

APP. 9333-06

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Gary W. Ott
Recorder, Salt Lake County, UT
AFFILIATED FIRST TITLE
BY: eCASH, DEPUTY - EF 46 P.

Recording Requested By
And When Recorded Mail To:

CITICORP NORTH AMERICA, INC.
Citibank Community Development
701 East 60th Street, North MC 1126
Sioux Falls, SD 57117
Attention: Dawn Bagley, Loan Administrator
Loan Number: 10 7001985 (Tax-Exempt)
10 7008055 (Taxable)

Tax Parcel No. _____

Space Above For Recorder's Use

**CONSTRUCTION TO PERMANENT FEE ACCOMMODATION DEED OF TRUST
with Assignment of Rents, Security Agreement,
and Fixture Filing**

The parties to this Construction to Permanent Fee Accommodation Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (this "**Deed of Trust**"), dated for reference purposes as of October 1, 2006, are **TRIPLE S INVESTMENTS CO., LLC**, a Utah limited liability company, **SCS CLOCKTOWER, L.L.C.**, a Utah limited liability company and **CPLC PROPERTIES, LLC**, a Utah limited liability company (collectively, the "**Trustor**"), **AFFILIATED FIRST TITLE INSURANCE AGENCY, INC.** or its designee, as trustee (the "**Trustee**"), and **UTAH HOUSING CORPORATION** as beneficiary and secured party (the "**Beneficiary**").

Reference is made to those certain \$14,000,000 Utah Housing Corporation Multifamily Housing Revenue Bonds (Liberty Commons Apartments Project) Series 2006A-1 Bonds (the "**Series A-1 Bonds**") and those certain \$3,510,000 Utah Housing Corporation Taxable Multifamily Housing Revenue Bonds (Liberty Commons Apartments Project) Series 2006A-2 Bonds (the "**Series A-2 Bonds**" and, together with the Series A-1 Bonds, the "**Bonds**") issued by Utah Housing Corporation as Issuer ("**Issuer**"). The Bonds are to be issued under that certain Indenture of Trust dated as of even date herewith (the "**Indenture**") by and between Beneficiary and Wells Fargo Bank, National Association ("**Bond Trustee**").

Pursuant to that certain Loan Agreement dated as of even date herewith (the "**Loan Agreement**") by and among Liberty Commons Associates, L.C., a Utah limited liability company ("**Borrower**"), Beneficiary and Bond Trustee, Beneficiary has agreed to make a loan (the "**Loan**") to Borrower funded by the proceeds of the sale of the Bonds (the "**Bond Proceeds**") to enable Borrower to finance the costs of acquisition and construction of low-income multi-family residential apartments (the "**Project**") on certain real property, as more fully described in Exhibit A attached hereto. Pursuant to that certain Loan Agreement dated as of even date herewith (the "**Loan Agreement**") by and among Trustor, Beneficiary and Bond Trustee, Beneficiary has agreed to make a loan (the "**Loan**") to Trustor funded by the proceeds of the sale of the Bonds (the "**Bond Proceeds**") to enable Trustor to finance the costs of acquisition, construction and equipping of low-income multi-family residential apartments (the "**Project**") on certain real property, as more fully described in Exhibit A attached hereto. The

obligations of Borrower to Beneficiary under the Loan Agreement, including without limitation all obligations to repay the Loan, to pay fees and to reimburse costs and expenses, are secured by, among other things, this Deed of Trust, a Construction to Permanent Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated as of October 1, 2006, executed by Borrower as trustor, naming Trustee as trustee and Beneficiary as Beneficiary (the "**Leasehold Deed of Trust**"). Pursuant to the Indenture, the Issuer has assigned and is assigning to Bond Trustee certain of the Issuer's rights, interests, and benefits under the Loan Agreement.

Trustor is the current owner of fee title to the Land. Trustor and Borrower have entered into that certain Ground Lease dated as of October 1, 2006 (as modified, amended, replaced or assigned from time to time, the "**Ground Lease**", a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Salt Lake County, Utah).

