

WHEN RECORDED, MAIL TO:
BANK ONE, ARIZONA, N.A.
P.O. Box 29542, Dept. A567
Phoenix, Arizona 85004
ATTN: Ada C. Cook

ENT 650249 Bk 723 Pg 293
DATE 5-NOV-1996 3:36PM FEE 42.00
MICHAEL L GLEED, RECORDER - FILED BY SA
CACHE COUNTY, UTAH
FOR NORTHERN TITLE COMPANY

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT is made as of October 29, 1996, between EZRA JACK NIXON, JR. and CHARLOTTE NIXON, jointly and severally, whose address is 150 East 400 North, Logan, Utah 84321, as Trustor (hereafter referred to as "Borrower"), and BANK ONE, UTAH, NATIONAL ASSOCIATION, as Trustee, and BANK ONE, ARIZONA, NA, a national banking association, as Beneficiary (hereafter referred to as "Lender"), whose address is the Western Region Real Estate Department, 201 North Central Avenue, Phoenix, Arizona 85004.

1. Grant in Trust.

A. Borrower, as Trustor, irrevocably and unconditionally grants, transfers, assigns, conveys and warrants to Trustee in trust for the benefit of Lender, and its successors and assigns, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all estate right, title and interest which Borrower now has or may later acquire in the following property (collectively the "Property"):

(1) The real property located in Cache County, Utah, as more particularly described on Exhibit A attached hereto;

(2) All buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Property, and all materials intended for construction, reconstruction, alteration, maintenance and repair of such buildings, structures or improvements, and all fixtures and articles of personal property now or hereafter attached to such buildings, structures or improvements so that the same are fixtures under applicable law, including without limitation, machinery, motors, and plumbing, heating, air conditioning, lighting, ventilating, refrigerating, alarms, sprinkler equipment, furnishings, carpeting, drapes and fixtures, and all replacement thereof, and all substitutions therefore;

(3) All water, water stock, and water rights now owned or hereafter acquired relating to or used in connection with said Property, together with all shares of stock evidencing any such water rights and all fixtures and equipment for irrigation or drainage, and any other stock or evidence of ownership of any part of such water, water stock or water rights that is owned by the Borrower in common with others and on documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property covered by this Deed of Trust;

(4) All rights of way, easements, tenements, hereditaments, and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Property, or any part thereof;

(5) All rents, issues, profits, royalties, income, privileges, and/or benefits derived from the Property (collectively the "rents"), subject however, to the right, power and authority hereinafter given to and conferred upon Lender to collect and apply such rents;

(6) All leasehold estate, right, title and interest of the Borrower in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into and all right, title and interest of Borrower thereunder including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature;

(7) All proceeds, including all claims to and demands for them of the voluntary or involuntary conversion of any of the real property, buildings, or other property described above, into cash or liquidated claims, including proceeds of all present and future fire hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by a public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage, or injury to or defect in the real property, buildings, or any other property described above or any of them;

(8) All proceeds of additions and accretions to substitutions entered and replacements for and changes in any of the Property;

(9) All interest, estate or other claims both in law and in equity which Borrower now has or may hereafter acquire in the Property; and

(10) All property of every kind acquired by the Borrower after the date hereof which by the terms hereof is intended to be subject to the lien of this Deed of Trust shall immediately upon the acquisition thereof by the Borrower and without further mortgage, conveyance or assignment become subject to the lien of this Deed of Trust as fully as though now owned by the Borrower and specifically described herein. Nevertheless, the Borrower shall take such actions and execute and deliver such additional instruments as Lender shall reasonably require to furnish evidence or confirm the subjection to the lien of this Deed of Trust of any such property.

B. Borrower hereby further grants to Lender a security interest in all personal property collateral above set forth for the purpose of securing all obligations of Borrower contained herein. This Deed of Trust shall also be deemed a Security Agreement and also constitutes a financing statement under the Uniform Commercial Code of Utah with respect

to the personal property and fixtures and for the remedies for any violation of the covenants, terms and conditions of the agreements herein contained.

