



W3243939

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

To Holder:
AMF Holdings, LLC
PO Box 708755
Sandy, UT 84070

E# 3243939 PG 1 OF 31
Leann H. Kilts, WEBER COUNTY RECORDER
30-Jun-22 0429 PM FEE \$40.00 DEP TN
REC FOR: CAPSTONE TITLE AND ESCROW, INC.
ELECTRONICALLY RECORDED

207846TT
05-118-0032

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

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE RECORD OWNER OF THE PROPERTY.

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Security Instrument") is made June 30, 2022 (the "Effective Date"), between **Cup Holdings, LLC**, a Delaware limited liability company, as "Trustor", or "Borrower" whose address is 2441 s 1560 w, Woods Cross, UT 84087; in favor of **Taylor Title, LLC**, as "Trustee", whose address is 150 N. Main STE B, Kaysville, UT 84037; for the benefit of **AMF Holdings, LLC**, a Utah Limited Liability Company, as Beneficiary, whose address is PO Box 708755, Sandy, UT 84070, as "Lender" or "Beneficiary".

**ARTICLE I
LOAN**

On the terms and subject to the conditions set forth in a Secured Promissory Note of even date herewith by Trustor (the "Note"), Beneficiary has agreed to make a loan (the "Loan") to Trustor in the principal amount of Two Hundred Seventy-Five Thousand Dollars and No Cents (\$275,000.00), which principal amount may be increased or decreased pursuant to the terms and conditions of the Note; provided, however, the total amount of indebtedness shall not exceed One Hundred Million Dollars (\$100,000,000.00). The maturity date of the Note is June 29, 2023. The Note, this Security Instrument, and all other instruments, agreements, certificates, and documents that evidence, secure or set forth any of Trustor's or any guarantor's obligations relating to the Loan or any security for the Loan, all as amended, modified, extended, renewed, restated, and supplemented from time to time, and whether now in existence or hereafter made or entered into, and whether or not secured by this Security Instrument, are hereinafter collectively referred to as the "Loan Documents." Terms not defined herein shall have their respective meanings as set forth in the Note.

**ARTICLE II
GRANT AND CONVEYANCE**

Loan # 3837 35th Ogden BM
350 35th Street
Ogden, UT, 84401

Page 1 of 29

Deed of Trust

Trustor's Initials

In consideration of the Loan, and subject to all security interests and rights granted or assigned by Trustor to Beneficiary in the Loan Documents, (1) Trustor hereby irrevocably grants, bargains, sells, transfers, conveys, warrants, and assigns to Trustee, in trust for Beneficiary, with power of sale, under and subject to the terms and conditions hereinafter set forth, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest in and to the real property located in Weber County, Utah, as more particularly described in Exhibit A, attached hereto and incorporated herein (the "**Land**"), together with all of the following in which Trustor now has or hereafter may acquire any right, title or interest:

(i) all additional lands, strips, gaps and gores of land appurtenant or adjacent to the Land, estates and development rights hereafter acquired by Trustor for use in connection with the Land, and all privileges and other rights now or hereafter appurtenant or incidental to the Land, and all licenses, easements and rights-of-way, public or private, now or hereafter used in connection with the Land, including, without limitation, the right to use all streets, curbs, gutters, sidewalks, sewers, storm drains, roads and public places;

(i) all rights to minerals, oil and gas and other hydrocarbon substances; all storm water, irrigation and drainage rights; all crops and timber on, under or relating to the Land; all shares of stock in any water company, canal company, or irrigation company, or other utility supplying water or utility services to the Land; any and all interests, stock, shares, or membership in any community association or any other entity in which Trustor owns or holds an interest as a result of its ownership of the Real Property; and all damages, royalties and Revenues of every kind, nature and description whatsoever that Trustor may be entitled to receive from any person or entity owning or hereafter acquiring a right to any oil, gas and mineral rights and reservations appurtenant or otherwise related to the Land;

(ii) all buildings, structures, signage, pavement, asphalt and hard surfacing, landscaping, utilities, pads, additions, enlargements, extensions, modifications, repairs, replacements, and other improvements and tenements of any nature now or hereafter erected or located on the Land (collectively, "**Improvements**");

(iii) all "goods" and "equipment" as such terms are defined in Article 9 of the Uniform Commercial Code that are deemed fixtures of real property under applicable Law, now owned or hereafter acquired by Trustor, which are used at or in connection with the Improvements or the Land or are located thereon or therein, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**");

(iv) all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Land and Improvements; security systems, data and communications cabling and satellite dishes; ranges, stoves, ovens, microwave ovens, disposals, dishwashers, and refrigerators; utility lines and equipment; baths, showers, sinks, toilets, urinals and other bathroom fixtures, cabinets, mantels, built-in mirrors, heating, ventilation, and air-conditioning equipment and systems, solar panels and systems, central vacuum system and equipment, sump pumps, septic systems, window shades, blinds, screens, awnings, storm doors, windows, carpeting, underpadding, floor coverings, paneling, wall coverings, and draperies; interior and exterior lighting fixtures, generators and fuel tanks, landscaping, playgrounds, play sets, sheds, swimming pools, hot tubs and spas, pool equipment, and all other similar items, together with all accessions, appurtenances, additions, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). The Land and items identified in paragraphs (i) through (v) above being referred to herein as the "**Real Property**");

(v) all rents, late fees, interests, issues, profits, income, royalties, fees, proceeds from any sale, leasing, refinancing, condemnation (temporary or permanent) or other disposition of all or any portion of or interest in the Real Property and other proceeds and revenues of any nature of, from or relating to the Real Property, or any business conducted thereon, including those now due, past due and to become due (collectively, "**Revenues**");

(vi) all existing and future leases (including oil and gas leases), subleases, subsubleases, occupancy agreements, licenses, concessions, and other agreements (whether written or oral) for the use or occupancy of all or any portion of or interest in the Real Property, whether written or oral, and any guarantees thereof, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash, letters of credit, security deposits, or other security to secure performance by the lessees or tenants of their obligations thereunder, whether such cash or security is to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due prior to the expiration of the term thereof (collectively, the “Leases”);

(vii) all insurance and insurance policies insuring the Real Property (including any Equipment and Fixtures) or any activity thereon or part thereof or interest therein and all proceeds of such insurance policies; all claims, awards, damages, causes of action, actions, judgments, recoveries, compensation, awards and proceeds arising on account of injury or damage to or taking of all or any part of the Real Property or for any loss or diminution in value of the Real Property; all advance payments of insurance premiums made by Trustor with respect to the Real Property; all deposits made with or other security given by Trustor to governmental authorities, utility companies and other third parties with respect to the Real Property; all claims or demands with respect to such deposits or security; and all right to refunds or rebates of any such insurance premiums or deposits, taxes or assessments on the Real Property;

(viii) all licenses, approvals, and permits, including land use, zoning, subdivision, and/or site plan applications and approvals, conditional use permits, building permits, etc. submitted to, approved by, or issued from any governing Governmental Authority having jurisdiction over the Real Property (collectively, the “Permits”), contracts, management contracts or agreements, and non-governmental permits, authorizations, consents and certificates acquired or used in connection with the construction, use, ownership, operation, occupancy, maintenance, repair, improvement or development of, or conduct of business on, the Real Property; and construction guarantees and warranties;

(ix) all proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, condemnation awards (and judgments or settlements made in lieu thereof), and all interest and proceeds of all of the foregoing;

(x) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Real Property and to commence any action or proceeding to protect the interest of Beneficiary in the Real Property.

The Land and all of the items described in paragraphs (i) through (x) above are hereinafter referred to collectively as the “Property”.