This Deed of Trust and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, secure, or otherwise pertain to the Loan, collectively constitute the "Loan Documents." Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to above. All terms not defined herein or in the Indenture and the Loan Agreement shall have the meaning given to them in the Uniform Commercial Code as enacted in the State of Utah, or under the Uniform Commercial Code in any other state to the extent the same is applicable law (collectively, as amended, recodified, and in effect from time to time, the "**Uniform Commercial Code**").

Pursuant to the Indenture, the Issuer has assigned and is assigning to Bond Trustee certain of the Issuer's rights, interests, and benefits under the Loan Agreement.

1. Grant in Trust and Secured Obligations.

1.1 Grant in Trust. For the purpose of securing payment and performance of the Secured Obligations defined and described in **Section 1.2** below, in such order of priority as Beneficiary may determine in its sole and absolute discretion, Trustor hereby irrevocably and unconditionally grants, bargains, conveys, warrants, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**"). The Property includes the following:

(a) The real property located in Salt Lake County, Utah, as more fully described in **Exhibit A** attached hereto and made a part hereof as if fully set forth, together with all existing and future easements and rights affording access to it (the "**Land**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**"); together with

(c) All articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an

interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"); together with

(d) All existing and future appurtenances, privileges, rights, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a "**Lease**," collectively, the "**Leases**") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all prepaid rents and any and all security deposits received or to be received by Trustor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue to, Trustor under any and all Leases (some or all collectively, as the context may require, "**Rents**"); together with

(g) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in **Exhibit A** or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements; together with

(h) All rights to the name, signs, and trade names used to operate the Land and Improvements; together with

(i) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, lighting, power equipment, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall

beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(j) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(k) To the extent not expressly prohibited by law, all federal, state, and local tax credits, and other tax benefits related to the Property; together with

(l) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(m) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of, and all other rights of Trustor in and to, all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any 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 damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(n) All books and records pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (the "**Books and Records**"); together with

(o) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above, including all proceeds of

any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to above. Trustor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of the Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Trustor agrees that any greater title to the Property hereafter acquired by Trustor during the term hereof shall be subject hereto.

1.2 Secured Obligations.

(a) Trustor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth in **Section 1.1** above and grants the security interest set forth in **Section 3** below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

(i) Payment of all obligations at any time owing under those certain Promissory Notes (the "**Notes**") dated of the Closing Date made by Borrower to the order of Issuer in the initial original principal amount of Fourteen Million and No/100 Dollars (\$14,000,000.00) as the same may be amended or supplemented from time to time, and/or the Promissory Note dated as of the Closing Date made by Borrower to the order of Issuer in the initial original principal amount of Three Million Five Hundred Ten Thousand and No/100 Dollars (\$3,510,000.00) as the same may be amended or supplemented from time to time; and

(ii) Payment and performance of all obligations of Borrower under this Deed of Trust; and

(iii) Payment and performance of all obligations of Borrower under the Loan Agreement and under any Loan Documents (as such term is defined in the Indenture); provided, however, that this Deed of Trust does not secure any Loan Document or other document, or any provision of any Loan Document or other document, that is expressly stated to be unsecured; and

(iv) Payment and performance of all future advances and other obligations that Trustor, or any successor in interest to Trustor, and/or any other obligor (if different than Trustor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supercede any agreements or instruments evidencing the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Notes or the Loan Agreement which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Lessor's Interest in Leases and Assignment of Rents.

2.1 Absolute Assignment. Effective upon the recordation of this Deed of Trust, Trustor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Beneficiary:

(a) All of Trustor's right, title, and interest in, to, and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents.