2. Secured Obligations.

Borrower makes the grant, conveyance, transfer and assignment set forth in Section 1 for the purpose of securing the following obligations, in any order of priority that Lender may choose: (1) the indebtedness of up to the principal amount of \$275,869.20, evidenced by a promissory note dated March 10, 1995 in the amount of \$1,750,000.00 (the "Note"), made by Borrower, and payable to the order of Lender, together with interest thereon payable at a variable rate and other charges provided in said Note, and any extensions and/or renewals or modifications thereof; (2) the performance of all obligations of Borrower under the Loan Agreement (Revolving Credit Agreement) and all related loan documents (hereafter the "Loan Documents") executed in connection with and for the transaction related to the Note and this Deed of Trust and each other agreement herein contained or referred to herein between the Borrower and Lender; (3) the payment and performance of each agreement of Borrower herein contained; (4) the payment of such additional loans or advances as hereafter may be made to Borrower, or its successors or assigns, when advanced as provided herein or when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (5) the payment of all sums expended or advanced by Lender under or pursuant to the terms hereof, together with interest thereon as herein provided.

3. Rights and Duties of the Parties.

A. Borrower agrees to keep the Property and all improvements thereon in good condition and repair and not to commit or permit waste thereof; not to remove, demolish, alter, or impair the design or structural character of any building, fixture, equipment, fence, parking, and/or any other improvement now or hereafter situated on the Property except as contemplated by Borrower for the improvements to be constructed on the Property as described in the Loan Documents; to complete or restore promptly and in good and workmanlike manner any building, fixture, equipment, fence, parking, or any other improvement which may be damaged or destroyed; to comply with all laws, covenants and restrictions affecting the Property; not to commit, suffer or permit any act upon the Property in violation of law; to comply with all terms of all Loan Documents; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; and promptly and diligently perform each and every covenant and condition of the Loan Documents.

B. Borrower agrees to provide and maintain insurance, of such type or types and amounts as Lender may require. Such insurance shall insure the Property and all improvements to the Property now existing or hereafter erected or placed on the Property for their full insurable value for fire and extended coverage insurance, together with additional endorsements for vandalism and malicious mischief, and such other coverage as Lender may, from time to time, reasonably require. All insurance required shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by

Borrower and subject to the approval of Lender. Such companies should be authorized to write such insurance in the State of Arizona. The company issuing the policies shall be rated "A" or better by A.M. Best Co., in Bests' Key guide. All property policies evidencing the insurance required shall name Lender as first mortgagee and all liability policies evidencing the insurance required shall name Lender as an additional insured, shall not be cancelable as to the interests of Lender due to the acts of the Borrower or any contractor, and shall provide for at least thirty (30) days' prior written notice of the cancellation or modification thereof to Lender. Memoranda or Certificates of insurance policies and binders for such policies and receipts indicating payments of the first year's premiums shall be delivered to Lender at the time of execution hereof together with certified copies of original policies of insurance if requested by Lender. In event of loss, Borrower shall give prompt notice to Lender, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender instead of to Borrower and Lender jointly, and the insurance proceeds, or any part thereof, may be applied by Lender, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. Neither the application nor the release of any such amounts shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Insurance shall inure to the benefit of and pass to the purchaser of said premises at any foreclosure sale, or any Lender's sale held pursuant hereto. Borrower shall obtain and maintain flood insurance on the Property from and after the time that the Secretary of Housing and Urban Development has identified the area in which the Property is located as having special flood hazards and on which flood hazard insurance has been made available. The amount of such flood insurance shall be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available for the Property. Insurance protecting the Borrower and Lender against loss or losses from liability imposed by law or assumed in any written contract and arising from personal injury, including bodily injury or death, or a limit of liability of not less than \$500,000 (combined single limit for personal injury and property damage) and an umbrella excess liability policy in an amount not less than \$1,000,000 protecting Borrower and Lender against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. Such policies must be written on an occurrence basis so as to provide blanket contractual liability, broad form property damage coverage, and coverage for projects and completed operations.

C. At least thirty days prior to the expiration of such policy, Borrower shall furnish Lender with evidence satisfactory to Lender of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. If Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies as required by this Deed of Trust, Lender may, upon thirty days written notice to Borrower, procure such insurance or single interest insurance for such risk covering the Lender's interest only and Borrower will pay all premiums thereon promptly upon demand by Lender and until such payment is made by Borrower the amount of all such premiums shall bear interest at the rate set forth in the Note.

