

WHEN RECORDED MAIL TO:  
Wells Fargo Bank Northwest N.A.  
Provo Residential Construction Dept.  
92 North University Blvd.  
Provo, UT 84601

ATTN: Diane Heslington

05036304

## CONSTRUCTION LOAN DEED OF TRUST AND SECURITY AGREEMENT

# 100640

With Assignment of Rents

Date: June 7th, 2001 Loan Amount: \$ 327,000.00 Loan Number: 7418405036304

Trustor: Garth Packard, a married man

Address: 5534 W. 10480 N., Highland, UT 84003

Note Makers (name all parties to Note including Trustor, if applicable): Garth Packard

Trustee: \_\_\_\_\_

ENT 61591:2001 PG 1 of 9  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2001 Jun 25 12:30 pm FEE 26.00 BY JRD  
RECORDED FOR FIRST AMERICAN TITLE CO

Property Address: 5773 W 10620 N.

Highland, UT 84003

Beneficiary: Wells Fargo Bank Northwest, N.A. Provo Residential Construction Dept.  
92 North University Blvd. Provo, UT 84601

THIS DEED OF TRUST is made on the date stated above in the Trust Deed Summary ("Summary") among the Trustor named in the Summary (hereinafter called the "Trustor"), whose address for purposes hereof is set forth in the Summary; the Trustee named in the Summary, whose address is also set forth in the Summary; and Wells Fargo Bank Northwest, N.A. as Beneficiary (hereinafter called the "Lender"), whose address is stated in the Summary.

### GRANTING CLAUSE AND SECURITY AGREEMENT

Trustor, in consideration of and as a necessary condition to and inducement for the granting of the credit accommodations hereinafter recited and the trust herein created, Irrevocably Grants and Conveys to Trustee, in Trust, with Power of Sale, for the benefit and use of Lender the following described property located in the County of Utah, State of UTAH:

See attached EXHIBIT A for legal description

which property has the approximate street address set forth above, (hereinafter called the "Property Address");

TOGETHER with all the improvements now or hereafter erected on the above-described real property, and all heretofore or hereafter vacated alleys and streets abutting the same, and all easements, rights of way, appurtenances, rents (including an absolute assignment of rents and the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to or used on or in connection with the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances, tangible personal property and goods of every nature whatsoever now or hereafter located in, or on, or used or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, water closets, sinks, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, telephone equipment, trees and plants, fences, security systems and outdoor lighting; all of which, including replacements for, accessions, modifications, and additions thereto, shall be deemed a part of the real property covered by this instrument.

The foregoing grant shall also be deemed to be a grant and creation of a security interest in (and assignment for security of) (i) any personal property interests, rights or assets hereinafter specified or described, and in any and all of the foregoing items which constitute personal property or fixtures or any other property or right of a nature which is subject to the rules and provisions of the Uniform Commercial Code for the State of Utah (or any other applicable state) or to any common law rules or laws, or rules or laws of the government of the United States, with respect to pledges, security interests, chattel mortgages and similar rights; said grant also creating such pledge, chattel mortgage, security interest, assignment or similar lien interest or right. This Deed of Trust also is a security agreement for all of the foregoing purposes and for the purpose of granting a security interest in and assigning and pledging for security all of the items which are described in EXHIBIT B which is attached hereto and incorporated herein by this reference.

Immediately upon request of the Lender, Trustor agrees that Trustor will, at its own cost and expense, take all such actions and accomplish all such other acts (including the delivery of physical possession, where required) necessary, in the judgment of the Lender, to perfect the lien and security interest of this Deed of Trust, including filing appropriate UCC-1 financing statements.

All of the described real property with improvements and fixtures, together with all personal property rights and interests which are subject of this Deed of Trust are hereinafter referred to collectively as the "Property".