**ARTICLE III
OBLIGATIONS SECURED**

This Security Instrument secures the following: (a) the payment and performance of all of Trustor’s indebtedness and obligations, now or hereafter incurred by Trustor, under the Loan Documents, including without limitation all principal due and all interest, prepayment charges, if any, late payment fees, insufficient fund fees, lender fees, origination fees, servicing fees, default fees, collection costs, and other fees, charges, costs, and expenses at any time accruing or assessed under the Note or any of the other Loan Documents, as the same may be extended, renewed, or modified; (b) payment and performance of all obligations of Trustor under this Security Instrument, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor or to protect the Property or other security for the Loan; (c) payment and performance of all future advances and other obligations that the then record owner of the Property

BT

may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Security Instrument; and (d) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes together with interest on each such advance, payment or expenditure at the highest rate of interest in effect under the Note (or at any higher default rate of interest specified in the Note if an Event of Default then exists) from the date of such advance, payment or expenditure until paid in full. All of the foregoing amounts shall be secured by this Security Instrument to the same extent and with the same priority as the initial advance of Loan proceeds made by Beneficiary. The term "Secured Obligations" is used herein in its most comprehensive sense and includes all of the above and any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, or joint or several.

**ARTICLE IV
COVENANTS AND AGREEMENTS OF TRUSTOR**

4.1 Warranty of Title. Trustor warrants, represents, covenants and agrees as follows: (a) Trustor holds good, indefeasible, marketable and insurable fee simple title to the Real 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 the 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. Grantor 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 Grantor and the successor of Grantor's interest in the Property shall be jointly and severally liable for Grantor'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 Real 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.

4.2 Use of Property; Compliance with Laws. The Loan is a commercial loan and not a consumer loan. As such, Grantor shall use the loan proceeds for business purposes and not for personal, family or household purposes and shall use the Real Property in a manner whereby the Loan shall not be deemed to be a consumer loan. Trustor represents and warrants to Beneficiary that the Real Property and its intended use by Trustor comply with all applicable Laws and restrictive covenants, conditions, and restrictions on the Real Property and that Trustor will pay all fees and charges in connection therewith. Unless required by applicable Laws or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Real Property was intended at the time this Security Instrument was executed. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property, obtain a conditional use permit, subdivide the Real Property, or obtain site plan approval related to the Real Property without Beneficiary's prior written consent. If the Real Property is subject to any community association, such as a homeowners association or a condominium association, Trustor shall comply with any and all terms and conditions set forth in any restrictive covenants pertaining to the Real Property and the documents governing the community association. Trustor shall comply with all applicable Laws and shall cause the Real Property to comply with all applicable Laws. As used herein, "**Laws**" means all federal, state, county, or municipal laws, statutes, ordinances, codes, decisions, judgments, decrees, rules, orders, writs, injunctions, permits, and regulations of any court or governmental authorities applicable to, or the decisions or orders of any courts having jurisdiction over, Trustor or the Property, now or hereinafter in force, including but not limited to all land use, zoning, subdivision, building, setback, health, traffic, flood control, fire safety, Hazardous Materials and underground storage tanks, and all laws and governmental requirements regarding access and facilities for handicapped or disabled persons, including the ADA and the Fair Housing Act.

4.3 Payment and Performance of Secured Obligations. Trustor shall pay when due all amounts that are now or that may become owing under the Note, this Security Instrument, and any Loan Documents, and shall timely perform all other Secured Obligations in accordance with their terms. No partial payment of an amount owed under the Note, this Security Deed or any other Loan Documents shall be deemed an accord and satisfaction or be deemed to release Grantor from the obligation to pay the full amount owed.

4.4 Taxes, Utilities, Liens and Charges.

4.4.1 **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.

4.4.2 **Utilities.** Trustor shall pay when due all utility charges, fees, and assessments for services furnished the Real Property or incurred by or on behalf of Trustor in connection with, or that may become a charge or lien against, the Real Property and all other assessments or charges of a similar nature, public or private, affecting the Real Property or any portion thereof (collectively, "**Utility Charges**").

4.4.3 **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 Real Property and shall prevent any liens from being filed against the Property.

4.4.4 **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.

4.4.5 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.

4.5 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 Real 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 Real Property to the equivalent of its original condition; (b) not commit or permit waste, impairment or deterioration of the Real 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 Real 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 Real 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 Real Property in good order and repair and in a good and marketable condition or prevent deterioration of the Real 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."

4.6 Leasing and Management of Real Property. Trustor shall not, without the prior written consent of Beneficiary enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce rents under, accept

a surrender of space under, shorten the term of any Lease, or consent to the sublease of any premises or the assignment of any Lease. Trustor shall timely observe and perform all of Trustor's obligations under any Leases, including performing any tenant improvement work and paying any leasing commissions and tenant improvement allowances. Trustor will hold all security deposits in accordance with the terms of the Leases and applicable Law. Trustor shall diligently perform and observe all of the terms, covenants, and conditions required to be performed by Trustor under any management agreement. Trustor shall not, without the prior written consent of Beneficiary enter into, renew, extend, amend, modify, waive any provisions of, or terminate any property management agreement. Upon request by Beneficiary, Trustor agrees to enter into and cause the property manager to enter into an assignment and subordination agreement, whereby the rights of the property manager are subordinated to the rights of the Beneficiary and the property management agreement is assigned to Beneficiary.

4.7 Right of Entry. Beneficiary and its agents, representatives, employees, contractors, and potential successors or assigns are hereby authorized to enter the Real 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 Real Property to determine Trustor's compliance with this Security Instrument.

4.8 Insurance.

4.8.1 Insurance Coverage. Trustor shall obtain and maintain the following insurance policies with the following coverages:

4.8.1.1 Property Insurance. Trustor shall obtain and maintain at the election of Beneficiary either a homeowner's insurance policy with coverages acceptable to Beneficiary or 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.

4.8.1.2 Flood Insurance. If any of the Real 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.

4.8.1.3 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.

4.8.1.4 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.

4.8.2 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 Real 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.

4.8.3 Application of Insurance Proceeds. In the event of any material loss of any Improvements or any other portion of the Real 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:

4.8.3.1 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

4.8.3.2 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.

4.9 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 Real 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 4.8.3 relating to the application of insurance proceeds.

4.10 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 Real 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.

4.11 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.

4.12 Required Notices to Beneficiary. Trustor shall give Beneficiary prompt written notice of each of the following: (a) the occurrence of any fire or other casualty affecting the Property, whether or not insured; (b) commencement of or receipt of notice of any action described in Section 4.8, Section 4.9 or Section 4.10; (c) any transfer or event or proposed transfer or event subject to Section 4.11; (d) receipt of notice from any Governmental Authority relating to the construction of the improvements on or affecting the use, operation, maintenance or occupancy of the Real Property or the conduct of business thereon; (e) receipt of any notice claiming a default under any obligation secured by any deed of trust or other lien, encumbrance or charge on the Property or any part thereof, whether senior or junior to the lien of this Security Instrument; (f) any event or condition that would reasonably be expected to have or does have a material adverse effect on the value, current use or operation of the Real Property, the business, operations or condition (financial or otherwise) of Trustor or any guarantor, the security granted in this Security Instrument, Trustor's ability to pay its obligations when due, or Trustor's ability to perform its obligations under this Security Instrument and the other Loan Documents (collectively, a "**Material Adverse Effect**") on which Trustor has knowledge; (g) the commencement or threat of any litigation, action, suit, claim, or proceeding against or investigation of Trustor or the Property that could (i) adversely affect Trustor or the Property, (ii) impair the validity, effectiveness or enforceability of this Security Instrument and any other Loan Documents, or (iii) impair Trustor's ability to perform its obligations under this Security Instrument and any other Loan Documents; and (h) the occurrence of any Event of Default or any event that, with the passage of time, the giving of notice or both, would become an Event of Default. Trustor shall furnish Beneficiary a copy of any notice received by Trustor of which Trustor is required by this Section to notify Beneficiary.