D. Borrower agrees to deliver to, pay for and maintain with Lender until the indebtedness secured hereby is paid in full, such evidence of title as Lender may

require, and an ALTA extended coverage mortgagee's loan title insurance policy with endorsements requested by Lender or equivalent issued by a title company satisfactory to Lender in the amount of the Loan. The policy shall insure (1) the Deed of Trust as a valid and enforceable first lien on the property described therein; (2) Borrower as the sole owner of marketable fee simple title to the Property and (3) the Lender's interest to be free and clear of all liens and encumbrances, easements, encroachments or other interests of any kind, except as are specifically approved in writing by Lender. The title insurance policy shall certify compliance of the Property with all zoning laws, rules, ordinances and regulations for the Property and all improvements thereon for the use permitted for the Property.

E. Borrower agrees to appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Lender or Trustee; and should Lender or Trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Lender or Trustee.

F. Borrower agrees to pay at least 30 days before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. After an event of default and upon notice from Lender to Borrower, there shall be added to any periodic payments required by the Note, such equal periodic payments as are necessary to create a non-interest bearing demand cash reserve for the payment of taxes and insurance when due, and such amount shall be a first deduction from any payment made by Borrower and shall be held separately by Lender for such purposes. The creation of any reserves does not relieve Borrower of the duties required herein to pay the costs of taxes and insurance but only vests in Lender the right to apply any reserves to the tax and insurance obligations. Such reserves are pledged to Lender to secure the Note and the performance of the agreements contained in this Deed of Trust. If such periodic reserve payments are not required, Lender shall be furnished evidence of payment of taxes, assessments and insurance policies due and owing with respect to the Property.

G. Should Borrower fail to make any payment or to do any act as herein provided, then Lender or Trustee, but without obligation to do so, and without notice or demand upon Borrower and without releasing Borrower from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Lender or Trustee being authorized to enter upon and take possession of the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, and to employ counsel, and pay its reasonable fees and expenses.

H. Borrower agrees to pay immediately and without demand all sums expended hereunder by Lender or Trustee, with interest from date of expenditures at the default rate which is four percent per annum above the interest rate provided in the Note until paid, and the repayment thereof shall be secured hereby.

I. Borrower shall not create or permit to exist any lien or encumbrance upon the Property, except (i) liens provided for the benefit of Lender; (ii) liens existing as of the date hereof and approved by Lender in writing as provided herein; (iii) liens as may be otherwise authorized by the terms of this Deed of Trust and the Loan Documents; (iv) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings; or (v) liens for which Lender shall give its prior written consent, which consent shall not be unreasonably withheld.

J. Should the Collateral or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Lender shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage.

K. At any time and from time to time upon written request of Lender, payment of its fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; and (d) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Borrower agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

L. Until Borrower shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Borrower shall have the right to collect rents earned prior to default as they become due and payable. After Borrower's default, Borrower's right to collect rents shall cease and Lender shall have the right, with or without taking possession of the Property affected thereby, to collect all rents. Failure or discontinuance of Lender at any time or from time to time to collect any such rents shall not in any manner affect the subsequent enforcement by Lender of the right, power, and authority to collect the rents. Nothing contained herein, nor the exercise of the right by Lender to collect, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.

4. Environmental Indemnity.

A. The following definitions apply to this Deed of Trust:

(1) "Hazardous Materials Laws" shall mean the Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation and Liability Act; Toxic Substances Control Act; Federal Water Pollution Control Act; Clean Air Act; Emergency Planning and Community Right-to-Know Act; Utah Solid and Hazardous Waste Act; Utah Water Quality Act; Utah Air Conservation Act; Utah Hazardous Substances Mitigation Act; Utah Underground Storage Tank Act, as they may be amended from time to time, and any other provisions relating to the environment or the generation, treatment, storage, disposal, cleanup or transportation of hazardous materials set forth in any laws, codes, ordinances, rules and regulations, orders or permits, in each case, whether federal, state or local, and guidelines and interpretations thereof by any governmental authority having jurisdiction thereover.

