

**Tax Parcel Nos.:**  
00-0020-8158; 00-0020-8166

**WHEN RECORDED RETURN TO:**  
Shumway Van  
Attn: Douglas J. Shumway  
8 East Broadway, Suite 550  
Salt Lake City, Utah 84111

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*Space above for County Recorder's Use*

## DEED OF TRUST

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH 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.

## REQUEST FOR NOTICE

**A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE ASSOCIATED WITH THE PROPERTY SECURING THIS DEED OF TRUST SHALL BE MAILED TO TRUSTOR, TRUSTEE & BENEFICIARY AT THE ADDRESSES INDICATED HEREIN.**

THIS DEED OF TRUST (as it may be amended and modified from time to time, the "**Deed of Trust**") is made and entered into this 1<sup>st</sup> day of September, 2017, by and between KLAIM, LLC, a Utah limited liability company having a business address of 1111 East Draper Parkway Suite 390, Draper, Utah 84020 ("**Trustor**"), Douglas J. Shumway, Esq., of the law firm of Shumway Van, whose address is 8 East Broadway Suite 550, Salt Lake City, Utah 84111, as trustee ("**Trustee**"), and TMB Limited Company, a Utah limited liability company, having a business address of 2255 S. 5370 W., West Valley City, Utah 84120, and his successors and assigns, as beneficiary and secured party ("**Beneficiary**").

## RECITALS:

WHEREAS, Beneficiary has agreed to make a loan to Trustor in the principal amount of \$2,800,000.00 ("**Loan**"), and Trustor has promised to repay to Beneficiary the Loan pursuant to that certain Promissory Note of even date herewith ("**Note**");

WHEREAS, Trustor owns that certain property located in Wasatch County, Utah, as more particularly described on the attached Exhibit A ("**Real Property**");

WHEREAS, to induce Beneficiary to make the Loan to Trustor, Trustor has agreed to grant, bargain, sell, and convey to Trustee the Real Property as collateral to the Loan pursuant to the terms of this Deed of Trust; and

WHEREAS, Beneficiary desires to secure the performance of Trustor's Obligations, as described herein, under the Note, and any other documents, agreements, or instruments governing, evidencing, or securing the Note, and Trustor is willing to enter into this Deed of Trust to secure the obligations of Trustor to Beneficiary.

DEFINITIONS:

As used herein, the following terms shall have the following meanings:

(a) "**Beneficiary**" means TMB Limited Company, a Utah limited liability company, whose address for notice hereunder is 2255 S. 5370 W., West Valley City, Utah 84120, and the subsequent holder or holders, from time to time, of the Note.

(b) "**Beneficiary's Agent**" means Trustor, for the purpose of collecting Rent, and applying Rent, as set forth in this Deed of Trust, which agency shall never be deemed to be that of trustee and beneficiary for any purpose, and which agency relationship cannot be terminated by Trustor so long as the Loan Documents are in effect.

(c) "**CGL**" the broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form acceptable to Beneficiary in its sole discretion).

(d) "**Charges**" means all fees, charges and/or other things of value, if any, contracted for, charged, received, taken or reserved by Beneficiary in connection with the transactions relating to the Note and the other Loan Documents, which are treated as interest under applicable law.

(e) "**Code**" means the Uniform Commercial Code, as amended from time to time, in effect in the state in which the Land is located.

(f) "**Constituent Party**" means any (i) general partner or managing member of Trustor, as applicable, or (ii) any signatory to this Deed of Trust that signs on Trustor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

(g) "**Contracts**" means all of the right, title, and interest of Trustor, including equitable rights, in, to, and under any and all (i) contracts and agreements for the purchase or sale of all or any portion of the Secured Property, now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits; and (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, zoning, development, and utility services whether executed, granted, or issued by a private person or entity or a Governmental Authority or quasi-governmental agency, which are directly or indirectly related to, or connected with, the Secured Property.

(h) "**Debtor Relief Laws**" means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy,

insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

(i) **"Default Rate"** means the rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate.

(j) **"Disposition"** means any sale, lease, exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Secured Property (or any interest therein) or all or any part of the legal and beneficial ownership interest in Trustor (if Trustor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), except as may be expressly permitted under this Deed of Trust or the other Loan Documents.

(k) **"Environmental Law"** means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements.

(l) **"Event of Default"** means any happening or occurrence described in Article V hereof.

(m) **"Fixtures"** means all materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Trustor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Trustor and are now or hereafter attached to the Land or the Improvements.

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

(o) **"Trustor"** means the individual or entity (or individuals or entities, if more than one) described as Trustor in the initial paragraph of this Deed of Trust and the successors, assigns, heirs and legal representatives thereof, and any and all subsequent owners of the Secured Property or any part thereof (without hereby implying Beneficiary's consent to any Disposition of all or any part of the Secured Property).

(p) **"Hazardous Substance"** means any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law.

(q) **"Impositions"** means (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Secured Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Secured Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Secured Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Secured Property.

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

(s) "**Indebtedness**" means (i) the principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Beneficiary. Notwithstanding the foregoing provisions of this definition, this Deed of Trust and the other Loan Documents shall not secure any such other Indebtedness with respect to which Beneficiary is by applicable law prohibited from obtaining a lien on real estate. Further, the term "**Indebtedness**" shall not operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law or include any consumer loan to the extent treatment of such loan or extension of credit as part of the Indebtedness would violate any Governmental Requirement.

(t) "**Land**" means all that certain real property or interest therein situated in Wasatch County, Utah, more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Trustor in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

(u) "**Lease Rent Notice**" means a notice from Beneficiary to any lessee under a Lease stating that the License has terminated and instructing each such lessee under a Lease to pay all current and future Rents under the Leases directly to Beneficiary, and attorn in respect of all other obligations thereunder directly to Beneficiary, or the Trustee on Beneficiary's behalf.

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

(w) "**Legal Requirements**" means (i) all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions (ii) any and all covenants, conditions, and restrictions contained in any deeds, or in any other instruments of any nature that relate in any way or are applicable to the Secured Property or the ownership, use, or occupancy thereof, (iii) Trustor's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Secured Property and to which Trustor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Trustor is granted a possessory interest in and to the Land and/or the Improvements.