4.13 Further Actions. Trustor shall, from time to time, at Beneficiary's request, execute and deliver to Beneficiary, and when appropriate, acknowledge, file and/or record such instruments, documents and agreements, and take such actions as Beneficiary may deem necessary or appropriate for the preservation, continuance, and perfection of the security of this Security Instrument, to evidence or confirm the lien of this Security Instrument on any of the Property, or otherwise to effectuate the intent and provisions of this Security Instrument, including, but not limited to, any instruments to correct errors or mistakes in this Security Agreement or any other loan documents. Trustor shall, at Trustor's expense, cooperate fully with Beneficiary with respect to any proceeding before any court, board or other Governmental Authority, which would reasonably be expected to have, or does have, a Material Adverse Effect and, in connection therewith, permit Beneficiary, at its election, to participate in any such proceedings, other than those proceedings where Trustor and Beneficiary are adverse parties. Upon receipt of an affidavit of an officer of Beneficiary as to the loss, theft, destruction or utilization of the Note or any other Loan Document which is not of public record, with respect to any Loan Document other than the Note, Trustor will issue in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor, and, with respect to the Note, Trustor will execute a reaffirmation of the debt as evidenced by such Note acknowledging that Beneficiary has informed Trustor that the Note was lost, stolen, destroyed, or mutilated and that such debt continues to be an obligation and liability of the Trustor as set forth in the Note, a copy of which shall be attached to such reaffirmation, or will execute a replacement Note.

4.14 Filing and Recording Fees. Trustor shall pay all filing, registration and recording fees, and all expenses incident to the preparation, negotiation, execution and acknowledgment of this Security Instrument or any other Loan Document, and all federal, state, county, and municipal fees, charges, assessments, and/or taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the Loan Documents.

4.15 Tax, Debt, Credit, Intangible Tax, and Documentary Stamp Laws. To the extent not prohibited by applicable Law, if any Law imposes a tax, fee or charge including, without limitation, any transfer tax, intangible tax, mortgage tax, either directly or indirectly on the debt, Beneficiary's interest in the Property, the Note, this Security Instrument or any other Loan Documents or a fee, charge or tax on or as a condition of the recordation of this Security Instrument (a "**Mortgage Tax**"), Trustor will pay the Mortgage Tax and any interest and penalties associated therewith. If payment of such amount by Trustor is unlawful, unenforceable, or provides a basis for a defense of usury, then Beneficiary shall have the option to declare the debt immediately due and payable. Trustor shall not claim or demand or be entitled to any credit or credits on account of the debt for any part of the Real Property taxes or other impositions assessed against the Real Property, and no deduction shall otherwise be made or claimed from the assessed value of the Real Property for real estate tax purposes by reason of the debt or this Security Instrument.

4.16 Environmental.

4.16.1 Environmental. Trustor hereby represents and warrants that: (a) there are no Hazardous Materials or underground storage tanks in, on, or under the Real Property; (b) there are no past, present or threatened releases of Hazardous Materials in, on, or under or from the Real Property; (c) there is no threat of any release of Hazardous Materials migrating onto the Real Property; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Real Property; and (e) Trustor has provided to Beneficiary in writing any and all information relating to environmental conditions in, on, under or from the Real Property known to Trustor or contained in Trustor's files and records, including, but not limited to, any reports relating to Hazardous Materials, in, on, under or migrating to or from the Real Property and/or the environmental condition of or the presence of mold or toxic chemicals at the Real Property.

4.16.2 Compliance with Environmental Laws. Trustor shall at all times keep and maintain the Real Property in compliance with, and shall not cause or permit the Real Property or any activities conducted thereon to be in violation of, any Environmental Law, and shall give all notices and warnings and make all disclosures required by Environmental Laws and all permits issued pursuant thereto. Trustor shall not, and shall not permit any tenant, lessee or other occupant of, or any contractor, subcontractor or any other person present on the Real Property to use, generate, manufacture, store, produce, distribute, treat, release, discharge, dispose of or otherwise permit the presence of, on, under or about the Real Property or transport to or from the Real Property any Hazardous Materials. Trustor shall keep the Property free and clear of all environmental liens.

4.16.3 Notification to Beneficiary. Trustor shall immediately advise Beneficiary in writing of Trustor's discovery of or receipt of notice of (i) any and all Hazardous Materials Claims; (ii) any use, generation, manufacture, production, release, discharge, treatment, storage, disposal or presence of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the Real Property; (iii) any occurrence or condition on any Real Property adjoining or in the vicinity of the Real Property that could cause the Property or any part thereof to become subject to any restrictions on ownership, occupancy, transferability or use under any Environmental Law; and (iv) any Remedial Work that Trustor proposes to undertake. Trustor shall also provide to Beneficiary copies of all notices received by Trustor from Governmental Authorities relating to any of the foregoing and all responses to such notices, including all reports, studies, analyses, data, test results, consultants' reports, laboratory analyses and/or remedial action plans and other materials prepared by or on behalf of Trustor. Trustor shall not, without Beneficiary's prior written consent, enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim if such settlement, consent or compromise might, in Beneficiary's judgment, impair the value of Beneficiary's security.

4.16.4 Third Party Claims. Trustor, at its sole cost and expense, shall take any and all reasonable actions, including institution of legal action against third-parties, necessary or appropriate to obtain reimbursement, payment

or compensation from such persons responsible for the presence of any Hazardous Materials at, in, on, under or near the Real Property or otherwise obligated by Law to bear the cost associated with such Hazardous Materials.

4.16.5 Definitions. The following terms used in this Security Instrument shall have the meanings set forth below:

4.16.5.1 “**Environmental Law**” means any federal, state or local Law, ordinance or regulation or any rule adopted or guideline promulgated pursuant thereto, or any order, ruling or directive of any federal, state, local, executive, judicial, legislative, administrative or other governmental agency, board or public authority, as well as common Law, relating to health, industrial hygiene, the environment, or the occupational or environmental conditions on, under or about the Real Property (including ambient air, soil, soil vapor, groundwater, surface water or land use), whether now or hereafter in force.

4.16.5.2 “**Hazardous Material**” means any chemical, substance, object, condition, material or waste that is or may be hazardous to human health or safety or to the environment, due to its radioactivity, ignitability, corrosivity, flammability, reproductive toxicity, infectiousness or other harmful properties or effects, including all chemicals, substances, materials or wastes that are now or hereafter may be regulated in any manner, classified as dangerous, hazardous or toxic, or as pollutants or contaminants, or to which exposure is prohibited or restricted by any federal, state or local governmental agency, board or public authority or by any Environmental Law, and any petroleum products, toxic mold or toxic chemicals or drugs.

4.16.5.3 “**Hazardous Materials Claims**” means any and all Claims, (including all foreseeable and unforeseeable consequential damages, all remedial, removal, response, abatement, cleanup, compliance, legal, investigative, planning and monitoring costs and other related costs, expenses and disbursements, such as attorneys’ and experts’ fees), whether instituted, made, sought, brought, imposed, completed, threatened, incurred or suffered, directly or indirectly arising out of or attributable to (A) the use, generation, manufacture, production, transportation, treatment, storage, release, threatened release, discharge, disposal, or presence or suspected presence of, or exposure of any person or property to, Hazardous Materials on, under, or about the Real Property; (B) the migration, escape, seepage, leakage, spillage, emission or release of a Hazardous Material to or from the Real Property or any other property legally or beneficially owned by Trustor; (C) the violation of, or failure to comply with, any Environmental Law by Trustor or any predecessor in title to Trustor; or (D) any activity carried on or undertaken on or off the Real Property, whether prior to, during, or after the period of time this Security Instrument is recorded against the Real Property, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Real Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Real Property.

4.16.5.4 “**Remedial Work**” means, without limitation, any response, remediation, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Material; any actions to prevent, cure or mitigate any release of any Hazardous Material; any action to comply with any Environmental Law or with any permits issued pursuant thereto (if such permits are required); and any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Material.

4.17 Books and Records on Property. Trustor shall keep and maintain at Trustor’s address stated above, or such other place as Beneficiary may approve in writing, books of account and records adequate to reflect correctly the results of operation of the Property and copies of all written contracts, Leases and other documents affecting the Property. Such books, records, contracts, Leases and other documents shall be subject to examination, inspection and copying at any reasonable time by Beneficiary. Trustor shall furnish to Beneficiary, within ten (10)

days after Beneficiary's request therefor, the following documents, each certified to Beneficiary by Trustor as being true, correct and complete: (a) copies of all Leases and other agreements for occupancy or use of all or any portion of the Real Property; (b) copies of the most recent real and personal property tax statements and utility bills for the Property; (c) copies of the most recent statements for the insurance coverage maintained pursuant to this Security Instrument; and (d) any other books, records, contracts, Leases and other documents pertaining to the Property requested by Grantee.

