



\*W3114636\*

E# 3114636 PG 1 OF 28  
Leann H. Kilts, WEBER COUNTY RECORDER  
31-Dec-20 0231 PM FEE \$40.00 DEP PC  
REC FOR: US TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

**WHEN RECORDED, MAIL TO:**

Actium Loan Management LLC  
111 East Broadway, Suite 390  
Salt Lake City, Utah 84111  
034249  
22-040-0030

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust"), is made and entered into as of December 29, 2020 by Levanta, LLC, a Delaware limited liability company ("Trustor") in favor of US Title ("Trustee"), for the benefit of Actium Loan Management LLC, a Utah limited liability company, Actium High Yield Loan Fund IV LLC, a Utah limited liability company, Actium High Yield Loan Fund V LLC, a Utah limited liability company, and Actium High Yield Loan Fund VI LLC, a Utah limited liability company and their successors and assigns (together with its successors and assigns, collectively, "Beneficiary"), with a mailing address at 111 East Broadway, Suite 390, Salt Lake City, 84111, and its successors and assigns.

**RECITALS**

- A. Pursuant to that certain Loan Agreement, Trust Deed Promissory Note (the "Note"), Guaranty and other documents and instruments entered into in conjunction therewith, each dated March 17, 2020, as amended by the Modification of Loan Agreement, Allonge to Promissory Note, and other documents and instruments entered into in conjunction therewith, each of even date herewith (collectively, the "Loan Documents", all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Documents), Beneficiary has agreed to make a loan to Ray Creek, LLC ("Borrower"), an affiliate of Trustor, in the total original principal amount of \$1,020,000.00 ("Loan").
- B. Trustor will receive substantial benefit from the execution, delivery, and performance of the Note and the other Loan Documents and is, therefore, willing to enter into this Deed of Trust.
- C. Trustor is the owner of the fee simple estate in the Land (defined below) and Improvements.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the due and punctual payment and performance of all of the Secured Obligations (defined below) as and when the same become due and payable, Trustor hereby represents, warrants, covenants, and agrees for the benefit of Beneficiary as follows:

## ARTICLE I

### DEFINITIONS

For purposes of this Deed of Trust, the following terms shall have the following meanings. Capitalized terms used in this Deed of Trust without definition shall have the meanings ascribed to such terms in the Loan Documents.

“Environmental Indemnity Agreement” means that certain Environmental and Hazardous Substances Indemnity Agreement dated as of March 17, 2020 by Trustor and the other indemnitors named therein, as indemnitors, in favor of Beneficiary, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms.

“Guaranty Agreement” means that certain Guaranty dated as of March 17, 2020 executed by Kody Holker guaranteeing the payment of the Guaranteed Indebtedness (as defined in the Guaranty Agreement), as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms.

“Non-Monetary Obligations” means all any and all obligations of the Trustor under the Loan Documents that are not related to the making of any payments required under the Loan Documents.

“Obligor” means Trustor, any guarantor under the Guaranty Agreement, or any indemnitor under the Environmental Indemnity Agreement, together with their respective successors and assigns.

“Person” means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization, Governmental Authority, or other entity.

“Secured Obligations” means collectively, the Secured Indebtedness, the Non-Monetary Obligations, and all other obligations of the Trustor under the Loan Documents.

## ARTICLE II

### GRANT AND SECURED OBLIGATIONS

**Section 2.01 Grant.** In order to secure the due and punctual payment and performance of all of the Secured Obligations as and when the same become due, whether at a stated due date, maturity date, by acceleration, or otherwise, Trustor does hereby irrevocably deed, mortgage, grant, pledge, bargain, sell, assign, transfer and convey to Trustee, and to its successors and assigns as trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession as provided below, as security for the Secured Obligations, all of Trustor's present and future estate, right, title, and interest in, to, and under the following described property now owned or held or hereafter acquired from time to time (collectively, the "Property"):

(a) All that certain tract or parcel of land lying and being in Weber County, Utah and being more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Land") and all minerals, oil, gas, and other hydrocarbon substances, sand, gravel, and other materials that may be mined, produced, or extracted from the Land, in, on, or under the surface of the Land (to the extent owned by Trustor), as well as all development rights, permits, licenses, air rights, water, water rights, water stock, utility reservations, sanitary sewer, and other utility capacities relating to the Land.

(b) All buildings, structures, and other improvements of every kind and nature whatsoever now or hereafter situated on the Land (collectively, the "Improvements"), all apparatus, equipment, fittings, fixtures, machinery, materials, supplies, and other items of personal property now owned or hereafter acquired by Trustor and now or hereafter affixed or attached to, installed in, or used in connection with the operation or maintenance of the Land or Improvements, including any fixtures as defined in the Uniform Commercial Code in effect in the jurisdiction in which the Land and Improvements are located and/or where Trustor is located or organized (the "UCC") and any appliances, storm doors, windows, lighting, plumbing, pipes, pumps, tanks, conduits, sprinkler and other fire prevention or suppression, refrigeration, incineration, escalator, elevator, loading, security, water, steam, gas, electrical, telephone, cable, internet, switchboards, storm and sanitary sewer, drainage, HVAC, boilers, waste removal, or other utility equipment or systems (collectively, the "Fixtures and Equipment") and building, construction, development, and landscaping supplies and materials now or hereafter affixed to or located at the Land or the Improvements and all replacements, substitutions, and additions to the foregoing.

(c) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, utility reservations and capacity rights, waters, water courses, water rights and powers, estates, rights, titles, interests, minerals, royalties, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way now or hereafter belonging, relating, or appertaining to the Land or the Improvements, or any part thereof, and the reversions, remainders, rents, issues and profits thereof; and all right to receive excess payments in any tax sale of the Land or the Improvements.

(d) Any and all rents, revenues, issues, profits, royalties, income, cash proceeds, security deposits, accounts, moneys, and other monetary benefits that are now due or may hereafter become due by reason of the renting, leasing, bailment of all or any portion of the Land or the

Improvements or the use or occupancy thereof (collectively "Rents").

(e) Subject to the rights of Trustor hereunder and under the Loan Documents, all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect and every modification, amendment, or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions, and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (in each case, as amended, amended and restated, supplemented, renewed, extended, substituted, or otherwise modified from time to time, collectively the "Leases").

(f) All other contracts and agreements in any way relating to, executed in connection with, or used in the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management, or ownership of the Land and/or Improvements or the sale of goods or services produced in or relating to the Land and/or Improvements (collectively, in each case as amended, amended and restated, supplemented, renewed, extended, substituted, or otherwise modified from time to time, the "Property Agreements") including without limitation: (i) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease, or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates, and entitlements; (ii) all material agreements and instruments under which Trustor or any of its affiliates or the seller of the Land and/or Improvements have remaining rights or obligations in respect of Trustor's acquisition of the Land and/or Improvements or equity interests therein; (iii) business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, certificates of need and all other permits, licenses and rights obtained from any governmental authority or private person; (iv) all rights of Trustor to receive monies due and to become due under or pursuant to the Property Agreements; (v) all claims of Trustor for damages arising out of or for breach of or default under the Property Agreements; and (vi) all rights of Trustor to terminate, amend, supplement, modify, or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon.

(g) All insurance or other settlement proceeds relating to or arising out of the foregoing, all proceeds of a sale of all or any portion of the foregoing, and all causes of action, claims, compensation, awards, damages, proceeds, payments, relief or recoveries, including interest thereon, as a result of any Casualty or Condemnation Event of all or any part of the Land and/or Improvements or for any damage or injury to it or for any loss or diminution in value of the Land and/or Improvements (collectively, the "Proceeds").

(h) To the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements, and accessions of, and to, any and all of the foregoing.

TO HAVE AND TO HOLD the Property and the rights, remedies, and privileges hereby granted and conveyed unto Trustee, forever, in trust, with power of sale in accordance with the terms and

conditions hereof, for the use and benefit of Beneficiary forever, subject, however to Section 7.17 hereof, and Trustor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee against every Person whosoever lawfully claiming or to claim the same or any part thereof.