(x) "**License**" means a limited, non-assignable license, subject to automatic termination, under this Deed of Trust, and all other terms and provisions hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including the right to collect, demand, sue for attach, levy, recover, and receive the Rents as Beneficiary's Agent and to give proper receipts, releases and acquittances therefor.

(y) "**Loan Documents**" means the Note, this Deed of Trust, and any and all other documents now or hereafter executed by Trustor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

(z) "**Maximum Lawful Rate**" means the maximum lawful and non-usurious rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Utah (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Utah law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Note and the other Loan Documents. Additionally, to the extent permitted by applicable law now or hereafter in effect, Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under other applicable law by giving notice, if required, to Trustor as provided by applicable law now or hereafter in effect.

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

(bb) "**Secured Property**" means the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Trustor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, and any and all of the proceeds of any of the foregoing.

(cc) "**Note**" means that certain Secured Promissory Note, of even date herewith, incorporated herein by this reference, executed by Trustor and payable to the order of Beneficiary in the principal amount of \$2,800,000.00, bearing interest as therein specified, containing an attorney fee clause, interest and principal being payable as therein specified, and finally maturing on September 1, 2020, and secured by, among other things, this Deed of Trust; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

(dd) "**Obligations**" means any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Trustor or any other person or party to the Loan Documents to Beneficiary, Trustee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Trustor is granted a possessory interest in the Land.

(ee) "**Operating Expenses**" means all costs and expenses related to the ownership, operation, management, repair and leasing of the Secured Property, including, without limitation, ground lease payments, costs and expenses associated with the operation of any garage associated with and constituting a part of the Secured Property, insurance charges and premiums for coverages related to the Secured Property, Impositions, the costs of prevention of waste, ordinary repairs, maintenance, environmental audits, property management, security, normal fees paid to accountants, reasonable marketing and promotional expenses, reasonable legal expenses, the cost and expense of all obligations under the Leases and all costs related to compliance with Legal Requirements.

(ff) "**Personalty**" means all of the right, title, and interest of Trustor in and to personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Trustor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

(gg) "**Release:**" The terms "**release,**" "**removal,**" "**environment,**" and "**disposal**" shall have the meanings given such terms in CERCLA, and the term "**disposal**" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the state in which the Property is located establish a meaning for "**release,**" "**removal,**" "**environment,**" or "**disposal,**" which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

(hh) "**Rents**" means all of the rents, royalties, income, issues, bonus monies, revenues, proceeds, profits, security and other types of deposits (after Trustor acquires title thereto), and other benefits paid or payable by parties to the Leases (other than Trustor) for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Secured Property.

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

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

(kk) "**Trustee**" means the individual described as Trustee in the initial paragraph of this Deed of Trust.

#### ADDITIONAL DEFINITIONS:

As used herein, the following terms shall have the following meanings:

(a) "*Hereof*," "*hereby*," "*hereto*," "*hereunder*," "*herewith*," and similar terms mean of, by, to, under and with respect to, this Deed of Trust or to the other documents or matters being referenced.

(b) "*Heretofore*" means before, "*hereafter*" means after, and "*herewith*" means concurrently with, the date of this Deed of Trust.

(c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

(d) "*Including*" means including, without limitation.

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

#### ARTICLE I: GRANT

1.1. GRANT. To secure the full and timely payment of the indebtedness and the full and timely performance and discharge of the Obligations, Trustor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, with power of sale, the Secured Property (but expressly excluding Rents), TO HAVE AND TO HOLD the Secured Property (but expressly excluding Rents) unto Trustee, forever, and Trustor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Secured Property (but expressly excluding Rents) unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof.

#### ARTICLE II: WARRANTIES & REPRESENTATIONS

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

2.1. ORGANIZATION AND POWER. If Trustor or any Constituent Party is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, Trustor and any Constituent Party, if any, (a) is either a corporation duly incorporated or limited liability company duly organized with a legal status separate from its affiliates, or a partnership or trust, joint venture or other type of business association duly organized, validly existing, and in good standing under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business in the state in which the Secured Property is located, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

2.2. VALIDITY OF LOAN DOCUMENTS. The Loan Documents constitute the legal, valid, and binding obligations of Trustor and others obligated under the terms of the Loan Documents, enforceable in accordance with their respective terms.

2.3. INFORMATION. All information, financial statements, reports, papers, and data given or to be given to Beneficiary with respect to Trustor, each Constituent Party, others obligated under the terms of the Loan Documents, or the Secured Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

2.4. TITLE & LIEN. Trustor has good and indefeasible title to the Land (in fee simple) and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens charges, rights of first refusal or first offer, encumbrances, security interests, claims, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever. This Deed of Trust constitutes a valid, subsisting lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting security interest in and to the Personalty, Contracts, and to the extent that the term Leases include items covered by the Code, in and to the Leases; and a valid, absolute assignment of the Rents; all in accordance with the terms hereof.

2.5. BUSINESS PURPOSES. The loan evidenced by the Note is solely for a commercial purpose, and is not for personal, family, or household, purposes. The Secured Property forms no part of any property owned, used or claimed by Trustor as a homestead and is not exempt from forced sale under the laws of the State in which the Secured Property is located. Trustor hereby disclaims and renounces each and every claim to all or any portion of the Secured Property as a homestead.

2.6. TAXES. Trustor and each Constituent Party have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Trustor nor any Constituent Party knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Trustor and each Constituent Party believe that their respective tax returns properly reflect the income and taxes of Trustor and each Constituent Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

2.7. MAILING ADDRESS. Trustor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

2.8. RELATIONSHIP OF TRUSTOR AND BENEFICIARY. Notwithstanding any prior business or personal relationship between Trustor and Beneficiary, or any officer, director or employee of Beneficiary, the relationship between Trustor and Beneficiary is solely that of debtor and creditor, Beneficiary has no fiduciary or other special relationship with Trustor, Trustor and Beneficiary are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Trustor and Beneficiary to be other than that of debtor and creditor.

2.9. NO RELIANCE ON BENEFICIARY. Trustor is experienced in the ownership and operation of properties similar to the Secured Property, and Trustor and Beneficiary have and are relying solely upon Trustor's expertise and business plan in connection with the ownership and operation of the Secured Property. Trustor is not relying on Beneficiary's expertise or business acumen in connection with the Secured Property.



