

Prepared by and return to:

Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601
Attention: Lemuel D. Whitsett
#164578-BHP
Tax Parcel No. 00-0021-5604

STATE OF UTAH

COUNTY OF WASATCH

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

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY UNDER CHAPTER 9a OF THE UTAH UNIFORM COMMERCIAL CODE, THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN SECTION 1.3(b). COLLATERAL INCLUDES FIXTURES.

THIS INSTRUMENT SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE.

THIS INSTRUMENT SECURES FUTURE AND/OR REVOLVING ADVANCES.

Loan Nos. 10032584; 10032606

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING dated as of January 10, 2023 (together with any amendments or modifications hereto in effect from time to time, the "*Security Instrument*"), is made by DEAD AIR ARMAMENT, LLC, a North Carolina limited liability company ("*Trustor*"), having an address of 3301 Benson Drive, Suite 103, Raleigh, North Carolina 27609 to COTTONWOOD TITLE INSURANCE AGENCY, INC. ("*Trustee*"), whose address is 1996 East 6400 South, Salt Lake City, Utah 84121, for the benefit of FIRST CAROLINA BANK (together with its successors and assigns, "*Beneficiary*"), whose address is 2626 Glenwood Avenue, Suite 390, Raleigh, North Carolina 27608. Beneficiary and Trustee are the grantees hereunder for indexing purposes.

WITNESSETH:

A. This Security Instrument is given pursuant to that certain Credit Agreement of even date herewith among Trustor, Sound Moderation Technologies, LLC, a North Carolina limited liability company ("*SMT*"; together with Trustor, collectively, the "*Borrower*"), and Beneficiary (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), to secure (i) a term loan (the "*Term Loan*") in the principal amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) and evidenced by that certain Promissory Note of even date herewith given by Borrower payable to Beneficiary, or order, in the principal amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "*Term Note*"), and (ii) a revolving line of credit (the "*Revolving Loan*"; together with the Term Loan, collectively, the "*Loan*") in the principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) and evidenced by that certain Revolving Credit Note of even date herewith given by Borrower payable to Beneficiary, or order, in the principal amount of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) (together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "*Revolving Credit Note*"; together with the Term Note, collectively, the "*Note*").

B. Trustor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to Beneficiary in respect of the Loan and the Loan Documents (the "*Debt*") and the payment and performance of all other Obligations, as provided in Article II hereof.

C. This Security Instrument is given pursuant to the Credit Agreement, and payment, fulfillment, and performance by Borrower of its obligations under the Credit Agreement and under the other Loan Documents are secured hereby.

D. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Credit Agreement.

NOW THEREFORE, in consideration of the making of the Loan by Beneficiary and the covenants, agreements, representations and warranties set forth in this Security Instrument and the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor has given, granted, bargained, sold and conveyed and by these presents does hereby give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, in fee simple,

forever, for the benefit of Beneficiary and its successors and assigns forever, the Property (as defined below):

ARTICLE I GRANTING CLAUSES

Section 1.1 Property Conveyed. Trustor has granted and conveyed and by these presents DOES HEREBY GRANT, BARGAIN, SELL, CONVEY, TRANSFER AND ASSIGN unto the Trustee, its heirs, successors and assigns, in fee simple, forever, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "*Property*");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "*Land*");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements owned by Trustor now or hereafter erected or located on the Land (collectively, the "*Improvements*");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, and remainder and remainders thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code, as adopted and enacted by the State of North Carolina (the "*Uniform Commercial Code*") now owned or hereafter acquired by Trustor, which is used at or in connection with the Improvements or the Land and is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, electronic data-processing and other office equipment, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Trustor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof), together with all attachments, components, parts, equipment and

accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under Leases (as hereinafter defined) except to the extent that Trustor shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Trustor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “**Fixtures**” shall not include any property which tenants are entitled to remove pursuant to Leases except to the extent that Trustor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, interest rate hedging agreements, and, to the extent assignable: (i) licenses, (ii) certificates and (iii) permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Trustor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, superior in lien to the lien of this Security Instrument and all proceeds and products of any of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Trustor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the tenants of their obligations thereunder and all “rents” (as defined in the Utah Uniform Assignment of Rents Act, Utah Code Annotated, Section 57-26-101 *et seq.*, hereinafter referred to as the “**Act**”), including, but not limited to, all minimum rents, additional rents, percentage rents, deficiency rents, common area maintenance charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation, settlements of past due rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents, together with any and all rights and claims of any kind that Trustor may have against any tenant under the Leases or any other occupant of the Property, revenues, royalties, issues, profits, income, revenues and other benefits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt, as provided herein;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies

covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, as provided in the Credit Agreement;

(k) Tax Certiorari. Trustor's interest in all refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction of same, in each case, irrespective of the time period to which they relate;

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

(m) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right to receive and collect any sums payable to Trustor thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All operating, security deposit, reserve, escrow and lockbox accounts maintained by Trustor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Credit Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Uniform Commercial Code Property. All documents, instruments, chattel paper, intangibles, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash, or in liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Trustor expressly grants to Beneficiary, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to herein as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and conveyed hereby.

Notwithstanding anything else to the contrary herein, the Environmental Indemnification Agreement referenced in the Credit Agreement shall not be a Loan Document for purposes of this Security

Instrument and the Environmental Indemnification Agreement shall not be secured by the lien and charge of this Security Instrument.

For purposes of Utah Code Ann. § 57-1-25 and Utah Code Ann. § 78B-6-901.5, Trustor agrees that the stated purpose for which this Security Instrument was given is not to finance residential rental property.

TO HAVE AND TO HOLD the above granted and described Property unto the Trustee and its heirs, successors and assigns, in fee simple forever, for the benefit of Beneficiary and its successors and assigns forever.

Section 1.2 Assignment of Rents.

(a) Security Interest. Trustor hereby grants to Beneficiary a security interest in and to, and unconditionally collaterally assigns to Beneficiary, to secure the obligations described in Article II below, all of Trustor's right, title and interest now existing and hereafter arising in and to the Leases and Rents. This Security Instrument is intended by Beneficiary and Trustor to create and shall be construed to create a present security interest in favor of Beneficiary, as secured party, of all of Trustor's right, title and interest in and to the Leases and the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney at the option of Beneficiary at any time an Event of Default (as defined below) exists and remains uncured to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all such Rents and to otherwise enforce all rights under the Act and the UCC and apply the same to the Obligations secured by this Security Instrument.

(b) Performance under Leases. Trustor shall timely perform all of its obligations under the Leases. Trustor represents and warrants that: (i) Trustor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made, except pursuant to the Loan Documents.

(c) Lease Covenants. Except as expressly permitted pursuant to the terms of the Credit Agreement, Trustor shall not, without the prior written consent of Beneficiary: (i) enter into any Lease of all or any portion of the Property; (ii) amend, modify, terminate or accept a surrender of any Lease; or (iii) collect or accept rent from any tenant of the Property for a period of more than one (1) month in advance. Any of the foregoing acts, if done without the prior written consent of Beneficiary in each instance, shall be null and void.

(d) Right to Collect. Notwithstanding the foregoing assignment of Rents, so long as no Event of Default remains uncured, Trustor shall have the right to collect all Rents, and to retain the same. Upon the occurrence and during the continuation of any Default, Trustor's right to collect and retain Rents shall terminate automatically and without the necessity for any notice

(e) Collection and Application of Rents by Beneficiary. While any Default remains uncured: (i) Beneficiary and/or any Beneficiary may at any time, without notice, in person, by agent or by court-appointed receiver (for which Beneficiary shall have all rights under the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated, Section 78B-21-101 et seq.), and without regard to the adequacy of any security for the Obligations secured by this Security Instrument, enforce all rights under the Act and enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Beneficiary therefor, Trustor shall promptly deliver to Beneficiary all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Trustor, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Beneficiary may be applied by Beneficiary against the Obligations secured by this Security Instrument, and all expenses,

including attorneys' fees and disbursements, in such order as Beneficiary shall determine in its sole and absolute discretion. No application of Rents against any Obligation secured by this Security Instrument or other action taken by Beneficiary and/or any Beneficiary under this Section 1.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Beneficiary or any Beneficiary a mortgagee-in-possession of the Property.