**Section 2.02 Secured Obligations.** This Deed of Trust is made and intended to secure the due and punctual payment and performance of all of the Secured Obligations as and when the same become due and payable, whether at the stated maturity, by acceleration, or otherwise.

### ARTICLE III

#### ASSIGNMENT OF LEASES AND RENTS

##### **Section 3.01 Assignment of Leases and Rents.**

(a) Trustor hereby absolutely, presently, irrevocably, and unconditionally grants, bargains, sells, conveys, assigns, and transfers to Beneficiary all of Trustor's present and future right, title, interest, and estate in, to, and under all Leases and Rents, whether now owned or hereafter acquired, and the absolute, present, irrevocable, and unconditional right to receive, collect, and possess all Rents.

(b) This Article 3 constitutes an absolute, present, irrevocable, and unconditional assignment of Leases and Rents to Beneficiary and not merely a collateral assignment of, or the grant of a lien or security interest in or on, Leases and Rents. Such grant, assignment, and transfer shall not be construed to: (i) bind Beneficiary to the performance of any of the covenants, conditions, or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary; or (ii) create, or operate to place or impose, any responsibility, obligation or liability upon Beneficiary for: (A) the control, care, maintenance, management, or repair of the Property; (B) any dangerous or defective condition of the Property, including, without limitation, the presence of any environmental contamination or conditions; (C) any waste committed on the Property by any Person; and/or (D) any negligence in the management, upkeep, repair, or control of the Property.

##### **Section 3.02 Revocable License.**

(a) Notwithstanding the grant, assignment, and transfer of Leases and Rents from Trustor to Beneficiary pursuant to Section 3.01, Beneficiary grants to Trustor a revocable license to collect and receive Rents as they become due, and to retain, use, and apply Rents to the payment of the Secured Obligations and to the costs and expenses incurred in connection with the operation and maintenance of the Property, and to exercise all rights as landlord under any Lease, in each case subject to the terms of this Deed of Trust and the other Loan Documents. After the occurrence and during the continuance of an Event of Default, Trustor shall collect and receive all such Rents as trustee for the benefit of Beneficiary.

(b) From and after the occurrence and during the continuance of any Event of Default:

(i) The revocable license granted to Trustor pursuant to Section 3.02(a) shall immediately and automatically, with or without notice from Beneficiary, cease and terminate and shall be void and of no further force or effect;

(ii) Beneficiary shall immediately and automatically be entitled to receive, collect, and possess all Rents (whether or not Beneficiary enters upon or takes control of the Property or has a receiver appointed for the Property or takes any other action), as hereinafter provided in this Deed of Trust;

(iii) Trustor shall, immediately upon written demand by Beneficiary, notify in writing all tenants under Leases that all Rents due thereunder from and after the date of such notice shall be paid to Beneficiary at its address set forth in this Deed of Trust, or at such other place as Beneficiary shall notify Trustor or the tenants in writing; and

(iv) Any portion of Rents then or thereafter received or held by Trustor shall be payable immediately upon written demand to Beneficiary for application by Beneficiary, at its option, to the payment of the Secured Indebtedness and/or expenses in connection with the operation and maintenance of the Property.

(c) It is agreed that, if the Event of Default that gave rise to the termination of the revocable license pursuant to Section 3.02(a) is cured, then the revocable license granted pursuant to Section 3.02(a) shall be reinstated for so long as no other Event of Default shall occur and be continuing, subject to the provisions of this Section 3.02.

(d) Notwithstanding the license granted to Trustor, upon the occurrence and during the continuance of an Event of Default, Trustor agrees that, at Beneficiary's sole option from time to time, Beneficiary, and not Trustor, shall be deemed to be the creditor of each tenant under each Lease in respect of any and all assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting each tenant, with an option to apply in accordance with the Loan Documents any money received from such tenant in reduction of any amounts due under the Loan Documents. In each such case, Beneficiary or Trustor at Beneficiary's direction shall be obligated to file or make timely filings of claims in such proceedings and to otherwise pursue creditor's rights in such proceedings.

**Section 3.03 Certain Rights of Beneficiary.** From and after any revocation of the license granted pursuant to Section 3.02(a), Beneficiary shall, at its option and in addition to its other rights and remedies provided in this Deed of Trust and the other Loan Documents and/or at law or in equity, have the immediate and continuing right, power, and authority, either personally or by agent without bringing any foreclosure or other action or proceeding, or by a receiver appointed by a court and without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Trustor or Beneficiary, to take any or all of the following actions:

(a) Notify any tenant or other person that Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary.

(b) Settle, compromise, release, extend the time of payment for, and make allowances, adjustments, and discounts of, any Rents or other obligations in, to, and under Leases.

(c) Settle, compromise, release, extend the time of payment for, and make allowances, adjustments, and discounts of, any Rents or other obligations in, to, and under Leases.

- (d) Lease all or any part of the Property and/or modify, amend, renew, or terminate any Leases.
- (e) Perform any and all obligations of Trustor under Leases and exercise any and all rights of Trustor therein contained to the full extent of Trustor's rights and obligations thereunder.

## ARTICLE IV

### SECURITY AGREEMENT AND FIXTURE FILING

**Section 4.01 Security Agreement.** This Deed of Trust shall also constitute a security agreement and fixture filing within the meaning of the UCC with respect to all of Trustor's present and future estate, right, title, and interest in, to, and under the Fixtures and Equipment and any portion of the Property that is not real property (the "Personal Property"). Trustor hereby grants to Beneficiary a security interest in and to the Personal Property and the Fixtures and Equipment and every component thereof, and hereby transfers and assigns to Beneficiary all of Trustor's present and future estate, right, title, and interest in, to, and under the Personal Property and the Fixtures and Equipment and every component thereof, to secure the due and punctual payment and performance of all of the Secured Obligations as and when the same become due and payable, whether at the stated maturity, by acceleration, or otherwise. With respect to the Fixtures and Equipment, upon the occurrence and during the continuance of an Event of Default, Beneficiary shall also have the right: (a) to proceed against the Fixtures and Equipment in accordance with Beneficiary's rights and remedies with respect to the Land, in which event the provisions of the UCC shall not govern the default and Beneficiary's remedies; or (b) to proceed against the Fixtures and Equipment separately from the Land in accordance with the UCC. If Beneficiary elects to proceed under the UCC, then five (5) days' notice of sale of the Personal Property and/or the Fixtures and Equipment shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling, and the like incurred by Beneficiary shall include, but not be limited to, all fees of any loan servicer and reasonable attorneys' fees and expenses. At Beneficiary's request, Trustor shall assemble the Personal Property and make it available to Beneficiary at a place designated by Beneficiary which is reasonably convenient to both parties. Trustor hereby authorizes Beneficiary to file financing and continuation statements under the UCC in such filing offices as may be necessary, advisable, or required by law in order to create, establish, perfect, preserve, and protect the security interest hereunder.

**Section 4.02 Fixture Filing.** To the extent permitted under applicable law, the filing or recording of this Deed of Trust is intended to and will constitute a fixture filing with respect to that portion of the Property which is or is to become Fixtures and Equipment. The "Secured Party" is Beneficiary and the "Debtor" is Trustor. The name, type of organization, jurisdiction of organization, and mailing addresses of the Secured Party and of the Debtor are set out in the Loan Documents. The land to which the Fixtures and Equipment are related is the Land, and Trustor is the record owner of the Land.

**Section 4.03 Other Security Agreement, Harmonization of Conflicts.** If Trustor has executed and delivered to Beneficiary one or more separate security agreements in connection with the Secured Indebtedness, such security agreements and the security interests created thereby are in addition to and not in substitution of this Deed of Trust and the liens and security interests created hereby, and this Deed of Trust shall be in addition to and not in substitution of such security

agreements and security interests. In all cases, this Deed of Trust and the aforesaid security agreements shall be applied and enforced in harmony with and in conjunction with each so that Beneficiary realizes fully upon its rights and remedies in each and the liens and security interests created by each. If conflicts exist among this Deed of Trust and such other security agreements, Beneficiary may elect which of such instruments govern with respect to each category of Property encumbered hereby and thereby.