2.10. ENVIRONMENTAL AND HAZARDOUS SUBSTANCES. The following representations and warranties of Trustor are made without regard to whether Beneficiary has, or hereafter obtains, any knowledge or report of the environmental condition of the Secured Property:

(a) The Secured Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.

(b) Without limitation of Section 2.10(a) immediately preceding, the Secured Property and operations conducted thereon by the current owner or operator of such Secured Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any governmental or nongovernmental entity or person or to any remedial obligations under any Environmental Law.

(c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Secured Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed.

(d) The Secured Property does not contain any Hazardous Substance.

(e) Trustor has taken all steps necessary to determine and has determined that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Secured Property.

(f) Trustor has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, in, under, from or about the Secured Property of any Hazardous Substance or the transportation to or from the Secured Property of any Hazardous Substance.

(g) There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges or is investigating any alleged presence, release, threat of release, placement on, in, under, from or about the Secured Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Secured Property, or the transportation to or from the Secured Property, of any Hazardous Substance.

(h) Trustor has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, in, under, from or about the Secured Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under, from or about the Secured Property, or the transportation to or from the Secured Property, of any Hazardous Substance.

(i) There have been no communications or agreements with any Governmental Authority or any private entity, including, but not limited to, any prior owners or operators of the Secured Property, relating in any way to the presence, release, threat of release, placement on, under or about the Secured Property,

or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under or about the Secured Property, or the transportation to or from the Secured Property, of any Hazardous Substance.

(j) Neither Trustor nor, to the best knowledge, information and belief of Trustor, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Secured Property, has ever caused, permitted, authorized or suffered, and Trustor will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, in, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Trustor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Secured Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

(k) Trustor has been issued all required federal, state, and local licenses, certificates, or permits relating to, and Trustor and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental, health, or safety matters.

2.11. NO LITIGATION. Except as disclosed in writing to Beneficiary, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Trustor or any Constituent Party or involving the Secured Property, (ii) outstanding or unpaid judgments against Trustor, any Constituent Party, or the Secured Property, or (iii) defaults by Trustor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

2.12. NO BANKRUPTCY. No bankruptcy or insolvency proceedings are pending or contemplated by Trustor or, to the best knowledge, information, and belief of Trustor, threatened against Trustor or by or against any endorser, cosigner, or guarantor of the Note.

2.13. COMPLIANCE WITH LEGAL REQUIREMENTS. The Land and the Improvements and the intended use thereof by Trustor comply with all Legal Requirements.

2.14. SEPARATE TAX PARCEL; LEGAL LOT. The Secured Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot or lots under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed, or otherwise dealt with as an independent parcel.

2.15. UTILITIES; ACCESS. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Secured Property, including water, storm sewer, sanitary sewer, gas, electric, cable, and telephone facilities, through public rights-of-way or duly recorded perpetual private easements.

2.16. NO FOREIGN PERSON. Trustor is not a "foreign person" within the meaning of §1445(f)(3) of the Tax Code.

**ARTICLE III: AFFIRMATIVE COVENANTS**

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

3.1. **PAYMENT AND PERFORMANCE.** Trustor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations in full and on or before the dates the same are to be performed.

3.2. **EXISTENCE.** Trustor will, and will cause each Constituent Party to, preserve and keep in full force and effect its existence (separate and apart from its affiliates), good standing, rights, franchises, trade names, trademarks and other associated goodwill whether existing at common law or as a federal or state registration.

3.3. **COMPLIANCE WITH LEGAL REQUIREMENTS.** Trustor will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Secured Property.

3.4. **LIEN STATUS.** Trustor shall protect and preserve the first lien and security interest status of this Deed of Trust and the other Loan Documents and will not permit to be created or to exist in respect of the Secured Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof without the prior written consent of Beneficiary.

3.5. **PAYMENT OF IMPOSITIONS.** Trustor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Trustor shall deliver to Beneficiary a written receipt evidencing the payment of the respective Imposition.

3.6. **REPAIR.** Trustor will keep the Secured Property in good order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep the same in such order and condition.

3.7. **INSURANCE.** Trustor will, at Trustor's own expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Secured Property with such insurers, in such amounts and covering such risks as shall be requested by and satisfactory to Beneficiary, from time to time, including but not limited to: (i) CGL, having limits of not less than \$1,500,000.00 per occurrence and \$3,000,000.00 general aggregate per location (or with such increased limits as may be required from time to time by Beneficiary by giving notice to Trustor), with no deductible or self-insured retention in excess of \$10,000.00 to apply to any coverage provided by the CGL policy without the prior written approval of Beneficiary; (ii) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Beneficiary), including but not limited to, coverage for the Secured Property, and all improvements, betterments, alterations and additions to the Secured Property and all furniture, fixtures, equipment, merchandise and all other items of Trustor's personal property in, on, at, or about the Secured Property, with no exclusions permitted thereunder with respect to vandalism, acts of terrorism, malicious mischief, or sprinkler leakage, including earthquake and flood as covered causes of losses and including an agreed amount endorsement for not