(f) Direction to Tenants. Trustor hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Trustor thereunder to Beneficiary following receipt of any written notice from Beneficiary that states that an Event of Default remains uncured and that all such amounts are to be paid to Beneficiary. Trustor further authorizes and directs all such tenants to pay all such amounts to Beneficiary without any right or obligation to inquire as to the validity of Beneficiary's notice and regardless of the fact that Trustor has notified any such tenants that Beneficiary's notice is invalid or has directed any such tenants not to pay such amounts to Beneficiary.

(g) No Obligation to Perform. Neither Beneficiary nor Trustee shall have any obligation to exercise any right under the Act or given to any of them under this Security Instrument. Nothing contained herein shall operate or be construed to obligate Beneficiary or Trustee to perform any obligations of Trustor under any agreement or lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment shall not operate to place upon Beneficiary and/or any Beneficiary any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this Security Instrument by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

This Section 1.2 is subject to the Act, and in the event of any conflict or inconsistency between the provisions of this Section 1.2 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

Section 1.3 Security Agreement; Fixture Filing.

(a) This Security Instrument shall also be considered a security agreement under the Uniform Commercial Code. This Security Instrument is both a security deed and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Security Instrument, Trustor hereby grants to Beneficiary, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). Trustor hereby authorizes Beneficiary to file financing statements, continuation statements and financing statement amendments in such form as Beneficiary may require to perfect or continue the perfection of this security interest without the authorization or signature of Trustor. If an Event of Default shall occur and be continuing, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary after the

occurrence and during the continuance of an Event of Default, Trustor shall, at its expense, assemble the Collateral and make it available to Beneficiary at a convenient place (at the Land if tangible property) reasonably acceptable to Beneficiary. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Beneficiary to the payment of the Debt and other Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper. Any initial financing statements and amendments thereto may (a) indicate the Collateral: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9 of the Uniform Commercial Code, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9-509 of the Utah Uniform Commercial Code.

(b) From the date of its recording in the real estate records of the county in which the real property is situated, this Security Instrument shall be effective as a "fixture filing" with respect to all of the Property which is or is to become fixtures (within the meaning of the Uniform Commercial Code). The addresses of Trustor (Debtor) and Beneficiary (Secured Party) are set forth below. For this purpose, the following information is set forth:

Name and Address of Debtor:

Dead Air Armament, LLC
3301 Benson Drive, Suite 103
Raleigh, North Carolina 27609

Name and Address of Secured Party:

First Carolina Bank
171 N. Winstead Avenue
Rocky Mount, NC 27804

This document covers any portion of the Property that now is or later may become a fixture attached to the Land. This financing statement shall remain in effect as a fixture filing until this Security Instrument is released or satisfied of record. Debtor is the record owner of the Property.

CONDITIONS TO GRANT

PROVIDED ALWAYS, these presents are upon the express condition, that if Borrower has paid the Obligations in full and Trustor has performed all of its obligations pursuant to this Security Instrument and the other Loan Documents to which it is a party, and no further advances are to be made under the Credit Agreement, Beneficiary will provide a satisfaction and cancellation of this Security Instrument and

termination statements for filed financing statements, if any, to Trustor. Trustor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 1.2 shall automatically terminate and become null and void.

ARTICLE II DEBT AND OBLIGATIONS SECURED

Section 2.1 Obligations. This Security Instrument and the grants, conveyances, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt and the following:

- (a) the performance of all other obligations of Trustor contained herein;
- (b) the payment and performance of each other obligation of Borrower contained in the Credit Agreement and any other Loan Document; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Credit Agreement or any other Loan Document.