## ARTICLE V

### TRUSTOR'S COVENANTS

**Section 5.01 No Further Sale or Encumbrance.** Trustor shall not sell, transfer, convey, lease, let, mortgage, pledge, encumber, create, or permit a lien on or security interest in, or otherwise hypothecate all or any part of the Property except for liens, encumbrances, and transfers expressly permitted under the Loan Documents.

**Section 5.02 Maintenance, Repair, Alterations; Use and Operation.** Trustor represents and warrants that the Improvements are in good, clean and safe condition, in compliance with all applicable Laws, and free from Hazardous Materials and damage caused by fire or other casualty. Trustor shall (a) keep, maintain and repair the Property in good, safe and insurable condition, and, in the event of any damage, injury or loss, restore or repair promptly and in a good and workmanlike manner any damaged portion of the Property to the equivalent of its original condition; (b) not commit or permit waste, impairment or deterioration of the Property; (c) not remove, demolish or materially alter, or permit to be removed, demolished or materially altered, any Improvement now or hereafter comprising part of the Property, except as required by applicable Laws or any Loan Document, or with the prior written consent of Beneficiary; (d) obtain, keep in effect and perform all obligations under all Permits, licenses, rights, bonds and other agreements required by applicable Laws or granted to or contracted for by Trustor for the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, sale, development, financing or refinancing of, or conduct of business on the Property; and (e) not take any action that might invalidate any insurance carried on the Property. Trustor shall not remove any Fixture or Equipment covered by this Security Instrument at any time without Beneficiary's prior written consent unless actually replaced by an article of equal suitability which is owned by Trustor free and clear of any lien or security interest. All repairs made by Trustor shall be made in a good and workmanlike manner, shall be equal or better in quality and class to the original work and shall comply with all Laws and insurance requirements. On an ongoing basis throughout the term of the Loan, Trustor shall make capital repairs, replacements and Improvements necessary to keep the Property in good order and repair and in a good and marketable condition or prevent deterioration of the Property. Trustor shall complete all repairs, replacements and Improvements in a good and workmanlike manner as soon as commercially reasonable after commencing such activity free and clear of any liens. In the event of any damage or destruction of the Improvements, Trustor shall commence the repairs and restoration of the Improvements as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion.

Beneficiary shall not have any obligation, responsibility or liability for or arising from: (i) the control, care, management, or repair of the Property, (ii) any waste committed on the Property by Trustor, any tenant, or any other person, (iii) any dangerous or defective condition of the Property, or (iv) any negligence in the management, upkeep, repair, or control of the Property that may result



in loss or injury or death to any tenant, licensee, employee, or person. Beneficiary shall not be deemed a "mortgagee in possession."

**Section 5.03 Warranty of Title.** Trustor warrants, represents, covenants and agrees as follows: (a) Trustor holds good, indefeasible, marketable and insurable fee simple title to the Property and good indefeasible and marketable title to the balance of the Property with the full right and power to grant, convey and assign the Property; (b) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever; (c) no lien or encumbrance, whether superior or inferior to this Security Instrument, shall be created or suffered to be created by Trustor after the date of this Security Instrument without the prior written consent of Beneficiary, which may be granted or withheld in Beneficiary's sole and absolute discretion; (d) no default on the part of Trustor or any other person exists under any existing exception to title and Trustor shall fully comply with all the terms of the exceptions to title; (e) Trustor shall deliver to Beneficiary a copy of all notices of default under, violation of or other claim delivered in connection with any exception to title; and (f) Trustor shall forever warrant, preserve and defend the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Beneficiary against all claims and demands of any other person whatsoever.

Trustor may not sell, convey or transfer any interest in the Property or encumber, pledge, hypothecate, or mortgage the Property or any interest therein. Trustor may not transfer or assign its interest in this Security Instrument or the Loan. Any such conveyance, transfer or assignment shall be null and void. In the event that any such conveyance, transfer or assignment is held to be valid notwithstanding the prohibition in this Security Instrument, the successor to Trustor's interest shall be deemed to have assumed the Secured Obligations under the Loan, the Note, this Security Instrument and the other Loan Documents and not merely to have purchased the Property subject to this Security Instrument and Trustor and the successor of Trustor's interest in the Property shall be jointly and severally liable for Trustor's obligations under the Loan, the Note, this Security Deed and the other Loan Documents.

Trustor, at its sole cost and expense, will provide Beneficiary with such evidence of Trustor's title in the Property as Beneficiary may require, along with a loan policy of title insurance (and any endorsements that may be requested by Beneficiary from time to time) (and any updated or revised policies of title insurance and endorsements throughout the term of the Loan) insuring Beneficiary's first position interest in the Property through this Security Instrument and in the Collateral through this Security Instrument and UCC financing statements. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee. If Beneficiary or Trustee appear in or defend any such action or proceeding, Trustor shall reimburse Beneficiary and/or Trustee for all costs and expenses, including the cost of evidence of title and reasonable attorneys' fees.

**Section 5.04 Taxes, Utilities, Liens and Charges.**

(a) Taxes and Assessments. Trustor shall pay prior to when due directly to the payee thereof all taxes and assessments (including, without limitation, nongovernmental levies or assessments) levied, assessed or charged against or with respect to the Property or this Security Instrument. Upon request, Trustor shall promptly furnish to Beneficiary all notices or statements of amounts due under this subparagraph and all receipts evidencing such payments.

(b) Utilities. Trustor shall pay when due all utility charges, fees, and assessments for

services furnished the Property or incurred by or on behalf of Trustor in connection with, or that may become a charge or lien against, the Property and all other assessments or charges of a similar nature, public or private, affecting the Property or any portion thereof (collectively, "Utility Charges").

(c) Labor and Materials. Trustor shall pay when due all amounts owing to all persons or entities supplying labor, services or materials to, in connection with, or for the benefit of, the Property and shall prevent any liens from being filed against the Property.

(d) Liens and Charges. Trustor shall (a) pay all indebtedness secured by liens, encumbrances (whether superior or inferior to this Security Instrument) and charges upon the Property as and when such indebtedness becomes due; (b) immediately pay in full and discharge all liens, encumbrances and charges that may be or appear to be superior to the lien of this Security Instrument, except for any such liens, encumbrances or charges that have been approved by Beneficiary and are shown as exceptions to title in Beneficiary's title insurance policy; and (c) immediately cause any lien for labor or materials or any other statutory or involuntary lien, encumbrance or charge that may arise against the Property to be removed and discharged, either by paying in full the amount claimed to be due by the lienor or by obtaining and recording a surety bond that by statute will result automatically in the removal and discharge of such lien, encumbrance or charge. If Trustor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by procuring discharge of such lien in such other manner as may be authorized by law.

(e) Other Charges. Trustor shall pay when due all ground rents, maintenance charges, management fees, impositions other than property taxes and assessments, maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions or restrictions, and any other charges pertaining to the Property or the ownership, operation, management, and maintenance of the Property

**Section 5.05 Right of Entry.** Beneficiary and its agents, representatives, employees, contractors, and potential successors or assigns are hereby authorized to enter the Property, including the interior of any structures, during normal business hours and upon twenty-four (24) hours' prior notice (which may be given by telephone or email), for the purpose of inspecting the Property to determine Trustor's compliance with this Security Instrument.

**Section 5.06 Insurance.**

(a) Insurance Coverage. Trustor shall obtain and maintain the following insurance policies with the following coverages:

- 1) Property Insurance. Trustor shall obtain and maintain at the election of Beneficiary a policy of commercial property insurance (causes of loss – special perils form) (both referred to herein as "property insurance") insuring against loss or damage by fire and perils in an amount equal to one hundred percent of the "full replacement cost" of any Improvement, which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities, and footings) with a waiver of depreciation and such other risks, along with a "replacement cost endorsement" without reduction for

depreciation, an “ordinance or law endorsement,” a fluctuating value endorsement with a waiver of the coinsurance clause (or an agreed amount endorsement with an inflation guard endorsement), and any other endorsements that Beneficiary may request. The form and substance of Trustor’s property insurance policy and any endorsements shall be satisfactory to Beneficiary. Beneficiary shall be a loss payee on Trustor’s property insurance.

