°49'59" WEST 236.38 FEET ALONG THE SOUTH LINE OF SAID GRANTOR'S PROPERTY TO THE POINT OF BEGINNING.

ROTATE 0°26'18" CLOCKWISE TO MATCH HIGHWAY BEARING.