Section 2.2 Future Advances. The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Beneficiary pursuant to any provision of the Credit Agreement, this Security Instrument or any other Loan Document subsequent to its execution, together with interest thereon at the Default Interest rate set forth in the Credit Agreement.

ARTICLE III TRUSTOR COVENANTS

Trustor covenants and agrees that throughout the term of the Loan:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Credit Agreement, the Note and this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Credit Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Trustor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Trustor and the Property as required pursuant to the Credit Agreement.

Section 3.4 Maintenance of Property. Trustor shall (a) cause the Property to be maintained in a good and safe condition and repair, subject to ordinary wear and tear; (b) make or cause to be made, as and when necessary, all material repairs, replacements and additions, whether or not insurance proceeds are available therefor; and (c) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property (except for normal replacement of the Fixtures, the Equipment or the Personal Property and refurbishment of the Improvements) without the consent of Beneficiary, except as expressly permitted under the terms of the

Credit Agreement and the other Loan Documents. Subject to the terms of the Credit Agreement and the other Loan Documents, Trustor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Security Instrument. After reasonable notice to Trustor, Beneficiary, and any persons authorized by Beneficiary, shall have the right, but not the obligation, to enter upon the Property (subject to the rights of Tenants under Leases) at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the reasonable discretion of Beneficiary, the necessity for any repair, alteration, replacement, clean-up or maintenance, Trustor shall, at the reasonable discretion of Beneficiary, either: (i) cause such work to be effected as soon as practicable after written notice thereof by Beneficiary; or (ii) promptly establish an interest-bearing reserve fund with Beneficiary in an amount determined by Beneficiary for the purpose of effecting such work.

Section 3.5 Waste. Trustor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Trustor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials. Except as permitted by the Credit Agreement, Trustor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the other Loan Documents, except for the Permitted Encumbrances.

Section 3.7 Performance of Other Agreements. Trustor shall or shall cause Borrower to observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Credit Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 Seisin and Warranty. Trustor hereby warrants that (a) Trustor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters previously disclosed to Beneficiary in writing (the "*Permitted Encumbrances*"); (b) Trustor has the right, full power and lawful authority to grant, convey and assign the same to Beneficiary in the manner and form set forth herein; and (c) this Security Instrument is a valid and enforceable first lien on and security title to the Property. Trustor hereby covenants that Trustor shall (y) preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Beneficiary against all lawful claims whatsoever, subject to the Permitted Encumbrances; and (z) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be reasonably required by Beneficiary to protect fully the lien of this Security Instrument.

Section 3.9 Taxes and Other Charges. Trustor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property ("*Taxes*") when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the

Property. Notwithstanding the foregoing, Trustor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such Taxes, in accordance with the terms of the Credit Agreement.

Section 3.10 Intentionally Omitted.

Section 3.11 Removal of Fixtures. Trustor shall not remove or permit to be removed from the Property any Fixtures presently or in the future owned by Trustor (unless such Fixtures have been replaced with similar Fixtures of equal or greater utility and value or have become obsolete).

**ARTICLE IV
OBLIGATIONS AND RELIANCES**

Section 4.1 Relationship of Trustor and Beneficiary. The relationship as between Trustor and Beneficiary is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Trustor, and no term or condition of any of the Credit Agreement, the Note, this Security Instrument or the other Loan Documents shall be construed so as to deem the relationship between Trustor and Beneficiary to be other than that of debtor and creditor.

Section 4.2 No Reliance on Beneficiary. The general partners, members, principals and (if Trustor is a trust) beneficial owners of Trustor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Trustor and Beneficiary are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Beneficiary's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Beneficiary Agent Obligations.

(a) Notwithstanding anything herein to the contrary, Beneficiary is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to this Security Instrument, the Credit Agreement, the Note or the other 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, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary.