- 2) Flood Insurance. If any of the Property is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor Law, Trustor shall obtain and maintain flood hazard insurance issued pursuant to the above mentioned flood insurance acts in an amount equal to the maximum limit of coverage available for the Property under such acts, subject only to customary deductibles or such higher amount as Beneficiary may require.
- 3) Commercial Mortgage Insurance. Upon request by Beneficiary, Trustor shall maintain a policy of commercial mortgage insurance insuring Trustor’s obligations under the Note, this Security Instrument and the other Loan Documents in form and substance acceptable to Beneficiary.
- 4) Other Insurance Policies. Trustor shall maintain such additional insurance policies, endorsements, or coverages as may be requested by Beneficiary, including, without limitation, commercial general liability insurance, umbrella liability insurance, business income insurance, commercial auto insurance, terrorism, earthquake, sinkhole and mine subsidence insurance.

(b) Insurance Requirements. The insurance policies shall be obtained under valid and enforceable policies, carried with such insurer or insurers licensed and authorized to transact business in the state where the Property is located and approved by Beneficiary, and in form and amounts as may from time to time be approved by Beneficiary. Beneficiary, in its sole and absolute discretion, must approve in writing in advance any proposed blanket or portfolio insurance policies. Trustor shall provide Beneficiary with copies of all insurance policies and endorsements and any renewals thereof together with satisfactory evidence of payment of same. Prior issuance of the Loan, and not less than thirty (30) days prior to expiration of any policy thereafter, Trustor shall furnish to Beneficiary a certificate of insurance in the form acceptable to Beneficiary along with any endorsements required by Beneficiary. Tenant shall provide Landlord with thirty (30) days’ prior written notice of any modification, non-renewal or cancellation of Tenant’s insurance policies. If Trustor fails to obtain or continuously maintain insurance, Trustor shall pay Beneficiary One Thousand Dollars (\$1,000.00) upon demand to compensate Beneficiary for the administrative time and effort to address and remedy the default. Trustor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss, with any insurance required hereunder. Trustor shall pay all premiums on insurance policies directly to the carrier. As security for the Secured Obligations, Trustor hereby assigns to Beneficiary all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation. If Beneficiary reasonably believes that Trustor does not maintain any insurance policy required to be maintained by Trustor herein, Beneficiary, in its sole discretion, may elect to obtain and maintain such insurance policy.

Within fifteen (15) days after a demand by Beneficiary, Trustor shall reimburse Beneficiary for all costs and expenses incurred by Beneficiary associated with obtaining and maintaining any insurance that Trustor is to obtain and maintain under this Security Instrument.

(c) Application of Insurance Proceeds. In the event of any material loss of any Improvements or any other portion of the Property, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Trustor shall cooperate with Beneficiary in obtaining for Beneficiary the benefits of any insurance proceeds or awards and reimburse Beneficiary for any costs and expense incurred in connection therewith, including reasonable attorneys' fees and costs. Beneficiary shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

- 1) the payment of the Secured Obligations, whether then due and payable or not, in accordance with the terms of the Note and this Security Instrument. Any such application of proceeds to principal on the Note shall not extend or postpone the due dates of the installment payments under the Note; or
- 2) the reimbursement of Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Beneficiary may, at its option, condition the reimbursement on Beneficiary's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may reasonably require.

Nothing herein contained shall be deemed to excuse Trustor from restoring, repairing or maintaining the Property as provided for herein, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount. Notwithstanding the above, Beneficiary, in its sole and absolute discretion, may release insurance proceeds to Trustor for the repair and restoration of the Property upon terms and conditions the Beneficiary may require.

**Section 5.07 Condemnation.** Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Land), whether direct or indirect, of the Property or part thereof or interest therein, along with copies of any and all documents serviced or provided in connection with such proceedings. Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All such awards, payments, damages, claims, and proceeds in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Beneficiary, and all proceeds of any such awards, payments, damages, or claims shall be paid to Beneficiary. Beneficiary shall apply

any such proceeds in the manner and upon the terms and conditions set forth in Section (b) relating to the application of insurance proceeds

**Section 5.08 Actions Affecting Property; Duty to Protect Beneficiary and Security.** Trustor shall give notice to Beneficiary of and shall, at its own expense, appear in, prosecute, defend and contest (with counsel approved by Beneficiary) any action or proceeding that purports to affect the Property or any portion thereof or Trustor's title thereto, the validity or priority of the lien of this Security Instrument, or the rights, powers, liabilities, or obligations of Beneficiary or Trustee. Without in any way mitigating or excusing Trustor's performance of the foregoing obligations, Beneficiary shall have the right, but not the obligation, to participate to whatever extent Beneficiary may desire, with counsel of Beneficiary's choice, in any such action or proceeding in which Beneficiary is named or where Beneficiary believes its interests are threatened or in jeopardy. If there is an Event of Default, or Trustor fails to perform any of the Secured Obligations, Beneficiary or Trustee may, at their option, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the Property, make any entries upon the Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Security Instrument, (ii) remedy Trustor's failure to perform the Secured Obligations (without waiving such default by Trustor), or (iii) otherwise protect Beneficiary's or Trustee's interests. Trustor shall pay all losses, damages, fees, costs, and expenses of any kind whatsoever incurred by Beneficiary and Trustee in taking such actions, including, without limitation, reasonable legal fees and costs. Trustor shall indemnify, defend and hold harmless Beneficiary, any successor to Beneficiary, any assignee of Beneficiary's interest in the Loan, and the Indemnified Parties for and against all claims that Beneficiary may directly or indirectly suffer or incur in connection with any such action or proceeding. As used herein, the term "proceeding" shall include litigation (whether by way of complaint, answer, cross-complaint, counterclaim or third-party claim), arbitration and administrative hearings or proceedings.

**Section 5.09 Acceleration Upon Certain Transfers and Other Events.** Beneficiary may, at its option, declare all of the sums secured by this Security Instrument to be immediately due and payable upon (a) any sale, encumbrance, pledge, hypothecation, mortgage, sale, or other transfer of the Property or any part of or interest in the Property, whether voluntary, involuntary or by operation of Law, including, without limitation, the death or dissolution of Trustor (other than a sale upon which Beneficiary is required by the express terms of the Note to request from Trustee a reconveyance of that part of the Property being sold); (b) any sale, encumbrance, pledge, hypothecation, or other transfer of all or part of any direct or indirect interest in Trustor, whether voluntary, involuntary or by operation of Law and whether occurring in a single transaction or as the result of a series of transactions; (c) a change in the ownership or control of any of the stock, membership interests, general partnership interests or any other beneficial interests in any corporation, partnership or other entity that has any ownership interest in Trustor; (d) the dissolution, liquidation or termination of Trustor; or (e) any other sale, encumbrance, pledge, transfer or Event of Default or other event that, under the terms of the Note, this Security Instrument or any other Loan Document, gives Beneficiary the right to declare the Loan immediately due and payable. If all of the sums secured by this Security Instrument are not paid in full within five (5) days after any such declaration by Beneficiary, then Trustor shall be in default under this Security Instrument and Beneficiary may invoke all of the remedies available under this Security Instrument and the other Loan Documents as well as all additional remedies available at law or in equity.

**Section 5.10 Financial Statements.** From time-to-time during the term of the Loan, as requested by Lender but not more frequently than annually, Borrower shall provide Lender and

Lender's agents, subject to Lender's obligation to maintain the confidentiality thereof, (i) Borrower's financial statements and records as are necessary for Lender to review and audit Borrower's financial condition and the operation, maintenance, and ownership of the Property; and (ii) any financial statements regularly prepared by any guarantor of the Loan. Lender's review and audit of Borrower's and any guarantor's financial information shall be undertaken and Lender's sole cost and expense.