4.18 Brokerage Fees. Trustor shall bear the sole responsibility for payment of any brokerage commissions, finder's fees or any other charges howsoever characterized and of any kind arising in connection with the Loan and the procurement of any prospective tenants of the Real Property or in any way related to the Property (collectively, "Commissions").

4.19 Indemnification.

4.19.1 General Indemnification. Trustor shall indemnify, defend, protect, release, and hold harmless Beneficiary and its successors and assigns (and the officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing) (collectively, "**Indemnified Parties**") for, from and against any and all losses, damages, claims, causes of action, suits, offsets, debts, duties, obligations, or liabilities, actions, defenses, proceedings, administrative and judicial proceedings and orders, remedial action requirements, enforcement actions of any kind, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including, but not limited to, reasonable legal fees and other costs of defense) (collectively, "**Claims**" and individually, a "**Claim**") arising from or related to (a) the Note, this Security Instrument, and/or any other Loan Documents; (b) the acts or omissions of Trustor or its successors and assigns or any occupants or tenants of the Real Property (and the officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing); (c) the construction, use, non-use, occupation, or condition of the Real Property; (d) any accident, injury to, or death of any persons or loss or damage to property occurring in, on or about the Real Property and the adjoining property from any cause whatsoever; (e) the failure to comply with applicable Laws; (f) the failure to comply with the terms and conditions of this Security Instrument or any other Loan Document; (g) any liens arising from work, labor, or material furnished to the Real Property; (h) any and all Hazardous Material Claims; (i) any violation of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, *et seq.*, all amendments thereto and reauthorizations thereof ("**ADA**") and the Fair Housing Act (the "**FHA**"), and all regulations, orders, rules, policies, and rules of common Law promulgated or arising in connection with the ADA and the FHA and any analogous Laws and any Laws relating to the habitability of the Real Property to the extent arising from or relating to the Real Property; (j) any Commissions; and (k) any Mortgage Tax.

4.19.2 Duty to Defend. Upon written request by Beneficiary, Trustor shall defend Beneficiary and any Indemnified Parties with attorneys and other professionals approved by the Indemnified Party. Notwithstanding the foregoing, Beneficiary and the Indemnified Parties, may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Beneficiary and Indemnified Parties, their attorneys shall control the resolution of any Claim or proceeding, but shall keep Trustor advised on a periodic basis of the progress toward such resolution. Upon demand, Trustor shall pay, or in the sole discretion of the Beneficiary and Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

4.19.3 Survival. The obligations and liabilities of Trustor under this Section shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, sale, or delivery of a deed in lieu of foreclosure or sale.

4.20 Off-Set. All sums payable by Trustor under the Note, this Security Instrument and any other Loan Documents, shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Secured Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Real Property or any part thereof; (b) any destruction or prevention of or interference with any use of the Real Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Real Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Security Instrument by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any Claims that Trustor has or might have against Beneficiary; (f) the occurrence of an Event of Default or any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Security Instrument or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

4.21 Estoppel Certificates. After request by Beneficiary, Trustor shall within fifteen (15) days furnish Beneficiary or any proposed assignee of the Loan with a statement, duly acknowledged and certified, setting forth (a) the original principal amount of the Loan, (b) the rate of interest on the Loan, (c) the unpaid principal amount of the Loan, (d) the date installments of interest and/or principal were last paid, (e) the maturity date of the Loan, (f) any offsets or defenses to the payment of the debt, if any, and (g) that this Security Instrument, the Note and the other Loan Documents are valid, legal and binding obligations and have not been modified or, if modified, giving the particulars of such modifications. In addition, upon request by Beneficiary, Trustor shall deliver to Beneficiary or any proposed assignee of the Loan an estoppel from each tenant of any portion of the Real Property stating that the Lease is in full force and effect, that none of the rents have been paid more than one month in advance, that there are no defaults, or events that may arise as a default, under the Lease, and that the tenant claims no defense or offset against the full and timely performance of its obligations under the Lease.

4.22 Debt Cancellation. Trustor shall not cancel or otherwise forgive or release any Claims or debt (other than termination of Leases in accordance herewith) owed to Trustor by any person or entity, except for adequate consideration and in the ordinary course of Trustor's business.

ARTICLE V ASSIGNMENT OF REVENUES AND LEASES

5.1 Absolute and Unconditional Assignment. Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all Revenues and all of Trustor's rights, title and interest under and interest in and to any and all current and future Leases and rents under any Leases. This assignment is an absolute assignment and not an assignment as additional security, and Beneficiary's right to the Revenues is not contingent upon, and may be exercised without Beneficiary's taking possession of, the Property. Subject to the terms and conditions of this Security Instrument, Beneficiary hereby grants to Trustor a license to collect, receive, hold, use and disburse the Revenues as they become due and payable and to exercise the rights of the lessor under the Leases until the occurrence of an Event of Default. Subject to requirements of applicable Law, Trustor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt of written notice from Beneficiary, to pay all Revenues to Beneficiary, and to continue to do so until otherwise notified in writing by Beneficiary.

5.2 Remedies. Upon the occurrence of an Event of Default, the license granted pursuant to Section 5.1 shall automatically terminate, and upon such termination, regardless of the adequacy of Beneficiary's security for the indebtedness secured by this Security Instrument, Beneficiary may:

5.2.1 Sue for, collect and retain the Revenues (including those past due and unpaid) without notice to or demand upon Trustor or lessees under any of the Leases, and without taking possession of the Property, and demand payment from Trustor of all Revenues collected by Trustor from the date on which the Event of Default occurred, which shall, from and after the occurrence of an Event of Default, be held by Trustor in trust for Beneficiary;

5.2.2 Send a notice to any lessee or tenant to pay rent directly to Beneficiary;

5.2.3 To the extent permitted by applicable Law, in person, by an agent, or by a court appointed receiver, enter upon and take possession of the Property or any part thereof, and in so doing, assume control of the use, operation, repair and maintenance thereof and conduct of business thereon and do any or all of the following: (i) exclude Trustor and Trustor's agents and employees from the Property; (ii) sue for and collect the Revenues; (iii) complete any construction that may be in progress; (iv) do such maintenance and make such repairs and alterations as Beneficiary or the receiver deems necessary; (v) use all stores of materials, supplies and equipment on the Property and replace such items at the expense of the receivership estate; (vi) pay all taxes and other impositions, insurance premiums, utility charges and any and all other charges, costs and expenses of operating the Property, and the cost of maintenance and repair of the Property; (vii) execute, cancel or modify Leases or contracts providing for management, maintenance or other services rendered to the Property; and (viii) generally do anything that Trustor could legally do if Trustor were in possession of the Property, on such terms as Beneficiary shall deem appropriate, in its sole and absolute discretion, to protect and preserve the security of this Security Instrument. All expenses incurred by Beneficiary or the receiver shall constitute part of the indebtedness secured hereby. Beneficiary and the receiver shall be entitled to have access to those books and records of Trustor that contain information necessary to enable Beneficiary or the receiver to manage and operate the Property. Trustor hereby agrees that it will do nothing to impair Beneficiary's or the receiver's ability to collect and retain the Revenues and that any lessee occupying the Property or any part thereof may pay any and all Revenues or other charges directly to Beneficiary or the receiver upon notice from Beneficiary without the necessity of any notice from Trustor; and/or

5.2.4 Exercise any other rights or remedies available under applicable Law, in equity, or under this Security Instrument and the other Loan Documents.

5.3 Application of Revenues.

5.3.1 The Revenues collected by Beneficiary or the receiver shall be applied: (i) first, to payment of the costs and expenses of the receivership, including reasonable attorneys' fees incurred by the receiver, borrowings of the receiver, receivers' fees, premiums on receiver's bonds, costs of repairs of the Property, taxes and other impositions, insurance premiums, utility charges and other costs, expenses and charges of operating the Real Property, and the costs of discharging any obligation or liability of Trustor as lessor of the Real Property; (ii) second, to payment of any and all other costs and expenses incurred by Beneficiary, including, without limitation, the reasonable attorneys' fees and legal costs; and (iii) third, to payment of the indebtedness secured by this Security Instrument.