less than one hundred percent (100%) of the full replacement cost (new, without deduction for depreciation) of the covered items and property and an ordinance or law coverage endorsement, with no deductible or self-insured retention in excess of \$10,000.00 to apply to any loss covered by such property insurance, and it being the parties' intent that Trustor structure its property insurance program so that no coinsurance penalty is imposed and there are no valuation disputes with any insurer or with Beneficiary; (iii) business income and extra expense coverage for no less than six months of income and expenses; (iv) workers' compensation insurance to the statutory limit and employer's liability (and/or commercial umbrella) insurance having a limit of not less than \$500,000.00 per occurrence; (v) automobile liability insurance covering owned, non-owned or rented automotive equipment having the combined single limit of not less than \$1,000,000.00 with respect to injuries or damages in any one occurrence; and (vi) such other insurance with other coverages or increased coverages, if any, as Beneficiary may require from time to time. Each insurance policy issued pursuant to this Section shall be issued by good and solvent insurance companies satisfactory to Beneficiary, to be licensed in the State of Utah, and having a "General Policyholders Rating" of at least "A," "IX," or better by Best's Insurance Guide and/or "A- or better" by Standard & Poor Insurance Solvency Review, or such better rating as may be required by Beneficiary with respect to such insurance, and all such policies shall provide, by way of endorsements, riders, or as otherwise applicable, that: (a) with respect to the CGL and all other liability insurance, if the policy contains a general aggregate limit, such policy shall include an "Aggregate Limits of Insurance Per Location" endorsement (using the applicable ISO form or an equivalent form acceptable to Beneficiary); (b) with respect to the CGL and all other liability insurance, such insurance shall name Beneficiary as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Beneficiary, without modification and under the commercial umbrella, if any, and which policy shall contain standard CGL "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage), and with respect to the property and other applicable insurance, such insurance shall contain a standard "Mortgagee clause" and shall be payable to Beneficiary as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Trustor for the benefit of Beneficiary, such insurance shall be payable to Beneficiary as Beneficiary's interest may appear; (c) the coverage of Beneficiary under such insurance policies shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Trustor of any warranties, declarations or conditions in any such policy; (d) no such insurance policies shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason (including, without limitation, excluding any individual risk events such as acts of terrorism) and to any extent whatsoever unless the insurer with respect to such policy shall have first given Beneficiary no less than thirty days' prior written notice thereof; and (e) Beneficiary shall be permitted, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance of any such insurance policies, and such payments shall be accepted by the applicable insurer to prevent same. Beneficiary shall be furnished with the original of each such initial policy coincident with the execution of this Deed of Trust and the original of each renewal policy not less than fifteen days prior to the expiration of the initial, or each immediately preceding renewal, policy, and Beneficiary shall additionally be thereupon concurrently furnished with receipts or other evidence that the premiums on each and all such insurance policies have been paid for at least one year. Trustor shall furnish to Beneficiary, on or before thirty days after the close of each of Trustor's fiscal years while this Deed of Trust is in force and effect, a statement certified by Trustor or a duly authorized officer of Trustor of the amounts of insurance maintained in compliance with this Section, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. For purposes of this Section, the term "ISO" (herein so called) shall mean Insurance Services office. It is expressly understood and agreed that the insurance coverages required in this Section hereinabove represent Beneficiary's minimum requirements and it is further understood and agreed that in any event the insurance coverages required in this Section are not to be construed to void or limit

Trustor's indemnity obligations contained in this Deed of Trust. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company covering Trustor or the Secured Property, (B) the failure of any insurance company to pay claims occurring, nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Trustor's indemnity obligations under this Deed of Trust or any other provision of this Deed of Trust.

In case of Trustor's failure to keep the Secured Property properly insured as required herein, Beneficiary, after notice to Trustor, at its option may (but shall not be required to) acquire such insurance as required herein at Trustor's sole expense.

3.8. INSPECTION. Trustor will permit Trustee and Beneficiary, and their respective agents, representatives, and employees, to inspect the Secured Property at all reasonable times, with or without prior notice to Trustor.

3.9. ENFORCEMENT OF LEASES AND OTHER AGREEMENTS. Trustor shall submit any and all proposed Leases and subordination, attornment, and non-disturbance agreements to Beneficiary for approval prior to the execution thereof.

3.10. PAYMENT FOR LABOR & MATERIALS. Trustor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Secured Property and never permit to exist in respect of the Secured Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Secured Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof.

3.11. FURTHER ASSURANCES AND CORRECTIONS. From time to time, at the request of Beneficiary, Trustor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Secured Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary in Beneficiary's sole discretion to protect the liens and the security interests herein.

3.12. TAX ON DEED OF TRUST. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Trustor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Trustor to pay such tax, Trustor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Trustor to pay such taxes, then Trustor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

3.13. STATEMENT OF UNPAID BALANCE. At any time and from time to time, Trustor will furnish promptly, upon the request of Beneficiary, a written statement or affidavit, in form satisfactory to Beneficiary, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

3.14. EXPENSES. Trustor will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document signed by Trustor or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Beneficiary under any Loan Document.

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

3.16. DELIVERY OF CONTRACTS. Trustor will deliver to Beneficiary a true, correct and complete copy of each Contract promptly after the execution of same by all parties thereto. Within twenty (20) days after a request by Beneficiary, Trustor shall prepare and deliver to Beneficiary a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and other information specified by Beneficiary, of or with respect to each of such Contracts, together with a true, correct and complete copy thereof (if so requested by Beneficiary).

3.17. ENVIRONMENTAL AND HAZARDOUS SUBSTANCES. Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products). Trustor shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Trustor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup. **THE COVENANT CONTAINED IN THIS SECTION SHALL SURVIVE THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN BY FORECLOSURE OR ACTION IN LIEU THEREOF.**

#### ARTICLE IV: NEGATIVE COVENANTS

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

4.1. USE VIOLATIONS. Trustor will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Secured Property in any manner which (i) violates any Legal Requirement, (ii) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (iii) constitutes a public or private nuisance, or (iv) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.

4.2. WASTE; ALTERATIONS. Trustor will not commit or permit any waste or impairment of the Secured Property and will not, without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Secured Property of a material nature.

4.3. CHANGE IN ZONING. Trustor will not (i) seek or acquiesce in a zoning reclassification, zoning variance or special exception to zoning of all or any portion of the Secured Property, (ii) grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), (iii) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Secured Property, without Beneficiary's prior written consent.

4.4. NO DISPOSITION. Trustor will not make a Disposition without obtaining Beneficiary's prior written consent to the Disposition.

4.5. ADDITIONAL OBLIGATIONS. Trustor shall not guarantee, endorse or otherwise become contingently liable in connection with any obligations of any other person or entity, and shall not create or incur any additional liability, whether contingent or non-contingent, with respect to either Trustor or the Secured Property, except as specifically allowed or contemplated pursuant to the Loan Documents.

#### ARTICLE V: EVENTS OF DEFAULT

The term "*Event of Default*," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

5.1. PAYMENT OF INDEBTEDNESS. Trustor shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise.

5.2. PERFORMANCE OF OBLIGATIONS. Trustor shall fail, refuse or neglect or cause the failure, refusal, or neglect to comply with, perform and discharge fully and timely as and when required any of the Obligations.

5.3. FALSE REPRESENTATION. Any representation, warranty, or statement made by Trustor or others under or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Beneficiary to be false or misleading in any material respect as of the date hereof or when made.

5.4. **DEFAULT UNDER OTHER LIEN DOCUMENT.** Trustor shall default or commit an event of default under and pursuant to any other mortgage, deed of trust, or security agreement which covers or affects any part of the Secured Property.