## ARTICLE VI

### REMEDIES

**Section 6.01 Remedies Following Event of Default.** Upon the occurrence and during the continuance of an Event of Default, in addition to any other rights, remedies, and powers that Beneficiary may have under the other Loan Documents or as provided by law, Beneficiary (either personally or by its agents, nominees, or attorneys) may immediately take such action, without notice or demand, as it deems advisable to protect and enforce the lien and security interest hereof and its rights hereunder, including without limitation, the following actions, each of which may be pursued in its own name or in the name of Trustor, concurrently or otherwise, at such time and in such manner as Beneficiary may determine in its sole discretion, without impairing or otherwise affecting the other rights, remedies, and powers of Beneficiary:

(a) Entry and Possession. (i) Enter upon and take possession of the Property, with or without the appointment of a Receiver or an application therefor; (ii) dispossess and exclude Trustor and its agents and servants wholly therefrom by summary proceedings or otherwise; (iii) take possession of all books, records, and accounts relating thereto; (iv) use, operate, manage, control, insure, maintain, repair, restore, improve, alter, and otherwise deal with all and every part of the Property and conduct the business thereat; (v) make, cancel, enforce, or modify Leases and obtain and evict tenants; (vi) demand, sue for, collect, and receive the rents, incomes, issues, and profits of the Property and apply the same, after payment of all charges and expenses (including the fees of any loan servicer and reasonable attorneys' fees and expenses), on account of the Secured Obligations; or (vii) require Trustor to transfer and assign to Beneficiary, in form satisfactory to Beneficiary, Trustor's interest as lessor in any Lease now or hereafter affecting the whole or any part of the Property, it being understood that in the event Trustor fails to render an assignment of Leases to Beneficiary this document shall, upon the occurrence of any Event of Default, serve as a de facto notice of such assignment to any interested party.

(b) Payment of Sums. (i) Pay any sums in any form or manner deemed expedient by Beneficiary to protect the lien and security interest of this Deed of Trust or to cure any Event of Default other than payment of principal of or interest on the Secured Indebtedness; (ii) make any payment hereby authorized to be made according to any bill, statement, or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Beneficiary shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date of such payment at the Default Rate shall be added to and become a part of the Secured Indebtedness and be immediately due and payable to Beneficiary; and (iii) Beneficiary shall be subrogated to any encumbrance, lien, claim, or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Beneficiary under the

provisions hereof, and any such subrogation rights shall be additional and cumulative security to this instrument.

(c) Acceleration. Declare the entire Secured Indebtedness immediately due, payable, and collectible, regardless of maturity, and, in that event, the entire Secured Indebtedness shall become immediately due, payable, and collectible; and thereupon Beneficiary may institute proceedings to foreclose this Deed of Trust, either by judicial action or by the exercise of the statutory power of sale, if permitted by applicable law, or to enforce its provisions or any of the indebtedness or obligations secured by this Deed of Trust.

(d) Foreclosure Sale. Institute a foreclosure action in accordance with the law of the state where the Property is located, or take any other action as may be allowed, at law or in equity, for the enforcement of the Secured Indebtedness and realization on the Property (or such part or parts thereof as Beneficiary may from time to time elect to foreclose upon) or any other security afforded by the Loan Documents. In the case of a judicial proceeding, Beneficiary may proceed to final judgment and execution for the amount owed as of the date of the judgment, together with all costs of suit, and interest on the judgment at the maximum rate permitted by law from the date of the judgment until paid. If Beneficiary is the purchaser at the foreclosure sale of the Property, in lieu of paying cash Beneficiary may make settlement for all or a portion of the purchase price by crediting the net sale proceeds (after deducting all costs and expenses of enforcing the Secured Obligations, including the fees of any loan servicer and reasonable attorneys' fees and expenses) against the Secured Obligations.

(e) Deficiency Judgment. If permitted by applicable law, Beneficiary may sue for and obtain a judgment for any deficiency remaining in the Secured Obligations after applications of all amounts received from the exercise of the rights provided in Section 6.01(d).

(f) Other Rights. Exercise any and all rights, remedies, and powers accruing to a Beneficiary under this Deed of Trust, the other Loan Documents, the UCC, or any other applicable law or available in equity.

**Section 6.02 Power of Sale.** Trustor hereby expressly grants to Beneficiary, to the extent permitted by law, the power of sale with respect to the Property. If (a) a "power of sale" or other non-judicial foreclosure is not permitted under the laws of the state in which the Property and Improvements are located as of the date of this Deed of Trust; and (b) after the date hereof a change occurs in applicable laws allowing a power of sale or other non-judicial proceedings for foreclosure and sale of the Property, then such a change in law shall apply to this Deed of Trust, and Beneficiary may exercise or institute such power of sale or non-judicial proceedings in the manner provided for under such modified law, provided that such application to this Deed of Trust is not prohibited under such modified law. To the extent permitted by law, Beneficiary may, with or without taking possession of the Property, after giving notice of the time, place, and terms of sale, together with a description of the Property to be sold in the manner required by law in the state where such Property is located, sell the Property (or such part or parts thereof as Beneficiary may from time to time elect to sell) at the location for public foreclosure sales in the county where the Property is located to the highest bidder for cash. If Property to be sold under this Deed of Trust is located in more than one county, publication of the notice of sale shall be made in all counties where the Property to be sold is located as prescribed by applicable law. The sale shall be held during the hours required by applicable law, or, if no law governs the time of sale, between the hours of 8:00 am and 6:00 pm on the day designated for the exercise of the power of sale under this

Deed of Trust or under applicable law. Beneficiary may bid at any sale under the terms of this Deed of Trust, may purchase the Property if Beneficiary is the highest bidder therefor, and in lieu of paying cash may make settlement for all or a portion of the purchase price by crediting the net sale proceeds (after deducting therefrom all costs and expenses including, without limitation, the costs and fees of any loan servicer and reasonable attorneys' fees and expenses) against the Secured Indebtedness.

**Section 6.03 Sale in Parcels.** In any action to foreclose this Deed of Trust, at the election of Beneficiary, the Property or any part thereof may be sold together or separately, in one sale or separate sales, in one parcel as an entirety, or in such parcels, manner, or order as Beneficiary in its sole discretion may elect, and one or more exercises of the rights and powers herein granted shall not extinguish or exhaust Beneficiary's rights and powers unless and until the entire Property is sold or the Secured Indebtedness is paid in full.

**Section 6.04 Receiver.** In any action to foreclose this Deed of Trust, or upon the occurrence and during the continuance of any Event of Default, Beneficiary may apply for the appointment of a receiver, trustee, liquidator, or conservator (a "Receiver") of the rents and profits of the Property, or both, without notice, and shall be entitled to the appointment of such a Receiver as a matter of right, without consideration of the value of the Property as security for the amounts due Beneficiary, or the solvency of any person or entity liable for the payment of such amounts. Trustor hereby consents to such appointment and waives notice of any application therefor (except as may be required by applicable law).

**Section 6.05 Beneficiary's Right to Sue.** Beneficiary shall have the right from time to time to sue for any sums, whether interest, principal, or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Deed of Trust, without regard to whether or not all of the Secured Indebtedness shall be due on demand and without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor, including an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced.

**Section 6.06 No Obligation to Marshal Assets.** In exercising its rights and remedies hereunder, Beneficiary shall have no obligation whatsoever to marshal assets, or to realize upon all of the Property. Beneficiary shall have the right to realize upon all or any part of the Property from time to time as Beneficiary deems appropriate. Trustor hereby waives any right to have any of the Property marshaled in connection with any sale or other exercise of Beneficiary's rights, remedies, and powers hereunder.

**Section 6.07 Remedies Cumulative.** The rights, powers, and remedies of Beneficiary granted and arising under this Deed of Trust and the other Loan Documents are separate, distinct and cumulative of other rights, powers, and remedies granted herein or therein and all other rights, powers, and remedies that Beneficiary may have at law or in equity, none of which are to the exclusion of the others and all of which are cumulative to the rights, powers, and remedies provided at law for the collection of indebtedness, enforcement of rights under mortgages and others forms of security instruments, and preservation of security. No act of Beneficiary shall be construed as an election to proceed under any one provision herein or under the Note, this Deed of Trust, or any other Loan Document to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.