5.3.2 If the Revenues are insufficient in amount to defray all costs and expenses of the receivership or the costs incurred by Beneficiary, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Security Instrument.

5.3.3 Neither the entry into possession of the Real Property by Beneficiary, its agent or a receiver pursuant to Section 5.2 nor any application of Revenues pursuant hereto shall cure or waive any Event of Default hereunder or invalidate any notice of default under this Security Instrument or any action taken pursuant hereto.

5.4 Reassignment of Revenues. The recordation in the official records of the county in which the Real Property is located of a full reconveyance of this Security Instrument shall operate as a reassignment of Revenues and Leases to the person or persons legally entitled thereto, unless such reconveyance expressly provides to the contrary.

5.5 Beneficiary Not Liable. Beneficiary shall not be liable for any loss sustained by Trustor resulting from Beneficiary's failure to lease the Real Property or any part thereof or from any other act or omission in managing the Real Property. Beneficiary shall not be obligated to perform or discharge, nor does Beneficiary undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment, and Trustor agrees to indemnify, defend, protect, release and hold harmless Beneficiary and the Indemnified Parties for, from, and against any Claims that may arise or be incurred under the Leases or under or by reason of this assignment and that may be asserted against Beneficiary by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Beneficiary incur any such liability under the Leases or under or by reason of this assignment or in defense of any such Claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be reimbursed by Trustor to Beneficiary immediately upon demand, and upon failure of Trustor to make such reimbursement within five (5) days after the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the rate of interest then in effect under the Note.

5.6 Leases. Trustor shall furnish, from time to time at Beneficiary's request, a rent schedule for the Property, certified by Trustor, showing the name, address and contact information of each lessee and, for each lessee, the unit occupied, the Lease expiration date, the amount of the security deposit, the rent, the amount of any prepaid rent and the period for which such rent was prepaid, any unexpired free rent period and any renewal or extension options.

**ARTICLE VI
SECURITY AGREEMENT**

6.1 Security Interest. Trustor hereby assigns and grants to Beneficiary a first-priority security interest in all Equipment, Fixtures, goods (including, without limitation, consumer goods, inventory, equipment and farm products), accounts, chattel paper (including, without limitation, electronic chattel paper and tangible chattel paper), instruments, general intangibles (including, without limitation, payment intangibles and software), letters of credit, letter-of-credit rights, documents, as-extracted collateral, money and deposit accounts of every kind, and all proceeds thereof as such terms are defined under the Uniform Commercial Code (collectively the "Collateral"), whether now or hereafter existing, and in which Trustor now has or hereafter obtains any right, title, estate or interest, but only to the extent of Trustor's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof.

6.2 Security Agreement. This Security Instrument constitutes a security agreement with respect to the Collateral, and Beneficiary shall have all of the rights and remedies of a secured party under the Loan Documents and the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor and Beneficiary acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Trustor, regardless of when advances to Trustor are actually made or when the Property is acquired. Trustor shall not, without obtaining the prior written consent of Beneficiary, further pledge, assign or grant any security interest in any of the Collateral or permit any lien to attach thereto or any levy to be made thereon or any UCC Financing Statements to be filed with respect thereto. Trustor will maintain the security interest granted herein and will defend the right, title and interest of Beneficiary in and to the Collateral. The security interest created hereby shall remain in full force and effect until payment in full of the debt and satisfaction of the Secured Obligations.



6.3 Fixture Filing. This Security Instrument constitutes and is filed as a fixture filing under the Uniform Commercial Code of the state where the Real Property is located. Portions of the Real Property consists of goods that are or are to become fixtures upon the Real Property, and this Security Instrument is to be recorded in the Official Records of the county in which the Real Property is located. This Security Instrument shall remain in effect as a fixture filing until released or satisfied of record or its effectiveness otherwise terminates as to the Real Property.

6.4 Status of Trustor. Trustor's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Trustor is an organization of the type specified in the first paragraph of this Security Instrument. Trustor is incorporated in or organized under the Laws of the state specified in the first paragraph of this Security Instrument. Trustor's principal place of business and chief executive office, and the place where Trustor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Trustor) the address of Trustor set forth on the first page of this Security Instrument. Trustor will not change or permit to be changed (a) Trustor's name; (b) Trustor's identity (including its trade name or names), (c) Trustor's principal place of business as set forth in the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Trustor, (e) Trustor's state of organization, and (f) Trustor's organizational number, without notifying Beneficiary of such change in writing at least thirty (30) days prior to the Effective Date of such change and, in the case of a change in Trustor's structure, without first obtaining the prior written consent of Beneficiary. If Trustor does not now have an organizational identification number and later obtains one, Trustor promptly shall notify Beneficiary of such organizational identification number.

6.5 Financing Statements. Trustor hereby authorizes Beneficiary to file financing statement(s) to establish or maintain the validity, perfection and priority of the security interest granted herein. Trustor agrees that at any time and from time to time, at the expense of Trustor, Trustor will promptly and duly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Beneficiary may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Beneficiary to exercise and enforce its rights and remedies hereunder. During the continuance of an Event of Default, Beneficiary may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Collateral. The exercise of any or all of Beneficiary's rights and remedies under this Security Instrument or under any of the other Loan Documents shall not in any way prejudice or affect Beneficiary's right to initiate and complete a foreclosure or sale under this Security Instrument.

6.6 Uniform Commercial Code. Trustor and Guarantor agree that the security interest granted herein shall be governed by and construed in accordance with the Laws of the state of Utah and the uniform commercial code as adopted by the state of Utah (without regard to the principles of conflicts of law), except that at all times the provisions for the perfection and enforcement of any security interest in Fixtures and any Fixture filing shall be governed by and construed in accordance with the laws of the state where the Real Property is located and the uniform commercial code as adopted by that state, and except that at all times the provisions for the perfection and enforcement of any security interest in the Collateral of Trustor other than Fixtures and the filing of any financing statement shall be governed by, and construed in accordance with, the laws of the state applicable toward the type of Collateral that is secured. The Uniform Commercial Code of the applicable state as set forth above is referred to herein as the "**Uniform Commercial Code.**"

**ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES**

7.1 Events of Default. Any of the following shall constitute an “Event of Default”:

- 7.1.1 any default under the Note, any guaranty securing the Note, or any other Loan Document;
- 7.1.2 any failure by Trustor to pay any monetary amount when due under this Security Instrument;
- 7.1.3 any default under any exception to title to the Real Property, if not cured within any cure period given in such exception to title;
- 7.1.4 any representation or warranty made by Trustor in this Security Instrument or any other Loan Documents or in any certificate, report, financial statement or other instrument or document furnished to Beneficiary at any time that is false or misleading in any material respect when made;
- 7.1.5 any failure by the Trustor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Trustor under this Security Instrument within fifteen (15) days (or such shorter period if specified in this Security Instrument) after the date of written notice from Trustor to Beneficiary;
- 7.1.6 the lien or security interest of this Security Instrument in the Property or the Collateral shall lose validity or priority through any act or omission of Trustor, such as through the filing of any tax lien;
- 7.1.7 the Real Property becomes subject to any lien (other than a lien for real property taxes and assessments not yet due and payable) and such lien is not released within forty-five (45) days after filing;
- 7.1.8 a judgment is filed against Trustor in excess of \$50,000, which is not vacated, dismissed, discharged or bonded over within thirty (30) days;
- 7.1.9 a decree or order is entered for the appointment of a trustee, receiver or liquidator for Trustor or any guarantor or the Property of Trustor or any guarantor and is not dismissed within fifteen (15) days;
- 7.1.10 Trustor or any guarantor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due;
- 7.1.11 there is an attachment, execution or other judicial seizure of any property of Trustor or any guarantor and such seizure is not discharged within fifteen (15) days after such event;
- 7.1.12 the issuance of any writ of attachment or execution or any similar process against the Property or any part thereof of interest therein or the entry of any judgment that shall become a lien on the Property or any part thereof or interest therein, if such execution, attachment, process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or
- 7.1.13 any substantial damage to or destruction of the Property if for any reason the Property cannot be (or is not) restored to its prior condition within a reasonable period of time, as determined by Beneficiary. Whenever any of the other Loan Documents refers to a “default” under this Security Instrument, such reference shall be to an Event of Default as defined herein. Upon presentation of an affidavit by Beneficiary setting forth facts showing an Event of Default, Trustee is authorized to accept as true and conclusive all facts and statements set forth therein and



to act thereon under this Security Instrument. An Event of Default under this Security Instrument shall be deemed a default under the Note and the other Loan Documents.