(2) "Hazardous Materials" means any material regulated under any Hazardous Materials Laws, including, without limitation, petroleum, hazardous waste, hazardous substances, pollutants or contaminants.

(3) "Hazardous Materials Claims" shall mean any and all enforcement, cleanup, removal or other governmental or regulatory actions or orders threatened, instituted or completed, oral or written, pursuant to any Hazardous Materials Laws, together with all claims made or threatened by any third party against the Borrower or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials.

B. Borrower warrants, represents, covenants and agrees with Lender with respect to Hazardous Materials:

(1) To the best of Borrowers' knowledge and belief after due inquiry and investigation, except as stated in that Environmental Questionnaire, Certification and Disclosure Statement furnished to Lender, no Hazardous Materials from any source whatsoever have been used, generated, manufactured, treated, released, stored, or disposed at the Property; no Hazardous Materials have migrated from the Property; the Property has not been the subject of an environmental impact study required by any governmental authorities nor has such study been indicated as necessary; the past, present or contemplated use of the Property has not violated and does not violate any Hazardous Materials Laws; and the Property is not within a government identified area of contamination.

(2) The Borrower shall comply and require (i) all tenants under any lease or occupancy agreement affecting any portion of the Property and (ii) all other persons on or occupying the Property to comply with all Hazardous Materials Laws. Without limiting the generality of the foregoing, the Borrower covenants and agrees that it will not use, generate, manufacture, store, release, treat or dispose of, nor will it permit the use, generation, manufacture, storage, release, treatment or disposal of Hazardous Materials on, under or about

the Property, nor will it transport or permit the transportation of Hazardous Materials to or from the Property.

(3) The Lender reserves the right, in its sole and absolute discretion at any time, to retain, at the Borrower's expense if the Borrower has breached this Agreement, an independent professional consultant to review any Hazardous Materials report prepared by or for the Borrower for the Property and/or to conduct its own investigation of the Property. The Borrower grants to the Lender, its agents, employees, consultants and contractors, the right to enter upon the Property and to perform such tests on the Property as are reasonably necessary to conduct such a review and/or investigation.

(4) The Borrower shall immediately advise the Lender in writing of (i) any and all Hazardous Materials Claims, (ii) any remedial action taken by the Borrower either voluntarily or in response to any Hazardous Materials Claims, and (iii) the Borrower's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any Hazardous Materials Claims or any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Laws. In addition, the Borrower shall provide the Lender with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws or Hazardous Materials Claims and all communications with any person relating to Hazardous Materials Claims.

(5) The Borrower shall promptly take any and all necessary remedial action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials on, under or about the Property. In the event the Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Property, the Borrower shall conduct and complete such remedial action (i) in compliance with all applicable Hazardous Materials Laws, (ii) to the satisfaction of the Lender, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities.

(6) Borrower shall not create or permit to continue in existence any lien (whether or not such lien has priority over the lien created by the Deed of Trust) upon the Property imposed pursuant to any Hazardous Materials Law.

(7) The intended use of the Property is for a single-family residence ("Permitted Uses") and Borrower shall not change or alter the Permitted Uses unless the Borrower shall have notified the Lender in writing and the Lender shall have determined, in its sole and absolute discretion, that such change or modification will not result in the presence of Hazardous Materials on the Property in such a level that would increase the potential liability for Hazardous Materials Claims.

(8) The Lender or Trustee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by the Borrower, incurred by or asserted against Borrower.

(9) Borrower acknowledges and agrees that a violation of the warranties, representations, covenants and agreements of the indemnity provisions of this Deed of Trust shall constitute an event of default under the Loan Documents.