5.5. **INSOLVENCY; BANKRUPTCY.** Trustor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Trustor of Trustor's inability to pay, or Trustor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Secured Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within 60 days after the levy; or (iii) shall allow the appointment of a receiver, Trustee or custodian of Trustor or of the Secured Property or any part thereof, which receiver, Trustee or custodian is not discharged within 60 days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of any Debtor Relief Law, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Beneficiary or Trustee granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Trustor as a debtor under any Debtor Relief Law or seeks appointment of a receiver, Trustee, custodian or liquidator of Trustor or of the Secured Property, or any part thereof, or of any significant portion of Trustor's other property; and (a) Trustor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Trustor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or 30 days next following the date of filing.

5.6. **DISSOLUTION; DISABILITY.** Trustor or any Constituent Party shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

5.7. **DISPOSITION OF SECURED PROPERTY AND BENEFICIAL INTEREST IN TRUSTOR.** Trustor makes a Disposition, without the prior written consent of Beneficiary.

5.8. **CONDEMNATION.** Any condemnation proceeding is instituted or threatened which would, in Beneficiary's sole judgment, materially impair the use and enjoyment of the Secured Property for its intended purposes.

5.9. **CONSTITUENT PARTY'S DEFAULT.** The occurrence of any event referred to in Sections 5.5 and 5.11 hereof with respect to any Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Constituent Party or other person or entity were "**Trustor**" in such Sections).

5.10. **MATERIAL ADVERSE CHANGE.** Beneficiary reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

5.11. **EVENT OF DEFAULT IN LOAN DOCUMENTS.** An Event of Default as defined in any of the Loan Documents.

#### **ARTICLE IV: REMEDIES**

6.1. **BENEFICIARY'S REMEDIES UPON DEFAULT.** Upon the occurrence of an Event of Default or any event or circumstance which, with the lapse of time, or the giving of notice, or both, would constitute an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself or otherwise do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property



and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Although Lender may take action under this Article IV, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Article IV.

Any amounts disbursed by Lender under this Article IV shall become additional debt of Borrower and Trustor secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

The remedies in this subsection are in addition to other remedies available to Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Beneficiary. The remedies in this Article IV are available under and governed by the real property laws of the state in which the Property is located, and are not governed by the personal property laws of such state, in accordance with the provisions of the Code, including, the power to dispose of personal property in a commercially reasonable manner under the Code or the application of proceeds under the Code. No action by Beneficiary taken pursuant to this subsection shall be deemed to be an acceptance of collateral in satisfaction of obligations under the Code. Any receipt of consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness. In the event that Beneficiary elects to foreclose under any of the methods described in this Article IV, Trustor hereby waives the right to determine the order in which the collateral is foreclosed, and Trustor acknowledges that Beneficiary may, in its sole discretion, elect to pursue and foreclose on any of the collateral, real or personal, secured by the Loan Documents in any order, and Trustor hereby waives any right to contest or determine the order in which the collateral is foreclosed.

(a) **Right to Accelerate.** Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Trustor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law or in equity.

(b) **Foreclosure-Power of Sale.** Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

i. **Public Sale.** Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Secured Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, provided for by the real property laws of the state in which the Property is located. If there is no statute in force at the time of the sale governing sales of real property under powers of sale conferred by deeds of trust, such

sale shall comply with applicable law, at the time of the sale, governing sales of real property under powers of sale conferred by deeds of trust.

ii. **Partial Foreclosure.** Sale of a part of the Secured Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid and the Obligations are performed and discharged in full.

iii. **Trustee's Deeds.** After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Trustor, conveying the Secured Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Trustor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

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

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

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

(f) **Beneficiary as Purchaser.** Beneficiary may be the purchaser of the Secured Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Secured Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Beneficiary, as purchaser, shall be treated in the same manner as any third-party purchaser and the proceeds of Beneficiary's purchase shall be applied in accordance with Section 6.4 hereof.

6.2. OTHER RIGHTS OF BENEFICIARY. Should any part of the Secured Property come into the possession of Beneficiary, whether before or after default, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Secured Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Beneficiary may from time to time deem necessary or desirable) for the purpose of preserving the Secured Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Secured Property. Trustor covenants to promptly reimburse and pay to Beneficiary on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Secured Property, together with interest thereon from the date incurred by Beneficiary at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Secured Property is on Trustor, and Beneficiary shall have no liability whatsoever for decline in value of the Secured Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Secured Property or collateral not in Beneficiary's possession.

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

6.4. APPLICATION OF PROCEEDS. The proceeds from any sale, lease, or other disposition made pursuant to this Article VI, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Beneficiary from the Secured Property, or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust or sums received pursuant to Section 6.8 hereof, or proceeds from insurance which Beneficiary elects to apply to the Indebtedness pursuant to Section 6.9 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Secured Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums,

or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed five percent (5%) of the proceeds thereof or sums so received; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Beneficiary of any inferior liens covering the Secured Property, if any, in order of the priority of such inferior liens (Trustee and Beneficiary shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Trustor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

6.5. ABANDONMENT OF SALE. In the event a foreclosure hereunder is commenced by Trustee in accordance with the provisions herein, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Secured Property or any part thereof in accordance with the provisions of this Deed of Trust.

6.6. PAYMENT OF FEES. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit where this Deed of Trust or the Secured Property or any part thereof is involved, Trustor agrees to pay Beneficiary's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

6.7. WAIVER OF DEFICIENCY STATUTE.

(a) **Waiver.** In the event an interest in any of the Secured Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Trustor agrees, to the extent permitted by law, that Beneficiary shall be entitled to seek a deficiency judgment from Trustor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Secured Property was sold pursuant to judicial or nonjudicial foreclosure sale. Trustor expressly recognizes that this Section may constitute a waiver of certain rights which may otherwise permit Trustor and other persons against whom recovery of deficiencies is sought (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Secured Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Trustor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Secured Property for purposes of calculating deficiencies owed by Trustor and others against whom recovery of a deficiency is sought.

(b) **Alternative to Waiver.** Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for

the finder of fact's determination of the fair market value of the Secured Property as of the date of the foreclosure sale: (i) the Secured Property shall be valued in an "*as is*" condition as of the date of the foreclosure sale, without any assumption or expectation that the Secured Property will be repaired or improved in any manner before a resale of the Secured Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Secured Property for cash promptly (but no later than 12 months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Secured Property, including, without limitation, brokerage commissions, title insurance, a survey of the Secured Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Secured Property shall be further discounted to account for any estimated holding costs associated with maintaining the Secured Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Secured Property must be given by persons having at least five years' experience in appraising property similar to the Secured Property and who have conducted and prepared a complete written appraisal of the Secured Property taking into consideration the factors set forth above.