**Section 6.08 Discontinuance of Proceedings.** If Beneficiary commences the enforcement of any right, power, or remedy, whether afforded under this Deed of Trust or otherwise, and including without limitation foreclosure or entry upon the Property, and such enforcement is then discontinued or abandoned for any reason, or is determined adversely to Beneficiary, then and in every such case, Trustor and Beneficiary shall be restored to their former positions and rights hereunder, without waiver of any Event of Default and without novation, and all rights, powers, and remedies of Beneficiary shall continue as if no such enforcement had been commenced.

**Section 6.09 Expenses.** Trustor shall reimburse Beneficiary on within five (5) days for all costs, fees, and expenses (including expenses and fees of its servicers and counsel) incurred by Beneficiary in connection with the transactions contemplated hereby, including, without limitation, the negotiation, documentation, and execution of this Deed of Trust and the other Loan Documents and the enforcement of Beneficiary's rights, powers, or remedies hereunder, thereunder, or available under applicable law or in equity, all of which sums are part of the Secured Indebtedness and are secured by this Deed of Trust. Trustor's statutory rights of reinstatement, if any, are expressly conditioned upon Trustor's payment of the foregoing and of all sums required under any applicable reinstatement statute and performance of all required acts thereunder and under this Deed of Trust.

**Section 6.10 Trustor as Tenant at Sufferance.** If Trustor or its successors, assigns, or tenants remain in possession of the Property after the Property is sold or transferred as provided above or after Beneficiary otherwise becomes entitled to possession of the Property, then Trustor and its successors, assigns, and tenants shall become tenants at sufferance of Beneficiary or the purchaser of the Property and shall either: (a) pay a reasonable rental for the use of the Property after the date of such sale, transfer, or possession; or (b) vacate the Property immediately upon the demand of Beneficiary or such purchaser. If Trustor or its successors, assigns, or tenants fails to vacate the Property as required under this paragraph, then Trustor and its successors, assigns, and tenants may be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.

**Section 6.11 Trustor's Waivers.** To the fullest extent permitted by law, Trustor, for Trustor and its successors and assigns, and for any and all persons ever claiming any interest in the Property, except as otherwise provided herein or in the other Loan Documents, hereby:

- (a) Waives any and all rights which it may have to notice prior to seizure by Beneficiary of the Property or any part thereof under the provisions of this Deed of Trust, whether such seizure is by writ of possession or otherwise.
- (b) Waives and renounces all right of homestead exemption in the Property and any other right to designate all or any portion of the Property as exempt from forced sale under any provision of the Constitution or laws of the United States, the state where the Land and Improvements are located, or any other state in the United States.
- (c) Acknowledges the right to accelerate the Secured Indebtedness and the power given to Beneficiary to sell the Property by foreclosure without any notice other than such notice (if any) as is specifically required to be given hereunder or under applicable law and specifically and irrevocably waives presentment, demand for payment, protest, notice of dishonor, notice of protest or nonpayment, notice of intent to accelerate, notice of acceleration of maturity and

diligence in connection with the enforcement of the Secured Indebtedness or the taking of any action to collect sums owing under the Loan Documents.

(d) Waives the benefit of all laws now or subsequently in effect providing for: (i) any appraisal before sale of any portion of the Property; (ii) any extension of the time for the enforcement of the collection of the Secured Indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt; and (iii) exemption of the Property from attachment, levy, or sale under execution or exemption from civil process.

(e) Agrees not, at any time, to insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in effect providing for any appraisal, valuation, stay, exemption, extension, or redemption, or requiring foreclosure of this Deed of Trust before exercising any other remedy granted hereunder.

(f) Waives any right to retain possession of the Property during the continuation of an Event of Default and all rights of redemption from sale under any order or decree of full or partial foreclosure.

**Section 6.12 Right of Set-Off.** In addition to any rights, remedies, or powers now or hereafter granted under applicable law, and not by way of limitation of any such rights, Beneficiary is hereby authorized by Trustor at any time or from time to time, without notice to Trustor, any other Obligor, or any other person, any such notice being hereby expressly waived, to set-off any obligations or liabilities held by Beneficiary to or for the credit or the account of Trustor or any other Obligor against the Secured Indebtedness, the Non-Monetary Obligations, and any other obligations and liabilities of Trustor or any such Obligor to Beneficiary, including, but not limited to, all claims of any nature or description arising out of or connected with this Deed of Trust, the Note, or any other Loan Document, irrespective of whether or not Beneficiary has made any demand hereunder or has declared the Secured Indebtedness to be due and owing and although said obligations and liabilities, or any of them, may be contingent or not matured.

**Section 6.13 Right to Cure Violations.** If Trustor or Beneficiary receives notice of a current or pending violation of any applicable law, rule, regulation, ordinance, code, requirements, covenants, conditions, restrictions, orders, licenses, permits, or approvals related to the maintenance, repair, replacement, nuisance, or other condition of the Property or any Improvements or tangible property thereon (a "Compliance Notice") and (a) an Event of Default has occurred and is continuing; or (b) such violation in the reasonable good faith judgment of Beneficiary is likely to have a material adverse effect on its rights and remedies under this Deed of Trust or on the value of the Property, then Beneficiary and any person authorized by Beneficiary shall have the right, but not the obligation, to enter upon the Property at any reasonable time to repair, alter, replace, clean up, or perform any necessary or appropriate work or maintenance activities that, in Beneficiary's sole discretion, are necessary or advisable to comply with the requirements of the Compliance Notice and cure the alleged, possible, or pending violation. Beneficiary shall have the right to remove any tangible property, motor vehicles, rubbish, stored materials, debris, refuse, trash, or other items on the Property and to dispose of the same as Beneficiary may determine in its sole discretion without being deemed guilty of trespass or theft of such items.

**Section 6.14 Application of Proceeds** The proceeds of the Property, together with any other sums that may be held by Beneficiary under this Deed of Trust, whether under the provisions of this Article VI or otherwise, shall be applied in same manner as is provided for the application of

proceeds pursuant to the Loan Documents.

## ARTICLE VII

### MISCELLANEOUS

#### **Section 7.01 Amendments, Extensions, Modifications, and Further Assurances.**

(a) This Deed of Trust may not be amended, supplemented, or otherwise modified except in accordance with the Loan Documents. No amendment, supplement, or other modification of this Deed of Trust shall be effective unless it is in writing and executed by Trustor and Beneficiary.

(b) From time to time, at the request of Beneficiary, Trustor will (i) promptly correct any defect, error, or omission which may be discovered in this Deed of Trust or other Loan Document; (ii) execute, acknowledge, deliver, record, and file such further instruments and perform such further acts, and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents, to protect the liens and security interests created by this Deed of Trust, or to confirm compliance with this Deed of Trust or other Loan Document.

#### **Section 7.02 Counterparts; Entire Agreement.**

(a) This Deed of Trust and any amendments, waivers, consents, or supplements hereto may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Deed of Trust and the Loan Documents or any amendment, modification, or supplement thereto by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Deed of Trust and the Loan Documents.

(b) This Deed of Trust and the other Loan Documents constitute the entire contract of Trustor and Beneficiary with respect to the subject matter hereof and supersede all previous agreements and understandings, oral or written, with respect thereto.

**Section 7.03 Successors and Assigns.** This Deed of Trust may be assigned or transferred, in whole or in part, by Beneficiary to any person at any time without notice to or the consent of Trustor. Trustor may not assign or transfer this Deed of Trust or any of its rights hereunder without the prior written consent of Beneficiary. This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their permitted assigns. The terms "Trustor" and "Beneficiary" shall include the legal representatives, heirs, executors, administrators, successors and permitted assigns of the parties hereto, and all those holding under either of them. The term "Beneficiary" shall include any payee of the Secured Indebtedness and any transferee or assignee thereof, whether by operation of law or otherwise.

**Section 7.04 No Merger.** In the event that Beneficiary's interest under this Deed of Trust and title to the Property or any estate therein shall become vested in the same person or entity, this Deed of Trust shall not merge in such title but shall continue as a valid lien on the Property for the amount secured hereby, unless expressly provided otherwise in writing executed by the person in whom such interests, title, and estate are vested.