All of the foregoing is to secure to Lender (a) the repayment and performance of the indebtedness and obligations set forth in and evidenced by a Construction Promissory Note made by the Note Makers named in the Summary and dated as of even date herewith, (hereinafter called the "Note"), in the principal loan amount set forth in the Summary with interest thereon payable as provided in the Note in that certain associated Construction Loan Agreement between Trustor and Lender (the "Loan Agreement"); (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust or otherwise; and (c) the performance of the covenants, agreements, promises, indebtedness, and obligations of Trustor herein contained; and (d) the payment of all other sums or extensions of credit for the benefit of Trustor or any guarantor in connection with this loan transaction, including but not limited to the issuance by Beneficiary of bonds, set-aside letters, letters of credit, etc., with their interest according to the tenor of any document or instrument documenting the same, that may hereafter be loaned or advanced by Beneficiary to Trustor or may serve to obligate Beneficiary to a third party.

05036304

Trustor warrants and represents that Trustor is lawfully seized of the estate or estates hereby conveyed and has the right to grant and convey and otherwise deal with, mortgage, lien, encumber and assign the Property; that the Property is unencumbered, and that Trustor will, and does hereby warrant and agree to now and hereafter defend, generally, the title of the Property or any part thereof or interest therein against all claims and demands, except any declarations, claims, liens, encumbrances, easements or restrictions approved or consented to by the Lender in a separate writing (if any) (such exceptions referred to as the "Permitted Encumbrances").

#### TRUSTOR AND LENDER COVENANT AND AGREE AS FOLLOWS:

##### SECTION 1.0 TAXES AND INSURANCE.

At the option of Lender, Trustor shall pay to Lender on the day any monthly payments are payable under the Note, until the Note is paid in full, a sum (hereinafter called the "Funds") equal to any or all of the following: (a) one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust; (b) monthly ground rents or one-twelfth of annually payable ground rents on the Property, if any; (c) one-twelfth of the yearly premium for hazard insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender and Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender shall not be required to pay any interest or earnings on the Funds. Lender shall give to Trustor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for performance of all obligations secured by this Deed of Trust and are subject to the security interest, pledge and assignment provision of this Deed of Trust.

If the amount of the Funds held by Lender exceeds the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, so long as there is no Default or Event of Default (as hereinafter defined), such excess shall be, at the option of Trustor, either promptly repaid to Trustor or credited to Trustor against future monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Trustor shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Trustor requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall refund to Trustor any sums held by Lender as Funds. If under subsection 19.6 hereof, the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply any Funds held by Lender at the time of application as a credit against the obligations secured by this Deed of Trust. Such applications shall not be a discharge of any obligation of Trustor to pay taxes and insurance premiums required hereunder or in the Loan Agreement, unless applied by Lender against such obligation if any then outstanding.

The imposition of the requirement for payment of the Funds, shall not relieve Trustor of the ultimate obligation to pay or cause to be paid the subject taxes, insurance premiums, assessments or ground rents nor shall such requirement be construed hereunder to transfer such obligations to the Lender. Lender agrees only to use ordinary care in the application of the Funds to the taxes, insurance premiums, assessments or ground rents and shall not be liable to Trustor other than to render accountings for the Funds and their application. In particular, the responsibility to assure that taxes are paid timely, that insurance policies do not lapse, that assessments are paid timely and that any ground lease is not breached by reason of failure to pay ground rents, rest fully with Trustor and Trustor shall bear all costs, expenses, charges, penalties, damages or losses arising out of or in any way connected with failure of payment or untimely payment, unless and to the extent that Trustor has timely requested (immediately prior to or immediately after any due date for the same), in writing, that payments be made from the Funds and Lender has ignored or otherwise failed to act on such notice. Further, Lender shall have no liability, notwithstanding such a written notice from Trustor if Funds are insufficient to make the requisite payment or payments.

In all events, immediately upon exercise of the option to require monthly installments of Funds, Trustor shall deposit sufficient sums with the Lender so that such deposited funds, when added to monthly installments thereafter anticipated, will be sufficient to pay, in full, at the next due date, the respective tax, assessment, insurance and ground rent obligations.