**ARTICLE V
FURTHER ASSURANCES**

Section 5.1 Recording of Security Instrument, Etc. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents conveying, creating or evidencing the security title, liens or security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the security title, liens or security interest hereof upon, and the interest of Beneficiary in, the Property. Trustor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security

Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any Security Instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any Security Instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Trustor will, at the cost of Trustor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, security deeds, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable law. Trustor hereby irrevocably authorizes Beneficiary, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Beneficiary may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Trustor" or "all personal property of Trustor" or words of similar effect, in order to perfect the security title and interests granted by Trustor under this Security Instrument. Trustor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this Section 5.2.

ARTICLE VI DUE ON SALE/ENCUMBRANCE

Section 6.1 Beneficiary's Reliance. Trustor acknowledges that Beneficiary has examined and relied on the experience of Trustor and its general partners, managers, members, principals and beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Trustor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the payment and performance of the other Obligations. Trustor acknowledges that Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Beneficiary can recover the Debt and the other Obligations by a sale of the Property.

Section 6.2 No Transfer or Encumbrance. Except as expressly permitted in the Credit Agreement or the Loan Documents, Trustor shall not permit or suffer any Transfer of the Property, without the prior written consent of Beneficiary. Except as expressly permitted under the Credit Agreement, without the prior written consent of Beneficiary, Trustor will not permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that materially affect title to the Property, other than the Permitted Encumbrances. Trustor shall give Beneficiary written notice of any default under any Lien. As used herein, the term "*Transfer*" means any direct or indirect sale, transfer, conveyance, mortgage, pledge or assignment of the Property or any part thereof.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Event of Default. Each of the following shall constitute a default (each, an "***Event of Default***") hereunder:

(a) An Event of Default (as defined therein) occurs under the Credit Agreement (subject to any applicable cure period, without duplication);

(b) Trustor fails to promptly perform or comply with any of the obligations set forth in this Security Instrument, and such failure continues beyond that date which is thirty (30) days after the earlier of (i) the date on which Beneficiary notifies Trustor of such failure or (ii) the date on which Trustor otherwise becomes aware of such failure; provided, however, Trustor shall have up to ninety (90) days to cure such failure if Trustor is diligently pursuing to cure such failure but the cure is not completed within the initial thirty (30) day period; or

(c) A default or event of default occurs under the Note or any other Loan Document other than the Credit Agreement, and such default or event of default continues beyond the expiration of the applicable grace or notice and cure period therefor, if any, set forth in such Loan Document (without duplication).

Section 7.2 Remedies. If an Event of Default shall have occurred and during the continuance thereof, Beneficiary may take any of the following actions:

(a) Acceleration. Beneficiary may declare the entire amount of the Obligations immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Beneficiary may charge Default Interest from the date of default on the unpaid balance of the Obligations, at the rate set forth in the Credit Agreement (the "***Default Rate***"). The Default Rate shall apply both before and after any judgment on the Debt or Obligations.

(b) Possession. Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Beneficiary, in Beneficiary's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Beneficiary is given full authority to do any act which Trustor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Security Instrument and without applying for a receiver of such rents.

(c) Foreclosure and Sale. Beneficiary may foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's right under Utah Code Ann. § 57-1-23, or other applicable law.

(d) Power of Sale.

(i) Beneficiary may, or Beneficiary may cause Trustee to, invoke the power of sale by recording and otherwise giving all written notices required by law to Trustee of an Event of Default and Beneficiary's election to cause the Property to be sold. Trustee shall record a Notice of Default and Election to Sell with the Office of the County Recorder of Wasatch County, Utah. Beneficiary shall deposit with Trustee this Security Instrument and such additional instruments and documents as Trustee may require under applicable law. Trustee shall publish and post a notice for sale for the time and in the manner provided by applicable law and shall mail copies of the notice of sale in the manner prescribed by applicable law to Trustor and to other persons prescribed

by applicable law. After the time required by applicable law, Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone the sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27.