6.8. CONDEMNATION PROCEEDS. Beneficiary shall be entitled to receive any and all sums which may be awarded and become payable to Trustor for condemnation of the Secured Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Trustor for damages caused by public works or construction on or near the Secured Property. All such sums are hereby assigned to Beneficiary, and Trustor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 6.4 hereof.

6.9. INSURANCE PROCEEDS. The proceeds of any and all insurance upon the Secured Property (other than proceeds of CGL insurance) shall be collected by Beneficiary, and Beneficiary shall have the option, in Beneficiary's sole discretion, to apply any proceeds so collected either to the restoration of the Secured Property, in the amounts, manner, method and pursuant to such requirements and documents as Beneficiary may require, or to the liquidation of the Indebtedness in accordance with the provisions of Section 6.4 hereof.

6.10. INDEMNITY. TRUSTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS BENEFICIARY AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED *WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED*, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:

(a) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS OR THE SECURED PROPERTY, OR ANY INTEREST OF TRUSTOR OR BENEFICIARY THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY TRUSTOR OR BENEFICIARY, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(b) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF TRUSTOR IF TRUSTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF TRUSTOR IF TRUSTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF TRUSTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(c) ANY ACTION TAKEN OR NOT TAKEN BY BENEFICIARY OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO TRUSTOR, THE SECURED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS;

(d) ANY ACTION BROUGHT BY BENEFICIARY OR TRUSTEE AGAINST TRUSTOR UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; AND

(e) ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, IN, UNDER OR ABOUT THE SECURED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE SECURED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

BENEFICIARY AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. TRUSTOR SHALL REIMBURSE BENEFICIARY AND/OR TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BENEFICIARY AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN FIVE DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY TRUSTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BENEFICIARY OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

6.11. WAIVER OF SUBROGATION. Trustor hereby waives any and all right to claim, recover, or subrogation that arises or may arise in its favor and against Beneficiary or its officers, directors, employees, agents, attorneys, or representatives hereto for any and all loss of, or damage to, Trustor, the Secured Property, Trustor's property, or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of the Loan Documents. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Deed of Trust with respect to any loss or damage to property of the parties hereto. Inasmuch as the above waivers preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Trustor hereby agrees to immediately give to each insurance company which has issued to it any such insurance policy whether or not it is required to be insured against by the provisions of the

Loan Documents written notice of the terms of said waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

6.12. **WAIVER OF SETOFF.** The Indebtedness, or any part thereof, shall be paid by Trustor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Secured Property; (ii) any restriction or prevention of or interference with any use of the Secured Property; (iii) any title defect or encumbrance or any eviction from the Secured Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Beneficiary, or Trustor, or any action taken with respect to this Deed of Trust by any Trustee or receiver of Beneficiary or Trustor, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Trustee or Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

6.13. **SETOFF.** Beneficiary shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Trustor in and to each and every account and other property of Trustor which are in the possession of Beneficiary to the full extent of the outstanding balance of the Indebtedness.

6.14. **CONSENT TO DISPOSITION.** It is expressly agreed that Beneficiary may predicate Beneficiary's decision to grant or withhold consent to a Disposition on such terms and conditions as Beneficiary may require, in Beneficiary's sole discretion.

6.15. **PAYMENT AFTER ACCELERATION.** If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Secured Property, Trustor shall tender to Beneficiary the payment of an amount sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, such tender shall be deemed a voluntary prepayment pursuant to the Indebtedness and, accordingly, Trustor, to the extent permitted by applicable law, shall also pay to Beneficiary the premium, if any, then required under the Indebtedness or the Loan Documents in order to exercise the prepayment privilege contained therein.

6.16. **MAXIMUM INTEREST.** It is expressly stipulated and agreed to be the intent of Trustor and Beneficiary at all times to comply strictly with the applicable Utah law governing the maximum non-usurious rate or non-usurious amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Utah law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Trustor and Beneficiary related to the Indebtedness or to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Trustor will have paid or Beneficiary will have received by reason of any voluntary prepayment by Trustor of the Note and/or any other portion of the Indebtedness, then it is Trustor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Beneficiary shall be credited on the principal

balance of the Note and/or any of the other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Trustor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Trustor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Trustor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Trustor and/or credit such excess interest against any other Indebtedness then owing by Trustor to Beneficiary. Trustor hereby agrees that as a condition precedent to any claim seeking usury penalties or claims against Beneficiary, Trustor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Trustor or crediting such excess interest against the Note and/or the other Indebtedness then owing by Trustor to Beneficiary. All sums contracted for, charged, taken, reserved or received by Beneficiary for the use, forbearance or detention of any of the Indebtedness, including any portion of the Indebtedness evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any portion of the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

6.17. PRESENT ASSIGNMENT. In consideration of the Indebtedness and other good and valuable consideration, including the indebtedness evidenced by the Note and the other Loan Documents, the receipt and sufficiency of which are hereby acknowledged and confessed, Trustor absolutely and unconditionally GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL, and CONVEY the Rents unto Beneficiary, in order to provide a source of future payment of the Indebtedness and the Obligations, subject only to the License, it being the intention of Trustor and Beneficiary that this conveyance be presently and immediately effective; and is neither conditional nor security for the repayment of the Indebtedness and the Obligations, TO HAVE AND TO HOLD the Rents unto Beneficiary, forever, and Trustor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Rents unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof.

6.18. LIMITED LICENSE. Beneficiary hereby grants to Trustor the License subject to termination of the License and the other terms and provisions of this Deed of Trust, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquitances therefor. Trustor hereby agrees to receive all Rents and hold the same as Beneficiary's Agent to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the performance and discharge of the Obligations, and next to the payment of Operating Expenses. Thereafter, Trustor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Assignment nor the receipt of Rents by Beneficiary shall effect a *pro tanto* payment of the Indebtedness, and such Rents shall be applied as provided in this Section. Furthermore, and notwithstanding the



provisions of this Section, no credit shall be given by Beneficiary for any Rents until the money constituting the Rents collected is actually received by Beneficiary at the following address: 2255 S 5370 W, West Valley City, Utah 84120. Further, no such credit shall be given for any Rents collected or released after termination of the License, after foreclosure or other transfer of the Secured Property (or part thereof from which Rents are derived pursuant to this Deed of Trust) to Beneficiary or any other third party.