##### SECTION 2.0 APPLICATION OF PAYMENTS.

Unless applicable law provides otherwise, all payments received by Lender under the Note or Section 1.0 hereof shall be applied by Lender first, in payment of amounts payable to Lender by Trustor under Section 1.0 hereof; then to payment of obligations (other than interest and principal) arising hereunder, under the Loan Agreement or the Note (including attorneys' fees); then to interest payable on the Note; then to the principal of the Note.

##### SECTION 3.0 LIENS, ENCUMBRANCES AND CLAIMS ON PROPERTY.

Except for the lien hereof, Permitted Encumbrances, property tax liens which are a lien against the Property for taxes not yet due and except as provided hereinafter; Trustor shall keep the Property free of all liens, claims, security interests and encumbrances. Except as hereinafter provided, Trustor shall have the obligation to discharge any such lien, claim, security interest or encumbrance immediately upon its attachment to or assertion against the Property or any portion thereof or interest therein. This obligation applies, whether or not any such lien, claim or encumbrance shall have priority over the lien and security interest hereof. This obligation shall not apply to any mechanic's lien claims arising by operation of law in the ordinary course of construction of improvements to the real property subject hereof, so long as no notice of lien claim with respect to any such mechanic's lien has been placed of record. Further, with respect to any lien or claim against the Property arising other than with the consent of Trustor, the obligation to immediately discharge the same shall not apply under the following circumstances:

3.0.1 Trustor has made arrangements satisfactory (in Lender's sole and absolute judgment) to Lender for payment of and discharge of the same, within a time period acceptable to Lender and Trustor does not breach or default under such arrangements; or

3.0.2 Trustor, in good faith, contests such claim or lien, or the enforcement thereof, in a legal proceeding which operates to prevent enforcement of the lien or claim of forfeiture of the Property or any part thereof and Trustor has posted such bond for payment of the same, in the event of loss in the proceedings, as shall be satisfactory to Lender.

##### SECTION 4.0 HAZARD INSURANCE.

Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and other

and other hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Trustor subject, however, to prior approval by Lender; provided, that such approval shall not be unreasonably withheld. ENT 61591:2001 PG 3 of 9

Additionally, all insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Trustor shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Trustor shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Trustor.

Unless Lender and Trustor otherwise agree in writing, insurance proceeds shall be applied to payment of the obligations secured by this Deed of Trust, with the excess, if any, paid to Trustor. If the Property is abandoned by Trustor, or if Trustor fails to respond to Lender within 30 days from the date notice is mailed by Lender to Trustor notifying Trustor that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds to payment of the obligations secured by this Deed of Trust.

Unless Lender and Trustor otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments due under the Note or to the Funds referred to in Section 1.0 hereof, or change the amount of such installments. If under Section 19.6 hereof the Property is acquired by Lender, all right, title and interest of Trustor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

#### **SECTION 5.0 PRESERVATION AND MAINTENANCE OF PROPERTY, LEASE.**

Trustor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any ground lease if this Deed of Trust is a conveyance of an interest in a leasehold estate. Trustor shall also comply with all laws covenants and restrictions affecting the Property, and not suffer or permit any act upon or with respect to the Property in violation of law.

The obligation of this Section 5.0 shall be construed to include taking any actions, entering such contracts, and generally doing all things which would, in the reasonable judgment of the Lender, preserve the value of the Property, including but not limited to providing for professional management, advertising of the Property, and any other actions which would be economically prudent for maintaining the value of the Property at a level at least as high as that relied upon by Lender in committing to enter into the Loan Agreement.