(ii) Any person, including Trustor or Beneficiary, or its designee, may purchase the Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

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

(iv) For purposes of Utah Code Ann. § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Credit Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Security Instrument lien upon the Property, and Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument.

(v) Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Property as determined and set forth in an FIRREA appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Ann. § 57-1-32.

(vi) Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. § 78B-6-901 (formerly Utah Code Ann. § 78-37-1) and Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

(viii) Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, trustee's fees and attorneys' fees actually incurred not to exceed the amount which may be provided for in the Security Instrument; (ii) to all sums secured by this Security Instrument; and (iii) any excess to the persons or persons legally entitled to it, or Trustee, in Trustee's discretion, may deposit any excess with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law.

(e) Appointment of Receiver. Beneficiary shall have the right, after the occurrence and continuance of an Event of Default, to the appointment of a receiver, pursuant to the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated*, Section 78B-21-101 et seq., to collect the Rents from the Property and to operate and manage the Property without consideration of the value of the Property or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the Obligations. The Beneficiary, at its option, in lieu of an appointment of a receiver, shall also have the right to take all actions set forth in the previous sentence. If such receiver should be appointed, or if there should be a foreclosure sale of the Property under this Security Instrument, Trustor, or any person in possession of the Property thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(f) Rights as a Secured Party. Beneficiary shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code. Beneficiary may elect to foreclose such of the Property as then comprise Fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Uniform Commercial Code. To the extent permitted by law, Trustor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

(g) Excess Monies. Beneficiary may apply on account of the Obligations any unexpended monies still retained by Beneficiary that were paid by Trustor to Beneficiary: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Trustor.

(h) Collection of Rents. Upon the occurrence and continuance of an Event of Default, the right granted to Trustor to collect the Rents shall be automatically and immediately revoked and Beneficiary shall have all rights under the Act, without further notice to or demand upon Trustor; provided, that, in the event such Event of Default is cured to Beneficiary's satisfaction following the occurrence thereof (and Trustor is not then otherwise in Default or subject to any other uncured Event of Default), Beneficiary shall reinstate the right granted herein. Beneficiary may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Trustor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Trustor or any other Person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Trustor. Trustor hereby

irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Beneficiary instead of to Trustor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Trustor and without the necessity of determining the existence or non-existence of an Event of Default. Trustor hereby appoints Beneficiary as Trustor's attorney-in-fact with full power of substitution, which appointment shall be effective upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Trustor's name or in Beneficiary's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied in accordance with the terms of sub-section (b), above.

(i) **Other Remedies.** Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Trustor provided under the Loan Documents or by applicable law. Beneficiary shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Trustor under the terms of this Security Instrument, as they become due, without regard to whether or not any other Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Trustor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Trustor to Beneficiary under any of the Obligations, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to Trustor, including any obligation to disburse to Trustor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary.

(j) **Waiver of Trustor's Rights.** BY EXECUTION OF THIS SECURITY INSTRUMENT, TRUSTOR EXPRESSLY: (a) WAIVES ANY AND ALL RIGHTS WHICH TRUSTOR MAY HAVE, (i) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT OR ANOTHER LOAN DOCUMENT AND (ii) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (b) ACKNOWLEDGES THAT TRUSTOR HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS OF TRUSTOR REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO TRUSTOR, AND TRUSTOR HAS CONSULTED WITH COUNSEL OF TRUSTOR'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (c) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF TRUSTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY TRUSTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY BENEFICIARY AGAINST TRUSTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the

Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Obligations and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Beneficiary that such cost or expense was incurred and continuing until the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest at the Default Rate thereon shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

Section 7.4 Other Rights; Attorney Fees.