**Section 7.05 Relationship of Parties.** The relationship of Beneficiary to Trustor is that of a creditor or lender to an obligor (inclusive of a person obligated on a supporting obligation) or debtor; and in furtherance thereof and in explanation thereof, Beneficiary has no fiduciary, trust, advisor, business consultant, guardian, representative, partnership, joint venture, or other similar relationship to or with Trustor and no such relationship shall be drawn or implied from this Deed of Trust or any of Beneficiary's actions or inactions hereunder or with respect hereto or from any prior relationship between the parties. Beneficiary has no obligation to Trustor or any other person relative to administration of the Secured Indebtedness or the Property, or any part or parts thereof.

**Section 7.06 Commercial Transaction.** The interest of Beneficiary under this Deed of Trust and the liability and obligation of Trustor for the payment and performance of the Secured Obligations arise from a commercial transaction.

**Section 7.07 Defined Terms; Rules of Construction.** The rules of construction set forth in the Loan Documents apply to this Deed of Trust and are incorporated herein, by specific reference as if such rules were fully set forth herein.

**Section 7.08 Joint and Several Liability.** If more than one party executes this Deed of Trust as a Trustor, the term "Trustor" means all parties signing, and each of them, and each agreement, obligation, Non-Monetary Obligations, and Secured Indebtedness of Trustor shall be and mean the several as well as joint undertaking of each of them.

**Section 7.09 Headings.** The headings of the various articles, sections, and subsections in this Deed of Trust are for reference only and shall not define, expand, or limit any of the terms or provision hereof.

**Section 7.10 Severability.** If any term or provision of this Deed of Trust is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Deed of Trust or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon any determination that any term or other provision hereof is invalid, illegal, or unenforceable, Trustor and Beneficiary shall negotiate in good faith to modify this Deed of Trust so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 7.11 Governing Law.** This Deed of Trust and any claim, controversy, dispute, or cause of action (whether in contract, equity, tort, or otherwise) based upon, arising out of, or relating to this Deed of Trust and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflicts of law; provided, however, that any claim, controversy, dispute, or cause of action based upon, arising out of, or relating to the creation, perfection, priority, or enforcement of the lien and security interest of this Deed of Trust shall be governed by and construed in accordance with the laws of the state where the Land and Improvements are located, without regard to principles of conflicts of law. Trustor acknowledges that the Loan Documents and one or more of the other Loan Documents are governed and construed in accordance with the laws of the State of Utah, without regard to principles of conflicts of law.

**Section 7.12 Submission to Jurisdiction.**

(a) Subject to the Loan Documents, Trustor hereby irrevocably and unconditionally: (i) agrees that any legal action, suit or proceeding arising out of or relating to this Deed of Trust may be brought in the courts of the state of Utah or of the United States of America located in Salt Lake City; and (ii) submits to the jurisdiction of any such court in any such action, suit, or proceeding. Final judgment against Trustor in any action, suit, or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment.

(b) Nothing in this Section 7.12 shall affect the right of Beneficiary to: (i) commence legal proceedings or otherwise sue Trustor in any other court having jurisdiction over Trustor; or (ii) serve process upon Trustor in any manner authorized by the laws of any such jurisdiction.

**Section 7.13 Waiver of Venue.** Trustor hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Deed of Trust or the Secured Obligations in any court referred to in Section 7.12 and the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**Section 7.14 Waiver of Jury Trial.** TRUSTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, THE SECURED OBLIGATIONS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, WHETHER BASED ON CONTRACT, EQUITY, TORT, OR ANY OTHER THEORY.

**Section 7.15 Notices.** Unless specifically stated otherwise in this Deed of Trust, all notices, requests, and communications required or permitted to be delivered hereunder shall be in writing and delivered to all persons at the addresses contained in the Loan Documents, by one of the following methods:

- (a) Hand delivery, whereby delivery is deemed to have occurred at the time of delivery.
- (b) A nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier.
- (c) Registered United States Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service.
- (d) Electronic transmission (facsimile or e-mail) provided that the transmission is completed no later than 6:00 p.m. on a business day and the original also is sent via overnight courier or U.S. Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

Any party may change its address for purposes of this Section 7.15 by giving written notice as provided in this Section 7.15.

All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 7.15.

**Section 7.16 No Waiver; No Course of Dealing; No Invalidity.** No failure to exercise and no delay in exercising on the part of Beneficiary of any right, remedy, or power hereunder or rights, remedies, and powers otherwise provided by law or available in equity shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Event of Default or if any subsequent Event of Default occurs, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power. No act or inaction of Beneficiary under this Deed of Trust shall be deemed to constitute or establish a "course of performance or dealing" that would require Beneficiary to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Wherever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid to the maximum extent allowed under applicable law.

**Section 7.17 Release of Lien.**

(a) Release on Satisfaction of Secured Obligations. If at any time during the period of this Deed of Trust the Secured Indebtedness has been paid and the Non-Monetary Obligations have been performed, no indebtedness remains outstanding under the Loan Documents, and Beneficiary has no further obligation under the Loan Documents to make any additional advances to Trustor, then Beneficiary will, upon written request of Trustor and at Trustor's cost and expense (including, without limitation, fees of any loan servicer and reasonable attorneys' fees and expenses), execute and deliver to Trustor a release, reconveyance, satisfaction, or cancellation (a "Release") of this Deed of Trust and such other documentation (including without limitation UCC-3 termination statements) as may be reasonably necessary to effectuate the release and termination of Beneficiary's liens and security interests on the Property. Notwithstanding the preceding or anything else to the contrary herein, to the fullest extent permitted under applicable law, Beneficiary shall not be required to release this Deed of Trust until it has proof that the payments to pay off the obligations secured by this Deed of Trust will not result in any preference or similar action and may require an opinion of counsel to confirm the same, nor shall Beneficiary be required to release this Deed of Trust until Lender receives a release of all asserted or threatened claims against Lender relating to the Property or the obligations secured hereby.

(b) Compliance with Applicable Laws. The foregoing provisions relating to the release, reconveyance, satisfaction, or cancellation of this Deed of Trust shall not be deemed or construed to supersede any obligation of Beneficiary to cause the release, reconveyance, satisfaction, or cancellation of this Deed of Trust that may be addressed by applicable law of the state in which the Land and Improvements are located, and it is expressly declared to be the intention and agreement of Beneficiary to comply with the requirements of applicable law with respect to such obligation.

**Section 7.18 After-Acquired Property.** This Deed of Trust shall encumber, encompass, cover and apply to and include any and all "after-acquired property" of Trustor located at, adjacent to or adjoining, or in any way associated with, the use or operation of Property, and such after-acquired property shall be a part of the Property. In furtherance of the foregoing, Trustor has given, granted, bargained, sold, and conveyed, and by these presents does give, grant, bargain, sell, and convey

unto Beneficiary all of Trustor's right, title, and interest in and to said after-acquired property. The after-acquired property identified by Beneficiary from time to time may also be identified in a notice of extension filed in the real property records in which this Deed of Trust is recorded or in any other county in which the after-acquired property is located. Trustor agrees that Beneficiary has the absolute and irrevocable right and power, which right and power is coupled with an interest, to file one or more notices of extension, and that all after-acquired property of Trustor identified by Beneficiary, whether through a notice of extension or otherwise, shall secure the due and punctual payment and performance of all of the Secured Indebtedness as and when the same becomes due and payable, with interest (including post-petition interest) thereon, and all renewals, extensions, renewals, rearrangements, modifications, replacements, amendments, amendments, and restatements or supplements thereof. This Section 7.18 is intended to be and is an "after-acquired property clause" and shall be construed in accordance with the provisions of applicable law of the state in which the Land and Improvements are located that authorizes or governs after-acquired property clauses in deeds of trust.

## ARTICLE VIII

### TRUSTEE PROVISIONS

**Section 8.01 Trustee's Fees and Expenses.** Trustor shall pay all reasonable fees and expenses incurred by Trustee for legal counsel and other professional advisors in connection with Trustee's performance of its duties hereunder. Amounts incurred by Trustee shall be deemed a part of the Secured Indebtedness secured by this Deed of Trust and bear interest at the Default Rate if not paid in full within five (5) days after Trustee's written demand for payment. Trustee hereby waives any statutory fee or compensation for services rendered hereunder.