#### **SECTION 6.0. PROTECTION OF LENDER'S SECURITY.**

If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially and adversely affects Lender's interest in the Property or the value of the Property, including, but not limited to, eminent domain, insolvency, code enforcement, mechanic's or materialmen's liens, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Trustor, may make such appearances, disburse such sums, make such payments (or incur liabilities to make payments) and take such action as is necessary to protect or preserve Lender's interest and the value of the Property, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this Section 6.0, with interest thereon, shall become additional principal indebtedness of Trustor secured by this Deed of Trust. Such amounts (including prepayment of any incurred liabilities) shall be payable upon notice from Lender to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note. This paragraph grants permission and authorization to Lender and, nothing contained in this Section 6.0 shall be construed as requiring Lender to incur any expense or liability or take any action hereunder.

#### **SECTION 7.0 INSPECTION.**

Lender may make or cause to be made reasonable entries upon and inspections of the Property at any time during normal business hours of Lender, provided that Lender may inspect at other times if Lender shall give Trustor twenty-four hours notice prior to any inspection at other than such normal business hours, specifying reasonable cause therefore. However, Trustor shall allow Lender, its authorized agents, employees or officers or any person appointed by Lender for such purpose to inspect the Property at all times during construction without notice. From and after the occurrence of an Event of Default, Trustor shall fully cooperate in providing to Lender full and free access to the Property and Trustor shall have full rights of entry and possession for all purposes related to the rights, remedies and interests of Lender hereunder or in preservation, protection or exercise of the same.

#### **SECTION 8.0 CONDEMNATION.**

The proceeds of any award or claim from damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of any taking of the Property, the proceeds shall be applied at Lender's option, to the sums secured by this Deed of Trust with the excess, if any, paid to the Trustor.

Unless Lender and Trustor otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments under the Note or Funds referred to in Section 1.0, or change the amount of such installments.

#### **SECTION 9.0 EXTENSION AND/OR MODIFICATION AGREEMENTS.**

Lender shall have the right to grant an extension of the time for payment of the outstanding amounts secured by this Deed of Trust. Lender shall have the right to modify any term or terms of the Note, this Deed of Trust, the Loan Agreement or any other document executed by Trustor in connection with the extension of the payment or other obligations secured hereby for the purpose of conforming the same to such extension, and these rights shall exist at Lender's sole option for purposes of assuring the continued protections and security hereunder in favor of the Lender. Any agreement for the modification of any other term or terms of the Note, this Deed of Trust, the Loan Agreement or

any other loan document executed by Trustor in connection with the secured obligations must be in writing and executed by both Trustor and Lender and shall be subject to the terms and conditions then imposed by Lender. Any extension or modification shall not relieve Trustor of obligations to Lender except as expressly provided for in the said extension and/or modification agreement.

#### SECTION 10.0 FORBEARANCE BY LENDER NOT A WAIVER.

ENT 61591:2001 PG 4 of 9

Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy at a later time or in connection with a subsequent occurrence of the same or similar nature. The procurement of insurance or the payment of taxes or other liens or charges or of ground rents, if any, by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

#### SECTION 11.0 REMEDIES CUMULATIVE.

All remedies provided in this Deed of Trust, in the Loan Agreement or the Note are distinct and cumulative to any other right or remedy under the same or to those afforded by law or equity, and may be exercised concurrently, independently or successively.

#### SECTION 12.0 SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.

The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Trustor, subject to the restrictive provisions of Section 16.0 hereof. All covenants and agreements of Trustor shall be joint and several. The captions and headings of the sections of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

#### SECTION 13.0 NOTICE.

Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor (and the other Note Makers, if any, named in the Summary) provided or in the Deed of Trust, the Loan Agreement or Note shall be given by mailing such notice by first class mail, addressed to Trustor at the address set forth in the Summary or at such other address as Trustor may designate by written notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail, to Lender's address stated in the Summary or to such other address as Lender may designate by notice to Trustor as provided herein. Mail notice provided for in this Deed of Trust shall be deemed to have been given and received two (2) days after the same is deposited in the U.S. Mail postage prepaid, addressed as aforesaid.