C. The Borrower further covenants and agrees with Lender that the Borrower shall protect, indemnify and hold the Lender, its directors, officers, employees and agents, and any successors to the Lender's interest in the Property, and any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the Lender's rights and remedies under the Loan Documents, and any successors to any such other person, and all directors, officers, employees and agents of all of the aforementioned indemnified parties, harmless from and against any and all actual or potential claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, attorneys' fees and costs and expenses of investigation) of whatever kind or nature, including, without limitation, any liability based upon negligence, strict or absolute liability in tort arising directly or indirectly from, or out of, or in any way relating to or in connection with a breach of any of the representations and warranties made in this Deed of Trust which relate to the release of Hazardous Materials, the use, generation, manufacture, release, treatment, storage, disposal or transport of Hazardous Materials, or to Hazardous Materials Laws generally. In addition, the Borrower agrees that in the event that any Hazardous Materials are caused to be removed from the Property by Borrower, Lender or any other person, the number or other matter designation assigned by the Environmental Protection Agency to such Hazardous Materials shall be solely in the name of Borrower and Borrower shall assume any and all liability for such removed Hazardous Materials. All such costs, damages, and expenses referred to in this Paragraph are hereinafter referred to as "Expenses." The Borrower understands and agrees that its liability to the indemnified parties indemnified by the indemnity provisions for Hazardous Materials shall arise upon the earlier to occur of (a) discovery of any Hazardous Materials on, under or about the Property or (b) the institution of any Hazardous Materials Claim, and not upon the realization of loss or damage, and Borrower agrees to pay to the Lender from time to time, immediately upon the Lender's request, an amount equal to such Expenses, as reasonably determined by the Lender.

D. Borrower hereby waives, releases, premises, acquits and forever discharges Lender of and from any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, fines, costs and expenses (including, without limitation, attorneys' and investigative fees) of whatever kind or nature (including, without limitation, any liability based upon negligence, strict or absolute liability in tort) which Borrower ever had, now has, shall or may have or acquire, arising directly or indirectly from, or out of, or in any way relating to or in connection with a breach of any of the representations and warranties made in this Deed of Trust which relate to the release of Hazardous Materials, the use, generation, manufacture, release, treatment, storage, disposal or transport of Hazardous Materials or to Hazardous Materials Laws generally.

E. Borrower shall be fully, unconditionally, irrevocably and personally liable for all of its obligations hereunder notwithstanding any exculpatory clauses of any kind

contained in the Loan Documents and notwithstanding the Borrower's discharge, release or satisfaction of liability from the obligations evidenced by the Loan Documents.

F. The representations, warranties, covenants and agreements contained herein and the obligations of Borrower to indemnify Lender or Trustee with respect to the expenses, damages, losses, costs and liabilities set forth in this Deed of Trust shall survive the payment of the indebtednesses and obligations due under the Loan Documents, the foreclosure of any liens on the Property by Lender or a third party, or the conveyance thereof by deed in lieu of foreclosure or power of sale foreclosure, and shall not be limited to the amount of any deficiency in any foreclosure or other sale of the Property.

5. Default and Remedies.

A. Any of the following shall constitute a "default" hereunder:

(1) The failure to pay in full, when due, any payment required hereunder or under the Note or any other agreement securing the Note;

(2) The failure to pay in full, make complete performance of any obligation due under the Note, or otherwise pay, perform, complete or satisfy any term or condition of this Deed of Trust or any Loan Documents;

(3) The failure to observe and perform any term, covenant, promise, payment or agreement by Borrower or any Guarantor under this Deed of Trust, the Note, or any of the Loan Documents, other than a monetary payment due, and that such failure continues for a period of 30 days following notice thereof by the Lender or Trustee, unless a shorter period of notice is provided in the applicable Loan Document.

(4) An event of default occurs under any of the Loan Documents, to the extent that such event of default is not included within the above-described events of default.

B. Time is the essence hereof. At any time after a default hereunder, Lender may, at its option, and without further notice or demand, declare all indebtedness secured hereby immediately due and payable, and take the further action authorized herein and described below, regardless of: (i) Lender's delay or failure in exercising such option; (ii) Lender's failure to exercise such option for any prior default or abandonment; or (iii) the adequacy of Lender's security. Lender may, at its option and in its sole discretion, without any additional notice or demand to or upon Borrower, do one or more of the following:

(1) Trustee and Lender, and either of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Document, Loan Documents or other agreement or any laws now or hereafter in force notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise

secured, whether by mortgage, deed of trust, pledge, guaranty, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustee or Lender, and either of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender or Trustee in such order and manner as they or either of them in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Lender or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Lender and any of them may pursue inconsistent remedies.

(2) Lender shall, without regard to the adequacy of any security for the indebtedness hereby secured, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Property, and operate the same and collect the rents therefrom.

(3) Lender may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to enforce any of the covenants hereof.