6.19. **RELIANCE UPON LEASE RENT NOTICE.** Upon receipt from Beneficiary of a Lease Rent Notice, each lessee under the Leases is hereby authorized and directed to pay directly to Beneficiary all Rents thereafter accruing and the receipt of Rents by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Beneficiary and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Trustor for any Rents paid to Beneficiary after receipt of such Lease Rent Notice. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all Operating Expenses; (b) all expenses incident to taking and retaining possession of the Secured Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. In no event will this Article VI reduce the Indebtedness except to the extent, if any, that Rents are actually received by Beneficiary and applied upon or after said receipt to such Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Trustor, Rents so received by Beneficiary or any part thereof. As between Trustor and Beneficiary, and any person claiming through or under Trustor, other than any lessee under the Leases who has not received a Lease Rent Notice, this Assignment of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Trustor or any person claiming through or under Trustor, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. **TRUSTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER, AND TRUSTOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY BENEFICIARY CONTEMPLATED BY THIS DEED OF TRUST.**

6.20. **COLLECTION OF RENT.** At any time during which Trustor is receiving Rents directly from any of the lessees under the Leases, Trustor shall, upon receipt of written direction from Beneficiary, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Beneficiary, as it becomes due and payable, including Rents which are past due and unpaid. If Trustor fails to timely take such action, or at any time during which Trustor is not receiving Rents directly from lessees under the Leases, Beneficiary shall have the right (but shall be under no duty or obligation) to demand, collect and sue for, in its own name or in the name of Trustor, all Rents due and payable under the Leases, as same becomes due and payable, including Rents which are past due and unpaid.

6.21. **TERMINATION.** Upon payment in full of the Indebtedness, the delivery and recording of a release, satisfaction or discharge of the Deed of Trust duly executed by Beneficiary and a re-assignment of the Rents to Trustor, the assignment in Section 6.17 of this Deed of Trust shall terminate, become null and void and shall be of no further force and effect.

## ARTICLE VII: SECURITY AGREEMENT

7.1. SECURITY INTEREST. This Deed of Trust (a) shall be construed as a Deed of Trust on real property, and (b) shall also constitute and serve as a "**Security Agreement**" on personal property within the meaning of a security interest under the Code as to property within the scope thereof and in the state where the Secured Property is located with respect to the Personalty, Fixtures, Contracts and Leases. To this end, Trustor GRANTS to, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Beneficiary, a security interest in all of Trustor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Trustor, Beneficiary, and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of "**Leases**" which are included within the Code be covered by the security interest granted herein; and all items contained in the definition of "**Leases**" which are excluded from the Code be covered by the provisions of Article I hereof.

7.2. FIXTURE FILING. This Deed of Trust shall also constitute a "**fixture filing**" for the purposes of the Code. All or part of the Secured Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Trustor) and the address of the secured party (Beneficiary) is set forth in the first paragraph of this Deed of Trust.

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

7.4. CERTAIN RIGHTS. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Secured Property for debts contracted for or liability or damages incurred in the management or operation of the Secured Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by

Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

7.5. RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

7.6. SUCCESSOR TRUSTEES. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

7.7. PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

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

7.9. NO REPRESENTATION BY TRUSTEE OR BENEFICIARY. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed

to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

#### ARTICLE VIII: MISCELLANEOUS

8.1. RELEASE. If the Indebtedness is paid in full in accordance with the terms of this Deed of Trust, the Note, and the other Loan Documents, and if Trustor shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Deed of Trust, the Note, and the other Loan Documents, then this conveyance shall become null and void and be released at Trustor's request and expense, and Beneficiary shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

8.2. PERFORMANCE AT TRUSTOR'S EXPENSE. Trustor shall (i) pay all legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Trustor under the Loan Documents, which amounts shall include (without limitation) all court costs, attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters; and (iii) any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "*Indebtedness*," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

8.3. SURVIVAL OF OBLIGATIONS. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section shall limit the obligations of Trustor as otherwise set forth herein.

8.4. RECORDING AND FILING. Trustor will cause the Loan Documents requested by Beneficiary and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges.

8.5. NOTICES. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the other party in the manner set forth herein.

8.6. COVENANTS RUNNING WITH THE LAND. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Trustor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Secured Property until the lien of this Deed of Trust has been fully released by Beneficiary.

8.7. SUCCESSORS AND ASSIGNS. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

8.8. NO WAIVER; SEVERABILITY. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Trustor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Trustor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

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

8.10. WAIVER OF FRAUDULENT INDUCEMENT. Neither Beneficiary nor any affiliate of Beneficiary has made any representation, warranty, or statement to Trustor in order to induce Trustor to execute this Deed of Trust. Trustor hereby expressly waives any claim of fraudulent inducement to execute this Deed of Trust and further disclaims any reliance or statements on or representations of Beneficiary in waiving such claim.

8.11. GOVERNING LAW. This Deed of Trust is executed and delivered as an incident to a lending transaction negotiated and consummated in Salt Lake County, Utah, and shall be governed by and construed in accordance with the laws of the State of Utah. Trustor, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Utah, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any Loan Document brought in the District Court of Salt Lake County, Utah, or in the United States District Court for the District of Utah, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Trustor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Beneficiary to serve process in any other manner permitted by law or shall limit the right of Beneficiary to bring any action or proceeding against Trustor or with respect to any of Trustor's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Trustor acknowledges that these waivers are a material inducement to Beneficiary's agreement to enter into agreements and obligations evidenced by the Loan

Documents, that Beneficiary has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this Section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of the applicable Loan Document. In connection with any litigation, this Deed of Trust may be filed as a written consent to a trial by the court.

8.12. **WAIVER OF CONSEQUENTIAL, PUNITIVE AND SPECULATIVE DAMAGES.** Trustor and Beneficiary agree that, in connection with any action, suit, or proceeding relating to or arising out of this Deed of Trust or any of the other Loan Documents, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.