Notice may also be given by personal delivery and shall be effective upon actual delivery, provided that such delivery to Lender must be to the officer designated in the Summary.

Notice of a change of address shall only be effective if given in writing signed by the party for which such change is being made, given in compliance with the provisions of this Section.

#### SECTION 14.0 GOVERNING LAW AND SEVERABILITY.

Except as to any rule or law requiring the application of the laws of another jurisdiction, this Deed of Trust shall be governed by the laws of the State of Utah. In the event that any provision, provisions, clause or clauses of this Deed of Trust, the Loan Agreement or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust, the Loan Agreement or the Note which can be given effect without the conflicting provision, provisions, clause or clauses and to this end the provisions and clauses of this Deed of Trust, the Loan Agreement and the Note are declared to be severable.

#### SECTION 15.0 LOAN CHARGES.

If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges or interest rates, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the obligations secured hereby exceed permitted limits, then: (1) any such loan charge or interest shall be reduced by the amount necessary to reduce the charge to the permitted limits; and (2) any sums already collected from Trustor which exceeded permitted limits will be refunded to Trustor. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Trustor. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

#### SECTION 16.0 TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN TRUSTOR.

Except as otherwise provided in this instrument, if all or any part of the Property or an interest therein is sold or transferred by Trustor (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person or persons but is a corporation, partnership, trust or other legal entity) without Lender's prior written consent, excluding a transfer by devise, descent or by operation of law upon the death of a joint tenant, then Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

Lender agrees to consider consent to a sale or transfer if: (1) Trustor causes to be submitted to Lender information required by Lender to evaluate the transferee; (2) Lender reasonably determines that Lender's security will not be impaired and that the risk of a breach of any covenant or agreement in this Deed of Trust by reason of the involvement of such transferee is acceptable; (3) interest will be payable on the sums secured by this Deed of Trust at a rate acceptable to Lender; (4) changes in the terms of the Note and this Deed of Trust required by Lender are made, including, for example, periodic adjustment in the interest rate, a different final payment date for the loan, and addition of unpaid interest to principal; and (5) the transferee signs an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Deed of Trust, as modified if required by Lender. To the extent permitted by applicable law, Lender may also charge a reasonable fee as a condition to Lender's consent to any sale or transfer. This covenant in no way limits the Lender's absolute discretion to refuse consent nonetheless.

In the event of a permitted transfer, Trustor will continue to be obligated under the Note, the Loan Agreement and this Deed of Trust unless Lender releases Trustor in writing.

## SECTION 17.0 LEGISLATION.

If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Loan Agreement or this Deed of Trust unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Deed of Trust, Loan Agreement or Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Deed of Trust to be immediately due and payable. In such event, Trustor shall not have the right to reinstate otherwise provided in this Deed of Trust.

ENT 61591:2001 PG 5 of 9

## SECTION 18.0 EVENTS OF DEFAULT.

Time is of the essence of this agreement. There shall have occurred an Event of Default if one or more of the following events occurs:

18.1 Non Payment. If the party or parties obligated on the Note default in the payment of any payment under the Note when due and payable, and such default continues for a period of five (5) days after notice of such failure is given to Trustor as provided herein; or

18.2 Liens. Taxes. Insurance. If Trustor defaults in the observance or performance of any covenant or agreement contained in Section 3.0, or 4.0 and such default continues for a period of ten (10) days after written notice has been given to Trustor by Lender; or

18.3 Other Defaults. If Trustor defaults in the observance or performance of any other covenant or agreement contained in this Deed of Trust, the Note or the Loan Agreement and such default continues for a period of thirty (30) days after Lender gives Trustor written notice specifying the default and demanding that the default be remedied; or

18.4 Due on Transfer or Encumbrance. Trustor has acted in violation of the restrictions of Section 16.0 hereof; or

18.5 Appointment of Trustee or Receiver. If a trustee, receiver, or liquidator of the Property or any part thereof or of Trustor, Trustor's business or assets is appointed by the order of a court of competent jurisdiction; or