7.2 Rights and Remedies. At any time after the occurrence of an Event of Default, Beneficiary or Trustee may do any one or more of the following in accordance with applicable Law, in any order:

7.2.1 With or without notice to Trustor, declare all indebtedness secured hereby to be immediately due and payable;

7.2.2 With or without notice, and without releasing Trustor from its obligations relative to such Event of Default, cure such Event of Default and/or take such action, without notice or demand, that Beneficiary deems advisable to protect and enforce its rights against Trustor and in the Property, and the costs and expenses incurred by Beneficiary or Trustee in so doing shall become a part of the indebtedness secured hereby;

7.2.3 Pursue an action for damage, and/or breach of the terms of the Note, this Security Instrument or the other Loan Documents, and/or recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or other Loan Documents;

7.2.4 Exercise any remedy afforded by ARTICLE V, Assignment of Revenues and Leases, or ARTICLE VII, Security Agreement;

7.2.5 Commence and maintain an action or actions to foreclose this Security Instrument (either for complete or partial foreclosure to the extent permitted by applicable Law), to specifically enforce any rights of Beneficiary hereunder (including rights with respect to possession and sale of any additional security for the Loan), to enjoin any conduct that impairs or threatens to impair the security of this Security Instrument, or to obtain such other equitable remedies as may be appropriate;

7.2.6 Cause the Real Property or any part thereof to be sold pursuant to the power of sale contained herein by providing Trustor with a written notice of default and complying with applicable Law;

7.2.7 Resort to and realize upon the security for the Loan and any other security now or hereafter held by Beneficiary in such order as Trustee and Beneficiary or either of them may, in their sole discretion, determine, concurrently or successively or in one or several consolidated or independent judicial actions or non-judicial proceedings;

7.2.8 Proceed under the Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, 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 applicable Law;

7.2.9 Apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security of the debt and without regard for the solvency of Trustor or any guarantor or other person liable for the debt;

7.2.10 Apply any sums deposited with or held in escrow by Beneficiary on behalf of Trustor in accordance with the terms of this Security Instrument or any other Loan Document; and/or

7.2.11 Exercise any and all other remedies at law, including any action for damages suffered by Beneficiary as a result of any Event of Default, or in equity as may be available now or hereafter, as Beneficiary may elect.

Any actions taken by Beneficiary shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Beneficiary has determined in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Beneficiary permitted by law, equity or contract or as set forth herein or in the other Loan Documents. In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

7.3 Exercise of Trustee's Power of Sale.

7.3.1 Notice of Sale. Trustee shall cause to be recorded, published and/or delivered to Trustor such notice of default and election to sell as may then be required by applicable Law and by this Security Instrument.

7.3.2 Sale of Property. After giving notice of default and notice of sale, and the lapse of such time period as may be required by applicable Law, Trustee may, without demand on Trustor, at the time and place of sale fixed in the notice of sale, either as a whole or in separate parcels or items or through two (2) or more successive sales, sell the Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustor shall have no right to direct the order in which the Property is sold in accordance with applicable Laws. Trustor shall pay the costs and expenses of the sale and any judicial proceeding in which any such sale may be made. Trustee shall deliver to such purchaser its deed conveying the Real Property, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at such sale.

7.3.3 Application of Sale Proceeds. After deducting all costs, fees and expenses of Trustee and of the sale, including costs of evidence of title in connection with the sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the default rate of interest specified in the Note (or, if no default rate is specified, at the highest rate then in effect under the Note), next to all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto or the Trustee. 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 applicable Laws.

7.3.4 Credit Bid Amount. Trustor agrees that the entire Secured Obligations, including all principal due and all interest, prepayment charges, if any, late payment fees, insufficient fund fees, lender fees, origination 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 Beneficiary's Security Instrument lien upon the Property, and Beneficiary may include all such amounts in any credit bid Beneficiary may make at a sale of the Real Property pursuant to this Security Instrument.

7.3.5 Postponement of Sale. In accordance with applicable Law, Trustee may postpone the sale of all or any portion of the Real Property by public announcement at the time and place first fixed for sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

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

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

ARTICLE VIII MISCELLANEOUS

8.1 Additional Powers of Beneficiary. Without affecting the liability of any other person liable for the payment of or performance of any indebtedness secured hereby, and without affecting the lien of this Security Instrument, Beneficiary may, at any time, and from time to time, without notice to or consent of Trustor: (a) release any person primarily or secondarily liable for payment or performance of any indebtedness secured by this Security Instrument; (b) extend the maturity date of such indebtedness or accept partial payments hereon; (c) grant forbearances; (d) release or reconvey, or cause to be released or reconveyed, any or all of the Property; (e) take or release any other or additional security for any indebtedness secured hereby; and (f) consent to the transfer of any security.

8.2 Costs and Expenses; Actions by Trustee and/or Beneficiary to Preserve Property.

8.2.1 Obligations of Trustor; Reimbursement of Costs and Expenses. Every provision of this Security Instrument, or any other Loan Document, that imposes upon Trustor an obligation to perform an act, or embodying an agreement by Trustor to perform an act, shall be construed as obligating Trustor to pay all costs and expenses relating thereto. Should Trustor fail to make any payment or to do any act as herein provided, Beneficiary and/or Trustee, may, but shall not be obligated to, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, all without notice to or demand upon Trustor, without releasing Trustor from any obligation hereof or secured hereby, and within such times and in such manner as Beneficiary or Trustee may deem reasonable. Trustor shall reimburse Beneficiary for any and all costs and expenses of any and all kind or nature whatsoever incurred by Trustor associated with enforcement of this Security Instrument and any other Loan Document, the exercise or performance of any of Beneficiary's rights or remedies in this Security Instrument or any Loan Documents or at law or in equity, and/or the collection or performance of the Secured Obligations (including any inspections, correspondence, inquiries, demands, etc.), including, but not limited to, all court costs, attorneys' fees, paralegal fees, discovery costs, witness fees, appraisal fees, survey fees, title charges and other fees, charges, costs and expenses that Beneficiary may incur whether or not an Event of Default occurs, remedies are exercised, or legal proceedings are instituted. If Beneficiary or Trustee expends any funds to perform Trustor's obligations under or enforce the terms and conditions of this Security Instrument or any other Loan Document, Trustor shall pay such amount to Beneficiary or Trustee, as the case may be, within ten (10) days after demand. Such fees, charges, costs and expenses shall be considered collateral advances made to protect Beneficiary's security and shall be added to the indebtedness secured hereby as provided above, and shall not be



considered costs and expenses of foreclosure or be subject to any statutory or other limitation on the amount thereof that may be demanded or recovered by Beneficiary, unless the fees, charges, costs and expenses in question are incurred solely and specifically for services that are (A) performed only after the date of Beneficiary's written election to declare the entire indebtedness secured hereby immediately due and payable, and (B) directly related to the preparation or giving of any notice of default or notice of sale or the taking of any other action required by applicable Law in connection with a trustee's sale or judicial foreclosure proceeding under this Security Instrument.