(4) Lender may elect to cause the Property or any part thereof to be sold pursuant to the power of sale granted herein in accordance with the laws of the state of Utah:

(a) Lender may proceed as if all of the Property were real property, in accordance with subparagraph (c) below, or Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (c) below, separate and apart from the sale of real property, the remainder of the Property being treated as real property.

(b) Lender may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.

(c) Should Lender elect to cause any of the Property to be disposed of as personal property as permitted by subparagraph (a) above, it may dispose of any part thereof in any manner now or hereafter permitted by the applicable Uniform Commercial Code or in accordance with any other remedy provided by law. Both Borrower and Lender shall be eligible to purchase any part or all of the Property at any such disposition. Any such disposition may be either public or private as Lender may so elect, subject to the provisions of the applicable Uniform Commercial Code. Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public or private sale or other disposition of such property and if such notice is sent to Borrower, it shall constitute reasonable notice to Borrower.

(d) Should Lender elect to sell any part of the Property which is real property or which Lender has elected to treat as real property, upon such election, Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Property or any portion thereof specified by Lender, at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Lender, shall, from time to time and as permitted by law, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Property consists of several lots or parcels, Borrower may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Borrower or Lender, but not the Trustee, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession. Borrower agrees to surrender possession of the Property or any part thereof to the purchaser thereof immediately after any sale, if such possession has not previously been surrendered to Borrower.

(e) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of deed or other conveyance, pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein;

(f) Trustee shall apply the proceeds of any sale or disposition hereunder to payment of the following: (1) the expenses of such sale or disposition together with Trustee's fees and reasonable attorneys' fees, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search and/or other evidence of title procured in connection therewith; (3) all sums expended under the terms hereof, not then repaid, with accrued interest in the amount provided herein; (4) all other sums secured hereby; (5) the remainder, if any, to the person or persons legally entitled thereto, or at Trustee's option be paid to the clerk of the court of competent jurisdiction over the Property.

C. The remedies listed herein are illustrative only and Lender shall also have any and all other rights in law or equity, whatever they may be.

D. Upon any default by Borrower hereunder, Lender may, at any time without notice, either in person, by agent, or by a receiver, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect the rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Lender may determine.

E. Upon any event of default described herein, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Property or the interest of Borrower herein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property or any part thereof and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and shall continue as such and exercise all such powers until the date of confirmation of sale of such Property unless such receivership is sooner terminated.

F. The entering upon and taking possession of the Property, any part of the Property, the collection of the rents or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

G. The failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Lender of any default shall not constitute a waiver of any other or subsequent default.

H. In the event that Lender or Trustee incurs any expenses (including reasonable attorneys' fees, whether or not the attorney is a salaried employee of Lender or Trustee, and court costs) to collect and enforce Borrower's obligations hereunder, Borrower shall, upon demand by Lender or other Trustee, immediately reimburse Lender or other Trustee therefor, together with interest thereon at the rate set forth in the Loan Documents from the date incurred by Lender or other Trustee, including, without limitation, reasonable attorneys' fees incurred in any litigation, bankruptcy, insolvency, administrative and arbitration proceedings and appeals therefrom.

6. Sale; Transfer; Liens.

A. Except for a sale in the ordinary course of business with proceeds sufficient to pay the note in full, Borrower agrees not to sell or transfer all or any part of the legal or equitable title or ownership of the Property or any interest therein or any part thereof

change the ownership or structure of Borrower in any manner without the prior written consent of Lender. Any violation of this provision shall be deemed a default hereunder and Lender is entitled to exercise all remedies provided herein by the Note and any other loan agreement.

B. Borrower hereby covenants that no lien of any mechanics or materialmen has attached, or may validly attach, to the Property or any part thereof; that Borrower will pay all sums which if not paid, may result in the acquisition or creation of a lien prior to or of equal priority with or junior to the lien of this Deed of Trust, or which may result in conferring upon a tenant of any part of the Property a right to recover sums as prepaid rent or as a creditor or offset against any future rental obligation; and, that Borrower will not grant any other lien or security interest on any part of the Property or personal property without full disclosure to and prior written consent by Lender. Borrower shall not acquire any equipment or fixtures which are not covered by this Deed of Trust and which may be subject to any security interest or other charge or lien having priority over the lien or security interest granted under this Deed of Trust.