18.6 Voluntary Bankruptcy or Insolvency. If Trustor files a petition in bankruptcy or for an arrangement or for reorganization pursuant to the federal Bankruptcy Act of any similar law, federal or state, or if a court of competent jurisdiction declares Trustor insolvent or bankrupt, or if Trustor makes an assignment for the benefit of creditors, or admits in writing inability to pay debts as they become due or consents to the appointment of a receiver or receivers of all or any part of the Property; or

18.7 Involuntary Bankruptcy. If any of the creditors of Trustor file a petition in bankruptcy against Trustor or for the reorganization of Trustor pursuant to the federal Bankruptcy Act or any similar law, federal or state; provided that, if the petition is discharged or dismissed within sixty (60) days after the date on which it was filed, the Event of Default shall be extinguished upon payment of all costs and expenses (including attorneys' fees and costs) incurred by Lender in connection with such Event of Default; or

18.8 Judgments. If final judgment for the payment of money is recorded against Trustor in any amount determined by Lender in its sole judgment and discretion, to be materially adverse to Trustor, the Property or the ability of Trustor to perform or pay the obligations secured hereby.

## SECTION 19.0 REMEDIES.

If an Event of Default has occurred, Lender, at its option, may elect any or all of the following remedies together with any and all remedies granted in the Note, Loan Agreement or by law or equity:

19.1 Acceleration. Lender without further notice to Trustor may declare the entire principal balance then outstanding together with all accrued and unpaid interest to be immediately due and payable.

19.2 Lender's Right of Possession in Case of Default. Upon the occurrence of an Event of Default, whether before or after the principal sum secured hereby is declared to be immediately due, or whether before or after sale upon foreclosure, forthwith, upon demand of Lender, Trustor shall surrender to Lender and Lender shall be entitled to take actual possession of the Property, or any part thereof personally, or by its agent or attorneys, as for condition broken, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Property together with all documents, books, records, papers and accounts of the Trustor or the then owner of the Property relating thereto, and may exclude the Trustor, or agents or servants of Trustor, wholly therefrom and may as attorney-in-fact or agent of the Trustor, or in its own name as Lender and under the powers granted in this Deed of Trust, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rent, issues, and profits of the Property, including action for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every one of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to the Trustor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Trustor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Deed of Trust or subordinated to this Deed of Trust, to make all necessary or property repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as Lender deems judicious, to insure or reinsure the Property and all risks incidental to Lender's possession, operation and management thereof and to receive all of such avail, rent, issues and profits; all at the cost and expense of Trustor, any such incurred costs and expenses being added to and deemed to be a principal part of the obligations secured hereby bearing interest at the rate applicable under the Note.

19.3 Appointment of Receiver. Upon filing of proceedings or notices (judicial or non-judicial) to foreclose this Deed of Trust, a court of competent jurisdiction may, upon application, appoint a receiver of the Property. Such appointment may be made either before or after sale without notice, and without regard to the solvency or insolvency, at the time of application for such receiver, of the persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Property or whether the same shall then be occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect the rents, issues and profits of the Property during the pendency of foreclosure proceedings and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when the

Trustor, heirs, administrators, executors, successors and assigns of Trustor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management and operation of the Property, during the whole of said period. The applicable court, from time to time may authorize the receiver to apply the net income in his hands in payment, in whole or in part, in payment of: (i) the indebtedness secured hereby or by any decree or proceedings foreclosing this Deed of Trust, or any tax, special assessment, or other lien which may be, or become superior to this Deed of Trust, provided such application is made prior to foreclosure sale; (ii) the deficiency in case of sale and deficiency. Any such proceedings shall in no manner prevent or retard the collection of said debt by foreclosure or otherwise.