(a) Actions of Beneficiary. The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

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

(c) Cumulative Rights of Beneficiary. Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce the other Obligations or any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Security Instrument. The rights of Beneficiary under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(d) Costs and Expenses. Trustor agrees to pay to Beneficiary within ten (10) days after demand all costs and expenses of any kind incurred by Trustor and Beneficiary pursuant to this Article (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Trustor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit, and Trustor shall pay to Trustor all Trustor's fees hereunder and shall reimburse Trustor for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees. All

of the foregoing amounts must be paid to Beneficiary as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Beneficiary. As used herein, the phrase "reasonable attorneys' fees" or words of similar import shall refer to the fees of Beneficiary's outside legal counsel computed on the basis of the regular billing rates of the attorneys and paralegals involved in such matter, and the number of hours actually worked by such attorneys and paralegals involved, and shall be computed without regard to North Carolina General Statutes Section 6-21.2 or any other statutory presumption.

Section 7.5 Right to Release Any Portion of the Property. Beneficiary may release any portion of the Property for such consideration as Beneficiary may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and Beneficiary may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as security title to and a security interest in the remaining portion of the Property.

ARTICLE VIII WAIVERS

Section 8.1 Waiver of Counterclaim. To the extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary arising out of or in any way connected with this Security Instrument, the Credit Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 8.2 Marshalling and Other Matters. To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Trustor, for itself and all persons who may claim by, through or under Trustor, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "Moratorium Laws", and all rights of reinstatement and redemption of Trustor and of all other persons claiming by, through or under Trustor are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the State in which the Property is located. Beneficiary shall have the right to sell and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order designated by Beneficiary.

Section 8.3 Waiver of Notice. To the extent permitted by applicable law, Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provide for the giving of notice by Beneficiary to Trustor and except with respect to matters for which Beneficiary is required by applicable law to give notice. Trustor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Security Instrument, the Credit Agreement or any other Loan Document does not specifically and expressly provide for the giving of notice by Beneficiary to Trustor.

Section 8.4 Waiver of Statute of Limitations. To the fullest extent permitted by applicable law, Trustor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Debt or payment or performance of its other Obligations.

Section 8.5 Additional Waivers. TRUSTOR EXPRESSLY WAIVES ANY RIGHTS OR

REMEDIES ON ACCOUNT OF ANY EXTENSIONS OF TIME, RELEASES GRANTED OR OTHER DEALINGS BETWEEN BENEFICIARY AND ANY SUBSEQUENT OWNER OF THE PROPERTY. TRUSTOR EXPRESSLY WAIVES THE FOLLOWING: ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH TRUSTOR OR TRUSTOR'S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATES OF UTAH AND NORTH CAROLINA OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE OBLIGATIONS, OR ANY PART THEREOF. ALL WAIVERS BY TRUSTOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY TRUSTOR, AFTER TRUSTOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF TRUSTOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. TRUSTOR'S EXECUTION OF THIS SECURITY INSTRUMENT SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

ARTICLE IX MISCELLANEOUS

Section 9.1 Notices. All notices and communications under this Security Instrument shall be in writing and shall be given in accordance with the terms of Section 9.1 of the Credit Agreement. Trustor's notice address is located in the introductory paragraph of this Security Instrument.

Section 9.2 Remedies Cumulative. The rights and remedies of Beneficiary as provided in this Security Instrument or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Security Instrument or the rights of Beneficiary.

Section 9.3 No Implied Waiver. Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

Section 9.4 No Warranty by Beneficiary. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Trustor or to be given to Beneficiary pursuant to this Security Instrument or any of the other Loan Documents, Beneficiary shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary.

Section 9.5 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Security Instrument shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

Section 9.6 Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Security Instrument shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be

held to be real covenants running with the land; provided, however, that this Security Instrument cannot be assigned by Trustor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Trustor shall be void and of no effect with respect to Beneficiary.

Section 9.7 Modifications. This Security Instrument may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. No course of dealing or conduct by or among Beneficiary and Trustor shall be effective to amend, modify or change any provisions of this Security Instrument or the other Loan Documents.