8.13. **CONTROLLING AGREEMENT.** In the event of any conflict between the provisions of this Deed of Trust and any of the other Loan Documents, it is the intent of the parties hereto that the provisions of this Deed of Trust shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

8.14. **SUBROGATION.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Secured Property, then, to the extent of such funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Secured Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

8.15. **RIGHTS CUMULATIVE.** Beneficiary shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Secured Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Trustor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Secured Property, at the sole discretion of Beneficiary, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Beneficiary hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Secured Property.

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

8.17. HEADINGS. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

8.18. ENTIRE AGREEMENT; AMENDMENT. This Deed of Trust and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Trustor and Beneficiary.

8.19. COUNTING OF DAYS. The term "*days*" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located (whether legal or religious in nature), the period shall be deemed to end on the next succeeding business day. The term "*business day*" or "*Business Day*" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Salt Lake City, Utah are authorized by law to be closed.

8.20. BENEFICIARY'S DISCRETION. Whenever pursuant to this Deed of Trust, 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 is otherwise specifically herein provided) be in the sole discretion of Beneficiary and shall be final and conclusive.

8.21. NO MERGER OF ESTATES. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Secured Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Trustor, Beneficiary, any lessee, or any third-party purchaser or otherwise.

8.22. SUBSEQUENT BANKRUPTCY. In the event of Trustor's subsequent default hereunder, Trustor hereby covenants not to impede Beneficiary's rightful exercise of its right under the Loan Documents by seeking protection under Title 11 of the United States Bankruptcy Code. Trustor hereby agrees that the negotiations leading up to the execution of the Loan Documents, including this Deed of Trust, have been the equivalent of a restructuring transaction under the protection of the bankruptcy stay, that it acknowledges that this has been an adequate opportunity for Trustor to achieve a restructuring of its debts and that it represents a fair resolution of all issues such that a subsequent bankruptcy proceeding would amount to a second bankruptcy proceeding. Therefore, Trustor agrees, that in consideration of the Loan Documents, including this Deed of Trust, Trustor will not seek protection under Title 11 of the United States Bankruptcy Code. Further, in the event that an order for relief pursuant to Title 11 of the United States Bankruptcy Code is entered against Trustor, Trustor hereby consents to relief from the automatic stay pursuant to 11 U.S.C. §362 and hereby irrevocably waives all defenses or objections thereto, in order to permit Beneficiary to pursue its right under general law.

8.23. NOTICE OF INDEMNIFICATION. Trustor hereby acknowledges and agrees that this Deed of Trust contains certain indemnification provisions which, in certain circumstances, could include an indemnification by Trustor of Beneficiary from claims or losses arising as a result of Beneficiary's own negligence.

8.24. WAIVER OF RIGHT TO TRIAL BY JURY. TRUSTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

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

**TRUSTOR:**

KLAIM, LLC  
a Utah limited liability company  
By Jordanelle Ranch LLC,  
Its Managing Member

By: [Signature]  
Chris Ensign, Manager of Jordanelle Ranch LLC

ACKNOWLEDGEMENT

STATE OF Utah }  
COUNTY OF Salt Lake }

On the 1<sup>st</sup> day of September in the year 2017 before me, the undersigned, personally appeared Chris Ensign, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Utah, County of Salt Lake.

[Signature]  
Notary Public

My commission expires: 12/15/19

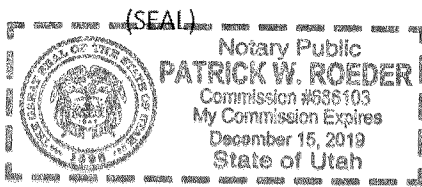




EXHIBIT A: LEGAL DESCRIPTION OF THE REAL PROPERTY

PARCEL 1:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, HAVING STATE PLANE COORDINATES Y=2 257581.916 METERS AND X=508 809.4945 METERS, AND RUNNING THENCE, USING STATE PLANE COORDINATE BEARINGS, NAD 93: SOUTH 00°20'08" EAST (DEED: SOUTH 00°19'23" EAST) 1309.61 FEET, THENCE SOUTH 89°25'31" WEST (DEED: SOUTH 89°26'16" WEST) 1336.577 FEET (TO CLOSE) (DEED: 1336.60 FEET), THENCE SOUTH 00°08'33" EAST (DEED: SOUTH 00°07'48" EAST) 510.534 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF HIGHWAY 289, THENCE NORTH 47°34'24" WEST 608.635 FEET ALONG SAID RIGHT OF WAY TO THE EASTERLY LINE OF EVELYN RODEBACK'S PROPERTY, THENCE LEAVING SAID RIGHT OF WAY NORTH 00°04'41" WEST (DEED: NORTH 00°03'56" WEST) 1408.72 FEET TO THE NORTH LINE OF SAID SECTION 17, THENCE NORTH 89°32'34" EAST (DEED: NORTH 89°33'19" EAST) 1778.805 FEET TO THE POINT OF BEGINNING.

PARCEL IDENTIFICATION NO. 00-0020-8158 TAX SERIAL NO. OHI-0011-0-017-025.

Address: 708 East Highway 248, Heber City, UT 84032

PARCEL 2:

A PARCEL OF LAND LOCATED IN THE WEST ONE-HALF OF THE NORTHEAST QUARTER AND THE EAST ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°33'19" WEST 1778.805 FEET AND SOUTH 00°03'56" EAST 877.49 FEET FROM THE NORTHEAST CORNER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 00°03'56" EAST 875.55 FEET; THENCE SOUTH 89°23'57" WEST 1114.71 FEET; THENCE NORTH 00°05'38" EAST 877.09 FEET; THENCE NORTH 89°28'38" EAST 1112.25 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THAT PORTION BELONGING TO THE UNITED STATES OF AMERICA PURSUANT TO WARRANTY DEED RECORDED DECEMBER 14, 1987 WITH ENTRY NO. 44409 IN BOOK 196 AT PAGE 385, WASATCH COUNTY, STATE OF UTAH, OFFICIAL RECORDS.

ALSO, LESS AND EXCEPTING ANY PORTION OF THE ABOVE DESCRIBED LEGAL THAT LIES SOUTH AND SOUTHWESTERLY OF THE NORTHERLY LINE OF STATE HIGHWAY S.R. 248.

PARCEL IDENTIFICATION NO. 00-0020-8166 TAX SERIAL NO. OHI-0019-0-017-025.

Address: Vacant Land, Heber City, UT 84032