ENT 61591:2001 PG 6 of 9

19.4 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including reasonable compensation to the Lender, its agents and counsel, and of any judicial proceedings, Trustee's fees, and of any and all expenses, liabilities and advances made or incurred by Lender under this Deed of Trust; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided at the default rate of interest, if any, provided by the Note; third, all principal and interest remaining unpaid on the Note; fourth, any surplus to Trustor, its successors or assigns, as their rights may appear.

19.5 Rescission of or Failure to Exercise Option of Acceleration. The failure of the Lender to exercise the option of acceleration of maturity and/or foreclosure following any Event of Default or to exercise any other option, right or remedy granted to the Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments hereunder shall not constitute a waiver of any such Event of Default, except as may be provided by law, nor extend or affect the grace period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgement to that effect by the Lender; but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity except as may be provided by law or extend nor affect the grace period, if any.

19.6 Power of Sale. If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of the election to cause the Property to be sold and shall record such notice in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Trustor and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Trustor, shall sell the Property at public auction or the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale in accordance with governing law. Lender or Lender's designee may purchase the Property at any sale. Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein.

19.7 Other Remedies and Rights. In addition to the foregoing and all rights of Lender under the Note and Loan Agreement and other rights and remedies granted hereby, Lender may cause, at the expense of Trustor, appraisals of the Property or other evaluations, inspections and actions to preserve, protect, operate or evaluate the Property. Lender shall also have the right to immediately offset any obligations secured hereby against accounts (deposit, demand deposit or otherwise) of Trustor at Lender of any offices of Lender.

#### **SECTION 20.0 TRUSTOR'S RIGHT TO REINSTATE.**

Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued as provided by applicable law of the State of Utah, by taking actions required under such law to do so. Upon such cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

#### **SECTION 21.0 UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

As stated above, this instrument is intended to be a security agreement pursuant to the Uniform Commercial Code, and a pledge, lien and assignment for security under other applicable laws for any of the items specified above as part of the Property which, under applicable law, may be subject to the same. Trustor agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor agrees to execute and deliver to Lender, upon Lender's request, any financing statement, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Trustor shall not create or suffer to be created pursuant to the Uniform Commercial Code or any other applicable law any other security interest, pledge, lien, or assignment for security of the Property or any interest therein or part thereof, including replacements and additions thereto. Upon breach of any covenant or agreement of Trustor contained in this Deed of trust, the Loan Agreement or the Note or upon the occurrence of an Event of Default, including failure to pay, when due, all sums secured hereby, Lender shall have the remedies of a secured party under the Uniform Commercial Code and all other rights or remedies available under applicable law, and, at Lender's option, may also invoke the remedies provided in Section 19.0 of this instrument as to such items. In exercising any of said remedies, Lender may proceed against the real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Section 19.0 hereof.

#### **SECTION 22.0 WAIVER OF STATUTE OF LIMITATIONS.**

Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured hereby.

#### **SECTION 23.0 WAIVER OF MARSHALLING.**

Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the remedies provided herein. Lender shall have the right to determine the order in which

any or all portions of the indebtedness secured hereby is satisfied from the proceeds realized upon the exercise of the remedies provided herein. Trustor, and any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

**SECTION 24.0 ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION; LEASE APPROVALS, MODIFICATIONS.**

ENT 61591:2001 PG 7 of 9

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenue of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Trustor as provided in the second succeeding sentence Trustor shall have the right to collect and receive all rents and revenues of the Property and to apply the rents and revenues so collected to the sums secured by this Deed of Trust in the order provided in Section 2.0 hereof and then to expenses of operating and maintaining the Property with the balance, so long as no Event of Default has occurred, to the account of Trustor, it being intended by Trustor and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. All sums received by Trustor are received in trust for the benefit of Lender to be applied as aforesaid. Upon notice by Lender to Trustor of an Event of Default, and without the necessity of Lender's entering upon and taking and maintaining full control and possession of the Property in person, by agent or by a court appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately be deemed held by Trustor as trustee for the benefit of Lender to be applied only at the written direction of Lender. Trustor agrees that each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Section, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the rents of the Property for more than one (1), month prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than one (1) month prior to the due date of such rents. Trustor further covenants that Trustor will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon the occurrence of an Event of Default, Lender may in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the completion of construction making of repairs to the Property and the execution or termination of the contracts providing for the construction, management or maintenance of the Property, all on such terms as are deemed best to protect the Property and its value. In the event Lender elects to seek the appointment of a receiver for the Property upon the occurrence of an Event of Default, Trustor hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to notice by Lender to Trustor of an Event of Default,