8.2.2 Rights of Beneficiary. Without limiting any other power of Trustee or Beneficiary under this Security Instrument, Trustor acknowledges that Beneficiary and/or Trustee shall have the right, but not the obligation, to take any action that either of them may deem necessary or appropriate for the protection of Beneficiary or the security of this Security Instrument, including the right: (i) to enter upon and take possession of the Property in accordance with applicable Law; (ii) to make additions, alterations, repairs and improvements to the Real Property that they or either of them may consider necessary or proper to keep the Real Property in good condition or repair; (iii) to appear and participate in any action or proceeding affecting the Property; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt that in the judgment of either may affect or appear to affect the security of this Security Instrument or be senior in priority to the lien hereof; and (v) in exercising such powers, to employ attorneys or other consultants or experts, and pay their fees and expenses. Neither the reservation nor any exercise of the foregoing rights shall be construed to excuse Trustor's failure to perform fully and when due all of Trustor's obligations under this Security Instrument or any other Loan Document, or to prevent any such failure from constituting an Event of Default; and

8.3 Nonliability of Beneficiary.

8.3.1 No Duty of Beneficiary. Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or any third party to select, review, inspect, examine, supervise, pass judgment upon or inform Trustor or any third party of the quality, adequacy or suitability of any matter or item that Beneficiary has the right to review, inspect, examine or approve under this Security Instrument or any other Loan Document. Any such selection, review, inspection, examination and the like is solely for the purpose of (a) determining whether or not Trustor's obligations under the Loan Documents are being properly discharged and (b) protecting Beneficiary's security and preserving Beneficiary's rights under the Loan Documents, and such selection, review, inspection, examination and the like shall not render Beneficiary liable to Trustor or any third party for the sufficiency, accuracy, completeness, or legality thereof and shall not operate to waive any rights of Beneficiary hereunder.

8.3.2 No Representation by Beneficiary. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Beneficiary pursuant hereto, including any financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Beneficiary.

8.3.3 Operation of Real Property. Prior to Beneficiary's actual entry upon and taking possession of the Real Property, nothing in this Security Instrument shall operate to impose upon Beneficiary any responsibility for the operation, control, care, management or repair of the Real Property, and the execution of this Security Instrument by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Real Property is and shall be that of Trustor prior to Beneficiary's actual entry and taking possession.

8.3.4 Disclosure. Beneficiary is hereby authorized to disclose (i) information relating to Hazardous Materials to federal, state, or local authorities when Beneficiary reasonably believes such disclosure to be required

under any Environmental Law; and (ii) information concerning Trustor, the Property or the indebtedness secured hereby to any insurance agency or company, to any person or entity proposing to acquire an interest in the Loan; and

8.3.5 Acts of Trustee. Beneficiary shall not be liable, and is hereby released from liability, for any act or omission of Trustee, except for such actions as may be taken by Trustee at the express request of and in accordance with instructions given by Beneficiary.

8.4 Risk of Loss. Trustor assumes the risk of loss or damage to the Property. Beneficiary shall have no liability whatsoever for decline in the value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance maintained is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or Collateral not in Beneficiary's possession.

8.5 No Merger. If Trustor's and Beneficiary's estates hereunder shall at any time become vested in one owner, this Security Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary hereunder.

8.6 Substitution of Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Real Property is located and by otherwise complying with applicable Laws, substitute a successor or successors to the Trustee named herein or acting hereunder. Without conveyance of the Property, a successor Trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable Law. Upon the request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trust herein expressed, all the estate, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the Property and moneys held by such Trustee to the substitute Trustee appointed in the Trustee's place.

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

8.8 Defense of Trustee; Reimbursement. Trustor shall defend Trustee against, and reimburse Trustee for, any and all losses, Claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees) that Trustee may incur, suffer, or sustain in the execution of the trust created hereunder, or in the performance of any act required or permitted hereunder or by law or in equity, or otherwise arising out of or in connection with this Security Instrument.

8.9 Waivers by Trustor. All sums payable by Trustor hereunder shall be paid without notice, demand, or defense, without right of counterclaim, setoff, or deduction, and without abatement, suspension, deferment, diminution or reduction, all of which rights now or hereafter conferred by law are hereby waived by Trustor. To the fullest extent permitted by applicable law, Trustor hereby expressly waives and releases the pleading of any statute of limitations as a defense to the payment of the debt or performance of the obligations under this security instrument and the other loan documents. To the fullest extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against

Trustor by beneficiary or its agents. Trustor shall not be entitled to any notices of any nature whatsoever from beneficiary except with respect to matters for which this security instrument specifically and expressly provide for the giving of notice by beneficiary or trustee to Trustor and except with respect to matters for which Trustor is not, pursuant to applicable laws permitted to waive the giving of notice. To the fullest extent permitted by applicable law, Trustor hereby waives any defense Trustor might assert or have by reason of beneficiary's failure to make any tenant or lessee of the real property a party defendant in any foreclosure proceeding or action instituted by beneficiary. Without limiting the generality of the foregoing, Trustor also waives, to the fullest extent permitted by applicable law the following: (a) any right to require beneficiary or trustee, prior to or as a condition to the enforcement of this security instrument, to marshal assets or otherwise to proceed against or exhaust any other security for the obligations secured hereby or pursue any other remedy whatsoever; and (b) any defense arising by reason of (i) any disability or other defense of Trustor with respect to the obligations secured hereby, (ii) the unenforceability or invalidity of any security for the indebtedness secured hereby or the lack of perfection or failure of priority of any security for the indebtedness secured hereby, (iii) the cessation from any cause whatsoever of the personal liability of Trustor (other than by reason of the full payment and discharge of all indebtedness secured hereby), or (iv) any act or omission of trustee, beneficiary or others that directly or indirectly results in or aids in the discharge or release of Trustor or the indebtedness secured hereby or any other security therefor by operation of law or otherwise.

8.10 Cumulative Rights and Remedies; No Waiver. The rights, powers and remedies given to Beneficiary pursuant to this Security Instrument shall be in addition to, and shall not supersede or preempt, any rights, powers and remedies given to Beneficiary by virtue of any applicable Law. Every power or remedy given by this Security Instrument to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised concurrently, independently, or successively, in any order whatsoever, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. No forbearance, failure or delay by Beneficiary in exercising any right, power or remedy granted to Beneficiary hereunder shall be deemed a waiver of such right, power or remedy, nor shall any such forbearance, failure or delay preclude the further exercise of such right, power or remedy, or any other right, power or remedy; and every such right, power and remedy of Beneficiary shall continue in full force and effect until such right, power or remedy is explicitly waived by Beneficiary in writing. Any waiver by Beneficiary must be in writing. A waiver of one Event of Default shall not be construed to be a waiver of any subsequent Events of Default by Trustor or to impair any remedy, right or power consequent thereon. The consent or approval by Beneficiary to or of any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

8.11 Beneficiary's Discretion. Whenever pursuant to this Security Instrument, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as otherwise specifically provided herein) be in the sole discretion of Beneficiary and shall be final and conclusive. In the event that a Claim or adjudication is made that Beneficiary or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Security Instrument or any other Loan Documents, Beneficiary or such agent, as the case may be, has an obligation to act reasonably or promptly, Trustor agrees that neither Beneficiary nor its agent shall be liable for any monetary damages, and Trustor's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Beneficiary has acted reasonably shall be determined by an action seeking declaratory judgment. Beneficiary agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

8.12 Notices. All notices required to be given to any of the parties hereunder shall be in writing and shall be delivered (a) by personal delivery, with receipt acknowledged; (b) by telecopier or electronic mail (with original

copy to follow as set forth herein); (c) by reputable overnight commercial courier service; or (d) by United States registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses as set forth at the first of this Guaranty (subject to the right of a party to designate a different address for itself by notice similarly given). Any notice so given by United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided, with postage thereon fully prepaid. Any notice given personally, by telecopier or e-mail, or by reputable overnight commercial courier service, shall be deemed to be given upon receipt of the same by the party to whom the same is to be given. Whenever the giving of notice is required, the giving of such notice may be waived in writing by the party entitled to receive such notice. Notices shall be sent to the parties at the following addresses:

To Beneficiary:
AMF Holdings, LLC
PO Box 708755
Sandy, UT 84070

To Trustor:
Cup Holdings, LLC
2441 s 1560 w
Woods Cross, UT 84087

To Trustee:
Taylor Title, LLC
150 N. Main STE B
Kaysville, UT 84037

8.13 Modification. This Security Instrument may be modified, supplemented, or amended only by an instrument in writing signed by Trustor and Beneficiary.