Section 9.8 Commercial Loan. Trustor represents and warrants that the Loan or other financial accommodations included as Debt secured by this Security Instrument were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

Section 9.9 Governing Law. The provisions of this Security Instrument regarding the creation, perfection, priority and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Property is located. All other provisions of this Security Instrument shall be governed by the laws of the State of North Carolina without reference to conflict of laws principles.

Section 9.10 State-Specific Provisions. In the event of any inconsistencies between the terms and conditions of this Section 9.10 and the other provisions of this Security Instrument, the terms and conditions of this Section 9.10 shall control and be binding.

(a) Utah Construction Registry.

(i) Subject to Trustor's contest rights set forth in this Security Instrument or the Credit Agreement, Trustor will pay prior to delinquency all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Security Instrument, for any such bill which may be legally due and payable. Upon Beneficiary's request, Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

(ii) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor authorizes Beneficiary to file a request to receive electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Annotated § 38-1a-201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

(iii) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing (which shall include the Title Insurance Policy) or for which the Beneficiary's title insurer has provided affirmative coverage acceptable to Beneficiary pursuant to the Title Insurance Policy. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

(iv) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Annotated § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

(v) Intentionally Deleted.

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

(vii) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Encumbrances), or any part thereof or interest therein whether inferior or superior to this Security Instrument and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected, if any, or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted; provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated § 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(viii) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Annotated § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all documented, reasonable out-of-pocket costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the Default Interest rate.

(b) Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the Utah Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Annotated § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Annotated § 57-1-30 or other applicable law.

(c) Deficiency. Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law. To the extent Utah Code Annotated § 57-1-32, as now existing or hereafter amended, or any other statute requires that the “fair market value” or “fair value” of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Obligations, the term “fair market value” or “fair value” shall include those matters required by law and the additional factors set forth below:

(i) The Property shall be valued “as is” and “with all faults” and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

(ii) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

(d) Reinstatement. If Trustor, Trustor’s successor-in-interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Security Instrument, Trustor shall pay all documented, reasonable out-of-pocket costs, fees and expenses incurred by Trustee and Trustee’s agents and counsel for accountings and reinstatement quotes as may be required by Utah Code Annotated § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Security Instrument.

(e) Notice. Beneficiary hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Property be mailed to it at the address set forth in preamble hereto.

(f) Water Rights.

(i) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division

of Water Rights, Utah County, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Security Instrument.

(ii) Trustor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(iii) Trustor shall promptly provide the Beneficiary with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(iv) Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Beneficiary with evidence of each such payment.

(v) Trustor and, to Trustor's knowledge, its predecessors-in-interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

As used herein, "**Water Rights**" in addition to any foregoing meaning assigned in this Security Instrument, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Property, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the Utah State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

(g) UTAH STATUTE OF FRAUDS; NOTICE TO BORROWER. PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 9.11 Substitution of Trustee. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Beneficiary may, from time to time, by instrument in writing, substitute a successor to any Trustee named herein or acting hereunder in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee, who shall, without conveyance from the predecessor Trustee, succeed to all its title. Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to record in Utah, and in the event of the death or resignation of the Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument, and any Trustee so appointed shall be vested with the title to the Property hereinbefore described, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named herein as Trustee. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Beneficiary.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A
Legal Description

PARCEL 1:

Unit B, WEATHERVANE STATION SUBDIVISION AMENDED, LOT 2, 2ND AMENDED, according to the official plat thereof, as recorded in the office of the Wasatch County Recorder, State of Utah on January 20, 2021 as Entry No. 492514 in Book 1334 at Page 954.

PARCEL 1A:

Non-exclusive easements for access, ingress and egress, as established by the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Weathervane Station Subdivision Amended Lot 2, Second Amended Units A – G Condominium Owner's Association, a/k/a Argento Business Park recorded February 18, 2021 as Entry No. 494324 in Book 1339 at Page 469, which Third Amend and Restated Declaration was supplemented by that certain Supplemental Declaration recorded March 5, 2021 as Entry No. 495354 in Book 1342 at Page 180.