may be applied by Lender first toward the payment of all costs, if any, incurred by Lender, as a result of Lender's taking control of and managing the Property, including, but not limited to, attorney's fees, receiver's fees, appraisal costs, premiums on receiver's bonds, title research costs, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to other obligations secured hereby. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property. Lender shall not be liable to Trustor, anyone claiming under or through Trustor, or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Section.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, then funds expended by Lender for such purposes shall become indebtedness of Trustor to Lender secured hereby. Unless Lender and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate applicable under the Note.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Lender.

The assignment of rents and the grant of an interest in the Property hereunder gives Lender a material and continuing interest in the leasing, licensing and operation of the Property. Accordingly, Trustor agrees to obtain prior written approval of the Lender for any form of lease or license agreement and of any tenant or licensee before execution of any such lease or license agreement. Furthermore, no amendment or modification of any lease or license agreement for all or any material (as judged by Lender in its business judgment) portion of the Property, shall be made or agreed to without the prior written consent of Lender. A single approval by Lender shall not be deemed to be an approval or consent to any subsequent change or modification with the same or other tenant or licensee, whether or not of a similar nature.

**SECTION 25.0 RECONVEYANCE.**

Upon payment and performance in full of all obligations secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**SECTION 26.0 SUBSTITUTE TRUSTEE.**

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor Trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor Trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

ENT 61591:2001 PG 8 of 9

**SECTION 27.0 REQUEST FOR NOTICE.**

Trustor requests that copies of the notice of default and notice of sale be sent to Trustor at the address specified above.

**SECTION 28.0 MISCELLANEOUS.**

Use of the term "Trustor" herein is for convenience in reference and shall include the singular "Trustor" if only one Trustor is involved but shall also include the plural if more than one Trustor executes this deed of trust, in which event all references, covenants, promises and obligations hereunder are joint and several. All expenses and costs incurred by Lender in the exercise of its rights and remedies hereunder upon a failure of any performance by Trustor (whether or not an Event of Default is occasioned thereby), including attorneys' fees and costs (also including any involved in obtaining relief from any bankruptcy court order or stay or otherwise acting in connection with any bankruptcy of Trustor or party having an interest in the Property) shall be payable to Lender by Trustor, immediately upon incurrence of the same, being considered part of the principal obligations under the Note.

IN WITNESS WHEREOF, TRUSTOR has executed this Deed of Trust as of the date set forth in the Summary above.

TRUSTOR(S):

Garth Packard  
Garth Packard

## ACKNOWLEDGMENT

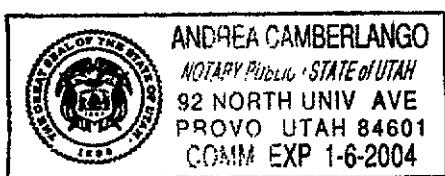
STATE OF UTAH : ss.  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 1 day of JUNE, 2001, by  
Garth Packard

Notary Public Andrea Camberlango

My Commission Expires: 1/16/2004 Residing at Springville, UT

NOTE: If the acknowledgment is for a corporation, partnership, or other entity, the representative capacity, title, or rank of the person signing for the said entity should be stated in the space after the name is inserted.



**EXHIBIT A.**

Lot 12, Plat "A", AMBER MEADOWS SUBDIVISION, according to the official plat thereof on file and of record in the office of the Utah County Recorder.