8.14 Time of the Essence. Time is of the essence in the performance of each provision of this Security Instrument.

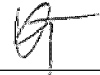
8.15 Waiver of Jury Trial. TRUSTOR AND BENEFICIARY, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY EITHER OF THEM AGAINST THE OTHER BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THIS SECURITY INSTRUMENT, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM THAT TRUSTOR MAY BE PERMITTED TO ASSERT HEREUNDER OR WHICH MAY BE ASSERTED BY HOLDER OR ITS AGENTS AGAINST BENEFICIARY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. This waiver by Trustor of its right to a jury trial is a material inducement for beneficiary to make the loan.

8.16 Governing Law. Trustor hereby acknowledges that Beneficiary resides in the state of Utah, that this transaction/the loan originated in the state of Utah, that the transaction/loan was made in the state of Utah, and that Beneficiary performed its obligations in the state of Utah. As such Trustor, hereby acknowledges that the state of Utah has a substantial relationship to the parties and the transaction and that there is a reasonable basis for the application of the law of the state of Utah to the transaction between Trustor and Beneficiary. TRUSTOR AND BENEFICIARY AGREE THAT THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE WHERE THE REAL PROPERTY SECURING THIS SECURITY INSTRUMENT IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF UTAH SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS SECURITY INSTRUMENT AND ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. To the fullest extent permitted by Law, Trustor hereby unconditionally and irrevocably waives any claim to assert that the Law of any other jurisdiction governs this Security Instrument and the other Loan Documents or that the application of the law of the state of Utah is contrary to a fundamental policy of any other state, and Trustor agrees that this Security Instrument. Any legal suit, action or proceeding against beneficiary or Trustor arising out of or relating to this Security Instrument or the other loan documents may at Beneficiary's option be instituted in any federal or state court in Salt Lake County, Utah and Trustor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Trustor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

8.17 Presumption. Trustor acknowledges that it has had the opportunity to obtain the assistance of counsel in the review and execution of this security instrument, and further acknowledges that the meaning and effect of the foregoing waiver of jury trial and the choice of law provisions set forth above have been fully explained to Trustor by such counsel. Trustor further acknowledges and agrees that Trustor had an opportunity to review and negotiate the terms of this security instrument, that the terms of this security instrument represent the Trustor's intent, and that the terms of this security instrument shall not be strictly construed against either Trustor or beneficiary and that there will no presumption of interpretation against either Trustor or beneficiary.

8.18 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of Law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable Law.

8.19 Severability. Any term or provision of this Security Instrument that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation or in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions or the validity or enforceability of the invalid, void or unenforceable term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision of this Security Instrument is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to and shall, subject to the discretion of such court, reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or



provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

8.20 Relationship. Trustor and Beneficiary intend that the relationships created under this Security Instrument and the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Trustor and Beneficiary nor to grant Beneficiary any interest in the Property other than that of mortgagee, beneficiary or lender.

8.21 Release. In recognition of Beneficiary's right to have all its attorneys' fees and expenses incurred in connection with this Security Instrument secured by the Property, notwithstanding payment in full of the obligations secured by the Property, Beneficiary shall not be required to release, reconvey, or terminate any security interest or lien in or on the Property unless and until Trustor and all guarantors have executed and delivered to Beneficiary general releases in form and substance satisfactory to Beneficiary.

8.22 Limitation on Damages. Beneficiary and its officers, directors, managers, members, shareholders, partners, employees, representatives, agents, and attorneys, shall not be liable to Trustor or any guarantor for consequential, special, punitive, speculative, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Security Instrument, the Loan or financing transaction, or the Property regardless of whether Beneficiary may have been advised of the possibility of such damages.

8.23 Preferential Transfers. If the incurring of any debt by Trustor or the payment of any money or transfer of Property to Beneficiary by or on behalf of Trustor or any Guarantor should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "voidable transfers"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary's counsel is advised to do so, then, as to any such amount or Property repaid or restored, including all reasonable costs, expenses, and attorneys' fees of Beneficiary related thereto, the liability of Trustor and Guarantor, and each of them, and this Security Instrument, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

8.24 Survival; Successors. All agreements, representations, warranties, covenants, releases, waivers, and indemnities made by Trustor shall (i) survive the execution and delivery of this Security Instrument, (ii) survive the filing and consummation of any bankruptcy proceedings, and (iii) continue in full force and effect notwithstanding any termination of this Security Instrument. All agreements, representations, warranties, covenants releases, waivers and indemnities in this Security Instrument shall run with the Land, shall bind Trustor and its estate, heirs, and successors and shall be to the benefit of and be enforceable by Beneficiary and its successors and assigns.

8.25 Joint and Several Liability. If Trustor consists of more than one person or entity, the obligations and liabilities of each such person or entity are joint and several.

8.26 Interpretation of Security Instrument. The captions or headings at the beginning of articles, sections and paragraphs in this Security Instrument are for convenience of reference only and shall not be used to interpret any provision hereof. All references and cross-references in this Security Instrument to sections, exhibits, schedules and riders, unless specified otherwise, refer to provisions in, or exhibits, schedules or riders to, this Security Instrument. Each exhibit, schedule and rider attached to this Security Instrument is incorporated herein by reference. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form or nouns and pronouns shall include the plural and vice versa. In

the event of any inconsistency or conflict between the terms of this Security Instrument and the Note, the terms of the Note shall prevail. As used in this Security Instrument, the term "dollars" and the symbol "\$" mean dollars in lawful currency of the United States of America. The use in this Security Instrument of the word "include," "includes" or "including" shall be construed as if followed by "without limitation" and shall not limit the generality of any provision in which it is used.

8.27 Integration. This Security Instrument, the Note, and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, between Trustor and Beneficiary are superseded by the terms of this Security Instrument and the other Loan Documents.

8.28 Request for Notices. Trustor requests that copies of notices of default and notices of sale be sent to Trustor at the address set forth in Section 8.12.

8.29 Utah Specific Provisions.

8.29.1 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.

8.29.2 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.

8.29.3 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).

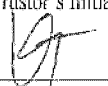
8.29.4 Remedies. In the Event of a Default, Beneficiary may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real 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.

8.29.5 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.

8.29.6 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, lender fees, origination 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, lender fees, origination 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 Real Property pursuant to this Security Instrument.

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


Loan # 3837 35th Ogden BM
350 35th Street
Ogden, UT, 84401

Trustor's Initials


TRUSTOR:

Cup Holdings, LLC,
a Delaware limited liability company

Additional Signor:

By: 

Name: Kenneth Thomson

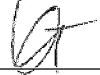
Title: Manager

By: _____

Name: _____

Title: _____

[ATTACH ACKNOWLEDGMENTS]



This certificate is attached to a 31 page document dealing with/entitled Deed of Trust and dated 6/30/22

Acknowledgment in an Individual Capacity

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me _____, a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal.

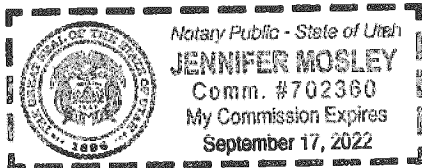
Notary Public *JM*

Acknowledgment in a Representative Capacity

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF Davis)

On this 30th day of JUNE, 2022, personally appeared before me Kenneth Thomson, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Managing Member of CCP Holdings LLC and that said document was signed by him/her in behalf of said LLC by authority of LLC, and said Kenneth Thomson acknowledged to me that said LLC executed the same.



Notary Public *JM*

Exhibit A

(Legal Description of Land)

All of Lots 34, 35, and 36, Block 4, FRANKLIN PLACE ADDITION, to Ogden City, Utah, according to the Official Plat thereof, on file and of record in the Office of the Weber County Recorder.

Together with 1/2 of the vacated alley abutting said lots on the North.

Tax ID No.: 05-118-0032

Loan # 3837 35th Ogden BM
350 35th Street
Ogden, UT, 84401

Exhibit - A
to
Deed of Trust