**Section 8.02 Rights, Duties and Exculpation of Trustee.**

(a) Trustee, by acceptance of this Deed of Trust, covenants to perform and fulfill the trusts and duties herein created and conferred upon Trustee. Notwithstanding the foregoing, Trustee agrees not to execute any of the powers conferred upon Trustee hereunder, nor to take any action to protect or enforce Beneficiary's rights hereunder, nor to provide any interpretation of this Deed of Trust or any of the other Loan Documents without Beneficiary's prior written consent thereto in each instance. Trustee, however, has an affirmative duty to reasonably cooperate with Beneficiary to protect the Property and to enforce Beneficiary's rights hereunder, but Trustee shall not be obligated to institute or defend any suit in respect hereof or to perform any act which would involve Trustee in any expense or liability unless, in each case, properly indemnified to Trustee's reasonable satisfaction. Trustee also has no duty to see to any recording, filing, or registration of this Deed of Trust or any other instrument in addition or supplemental hereto, or to give any notice thereof, or to see to the payment of, or be under any duty in respect of, any tax or assessment or other governmental charge which may be levied or assessed on the Property or against Trustor, to see to the performance or observance by Trustor of any of the covenants and agreements contained herein. Trustee shall not be responsible for the sufficiency of the security purported to be created hereby and makes no representation or warranty in respect thereof or in respect of the rights of Beneficiary.

(b) With the approval of Beneficiary and subject to applicable law, Trustee shall have the right to: (i) perform any duty hereunder either directly or through one or more appointed agents and designees; and (ii) select and employ in furtherance of its duties, suitable agents and designees,

including, without limitation, any accountants, engineers, attorneys, and other professional and non-professional consultants and contractors; (iii) receive reimbursement for expenses incurred in the performance of its duties, including reimbursement for the cost and expenses of the Trustee's agents and designees; and (iv) receive reasonable compensation for performing its duties as Trustee hereunder.

(c) All money received by Trustee with respect to the Secured Indebtedness and Secured Obligations shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall have no liability for interest on any moneys received by Trustee hereunder.

(d) Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or by any agent or designee of Trustee, if selected with reasonable care, or otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee shall have no personal liability of any kind for: (i) debts under contracts entered into in performance of its duties (whether contracted for directly by Trustee or by its agents and designees); (ii) damages; and (iii) losses incurred by the Property.

(e) Trustee has the right to advice of counsel upon any matters arising hereunder and shall be fully protected in relying on the advice of counsel. Trustee has the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee, hereunder, believed by Trustee in good faith to be genuine. Trustee shall not be personally liable in case of entry upon the Property by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, or for liability or damages incurred in the management or operation of the Property.

### **Section 8.03 Resignation and Substitution of Trustee.**

(a) Trustee may resign at any time upon written note to Beneficiary delivered not less than ten (10) days prior to the intended date of resignation. In the event of Trustee's death, resignation, refusal to act, disqualification, or other inability to act, or if Beneficiary shall deem it desirable to remove Trustee for any reason with or without cause, Beneficiary has to right, in its sole discretion, to select and appoint one or more successor trustees (who may be Beneficiary or an affiliate of Beneficiary if permitted by law), without application to court or compliance with any formality other than appointment and designation in writing by Beneficiary. Such designation need not be recorded or sent to the Borrower in order to be effective. If Beneficiary is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association.

(b) Any successor(s) appointed as Trustee shall, without further act, deed, or conveyance, become vested with all of the estates, properties, rights, powers, privileges, immunities, and duties herein conferred upon Trustee with like effect as if any such successor were originally named as trustee herein. Nevertheless, upon the written request of Beneficiary or of the successor as Trustee, the party ceasing to act as Trustee shall execute and deliver an instrument, in recordable form, transferring to such successor as Trustee, all of the estates,



properties, rights, powers, privileges, immunities, and duties herein conferred upon Trustee and shall duly assign, transfer, and deliver to such successor, in trust, any of the property and money then held by the departing Trustee; provided, however, no such assignment shall be required for any successor to serve as Trustee hereunder.

**Section 8.04 Multiple Trustees.** If more than one Trustee is appointed hereunder at any one time, or from time to time, all rights granted to and all powers conferred upon Trustee hereunder may be exercised by any or all of such Trustees, independently or jointly. Action exercised by one Trustee shall be deemed valid and binding on all Trustees.

## ARTICLE IX

### STATE-SPECIFIC PROVISIONS

**Section 9.01 State-Specific Provisions Control.** In the event of any conflict between the terms and provisions set forth in this Article IX and the other terms and provisions of this Deed of Trust, this Article IX shall control.

**Section 9.02 State-Specific Provisions.**

- (a) Purpose. For purposes of Utah Code Annotated §§ 57-1-25 and 78B-6-901.5, Trustor agrees that the stated purpose for which this Security Instrument was given is not to finance residential property.
- (b) Assignment of Rents Act. To the extent that this Deed of Trust is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101, et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Deed of Trust and the provisions of the Act, the provisions of the Act shall control.
- (c) Fixture Filing. This Security Instrument constitutes and is filed as a fixture filing under Section 334 of the Utah Uniform Commercial Code (Utah Code Annotated § 70A-9a-334).
- (d) Remedies. In the Event of a Default, Beneficiary may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Annotated Code § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing or concerning water rights (such as stock in irrigation, canal, or water companies) in accordance with Utah Annotated Code § 57-1-30 or other applicable law.
- (e) Order of Sale. Trustor shall have no right to direct the order in which the Property is sold and Trustor hereby waives any and all rights 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.
- (f) Security. For purposes of Utah Code Annotated § 57-1-28, Trustor agrees that the entire Secured Obligations, including all principal due and all interest, prepayment charges, if

any, late payment fees, insufficient fund fees, loan fees, funding fees, servicing fees, default fees, collection costs, and other fees, charges, costs, and expenses owing from time to time under the Loan shall constitute a part of and be entitled to the benefits of the lien of this Security Instrument upon the Property, and Beneficiary may add any interest, prepayment charges, if any, late payment fees, insufficient fund fees, loan fees, funding fees, servicing fees, default fees, collection costs, and other fees, charges, costs, and expenses owing from time to time under the Loan to any credit bid Beneficiary may make at a sale or a foreclosure sale of the Property pursuant to this Security Instrument.

*[remainder of page intentionally left blank; signature page follows]*



**EXHIBIT "A"**

Part of the Northeast Quarter of Section 33, part of the Northwest Quarter of Section 34, part of the Southeast Quarter of Section 28, and part of the Southwest Quarter of Section 27, Township 7 North, Range 1 East, Salt Lake Base and Meridian: Beginning at a point on the North line of said Section 33 which is 110.00 feet North 89°22'45" West along said Section line from the Northeast corner of Section 33, running thence North 0°31'13" East 683.90 feet to a centerline of a canal; thence along the center of a canal the following nine (9) courses: (1) South 40°31'00" East 115.30 feet, (2) South 10°57'00" East 79.14 feet, (3) South 25°07'00" West 94.13 feet (4) South 26°32'00" East 142.54 feet, (5) South 53°09'00" East 54.00 feet (6) South 89°31'00" East 80.80 feet, (7) South 46°15'00" East 100.14 feet, (8) South 7°49'00" East 159.24 feet and (9) South 6°04'39" West 164.53 feet; thence South 1°56'52" West 54.28 feet to the North line of Kimbers Subdivision; thence South 81°27'25" West along said North line 212.32 feet to the West line of Section 34 and West line of said Kimbers Subdivision; thence South 0°22'55" West along said West lines 306.41 feet; thence South 79°54'11" West 417.23 feet; thence North 69°49'04" West 493.43 feet; thence North 0°18'20" East 421.32 feet to said North line of Section 33, thence South 89°22'45" East along said North line 765.10 feet to the point of beginning.

Situated in Weber County

APN: 22-040-0030