7. Miscellaneous Provisions.

A. Upon the request of Borrower, Lender may hereafter, at its sole option, at any time before full payment of the indebtedness secured hereby, make further advances to the Borrower, and the same, with interest and late charges, is secured by this Deed of Trust; provided, however, that the amount of principal secured by this Deed of Trust and remaining unpaid, shall not at the time of and including any such advances exceed the original principal sum secured hereby.

B. All of the leases or renewals, modifications, consolidations, replacements or extensions of such leases affecting the Property shall be made subject and subordinate to the lien of this Deed of Trust and related security instruments. No prepayment of rent of more than 30 days shall be permitted. Borrower covenants that it will fully perform all of its duties as lessor under any lease pertaining to the Property. If Borrower shall default under any such lease, it shall also constitute a default under this Deed of Trust.

C. The interpretation, construction and enforcement of this Deed of Trust shall be governed by the laws of the State of Utah.

D. Borrower requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address set forth above.

E. The invalidity of any one or more covenants, phrases, clauses, sentences or paragraphs of this Deed of Trust shall not affect the remaining portions of this Deed of Trust or any part thereof, and this Deed of Trust shall be construed as if such invalid covenants, phrases, clauses, sentences or paragraphs, if any, had not been inserted herein.

F. Borrower warrants that the Property is and shall remain in compliance with all applicable governmental laws, statutes, ordinances, acts, rules and

regulations or similar requirements to allow the proper use of the Property for its proposed purposes. Borrower further covenants to take any and all action required to cause the Property to remain in such compliance.

G. Lender may appoint a successor trustee at any time by filing for recording in the office of the County Recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

H. Borrower, unless prohibited by law, shall pay directly or reimburse Lender for any claim, payment or obligation for any tax due or payable as a result of Lender granting the loan to Borrower and evidenced by the Note secured by this Deed of Trust, including, but not limited to any intangible or other tax on the indebtedness of the Note or created upon the documents executed in connection with the loan transaction.

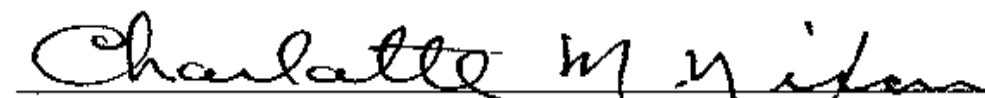
I. All agreements or representations directly or indirectly relating to the Property and the secured obligation are merged into and incorporated in this Deed of Trust and this Deed of Trust can only be amended by a writing subscribed by all parties hereto.

J. This Deed of Trust constitutes a "Construction Mortgage," as defined in Utah Code Ann. § 70A-9-313 (1953, as amended) and secures an obligation incurred for the construction of the improvements to be constructed on the Property, including the acquisition cost of the land. Borrower agrees to commence construction.

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

BORROWER:


EZRA JACK NIXON, JR.,
as an individual


CHARLOTTE NIXON, as an individual

STATE OF UTAH)
COUNTY OF CACHE) : ss.

The foregoing DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT was acknowledged before me this 1st day of November, 1996 by EZRA JACK NIXON, JR.

My Commission Expires:

9/7/97

Odean G. McCann
NOTARY PUBLIC



STATE OF UTAH)
COUNTY OF CACHE) : ss.

The foregoing DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT was acknowledged before me this 1st day of November, 1996 by CHARLOTTE NIXON.

My Commission Expires:

9/7/97

Odean G. McCann
NOTARY PUBLIC



PART OF LOT 6, BLOCK 22, PLAT "A", HYRUM CITY SURVEY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF SAID BLOCK 22, 166.30 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 6, BLOCK 22, PLAT "A" AND RUNNING THENCE EAST IN SAID NORTH LINE OF BLOCK 22, 163.70 FEET; THENCE SOUTH 82.50 FEET; THENCE WEST 163.70 FEET; THENCE SOUTH 82.50 FEET TO THE PLACE OF BEGINNING. FURTHER DESCRIBED AS BEING SITUATED IN THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 10 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN. (PART OF 01-009-0012)