In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term is defined below) shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole and absolute discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents and Enforcement of Leases. Subject to the License granted to Trustor under **Section 2.2** above, Beneficiary has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. Trustor hereby irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Beneficiary in its sole and absolute discretion may so choose:

- (a) Demand, receive, and enforce payment of any and all Rents; or
- (b) Give receipts, releases, and satisfactions for any and all Rents; or

(c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents; or

(d) Enforce the provisions of any and all Leases.

The appointment granted in this **Section 2.3** shall be deemed to be a power coupled with an interest. Beneficiary's right to the Rents, or to enforce the provisions of any Lease, does not depend on whether or not Beneficiary takes possession of the Property as permitted under **Section 6.3(c)** below. In Beneficiary's sole and absolute discretion, Beneficiary may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under **Section 6.6** below. If an Event of Default (as such term is defined below) occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted under this Deed of Trust.

2.4 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default (as such term is defined below) has actually occurred or is then existing hereunder.

2.5 Proceeds. Beneficiary has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Beneficiary deems appropriate: (a) any and all Secured Obligations, together with all costs and attorneys' fees; (b) all expenses of leasing, operating, maintaining, and managing the Property, including, without limitation, the salaries, fees, commissions and wages of a managing agent, and the other employees, agents, or independent contractors Beneficiary deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Beneficiary deems necessary or desirable; and (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

2.6 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and the Improvements, Beneficiary is not and shall not be deemed to be:

(a) A "mortgagee in possession" for any purpose; or

(b) Responsible for performing any of the obligations of the Trustor as lessor under any lease; or

(c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or

(d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.7 Leasing. Trustor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Beneficiary's express prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall apply all Rents in the manner required by the Loan Agreement.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Utah Uniform Commercial Code, as amended or recodified from time to time (the "**Uniform Commercial Code**"), covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

3.2 Financing Statements.

Trustor shall file one or more financing statements and any amendments thereto and execute such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property, Leases, or Rents. As provided in **Section 5.11** below, Trustor shall cause Borrower to pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require and all other reasonable fees and costs Beneficiary incurs in connection with perfection of its security interests. In case Trustor fails to file any financing statements or execute any other documents for the perfection or continuation of any security interest, required by Beneficiary pursuant to the terms of this Deed of Trust or any other Loan Document, Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact, with full power of substitution, to file and execute any such documents on its behalf. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate

encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the Uniform Commercial Code records.

4. Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing under Section 70A-9a-502 of the Utah Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Land or Improvements.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents and warrants that, except as previously disclosed to Beneficiary in writing:

(a) Trustor lawfully possesses and holds fee simple title to all of the Land, unless any portion of Trustor's present interest in the Land is described in **Exhibit A** as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in such portion of the Land as stated in **Exhibit A**; and

(b) Trustor has or will have good and marketable title to all Property subject only to such exceptions and conditions to title as Beneficiary has approved in its sole and absolute discretion (the "**Prior Approved Encumbrances**"); and

(c) Trustor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents; and

(d) This Deed of Trust creates a first and prior lien on fee interest the Property subject only to the Prior Approved Encumbrances; and

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements; and

(f) Trustor owns any Property which is personal property free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office; except with respect to junior indebtedness approved and permitted by Beneficiary; and

(g) The Property has frontage on and direct access for ingress and egress to streets; and

(h) Electric (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(i) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 Taxes and Assessments.

(a) Trustor shall cause Borrower to pay prior to delinquency all taxes, levies, charges and assessments, including assessments on a appurtenant water stock (individually and collectively, an "**Imposition**"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Beneficiary may require Trustor to present evidence that it has been paid in full, on ten (10) days' written notice by Beneficiary to Trustor. Notwithstanding the foregoing provisions of this Section, Trustor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may be reasonably required from time to time by Beneficiary; and provided further that if at any time payment of any obligation imposed upon Trustor by this **Section 5.2** becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Trustor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) If a taxes and insurance reserve account is not otherwise required pursuant to the terms of the Loan Agreement, then following an Event of Default (as such term is defined below), Trustor shall cause Borrower to pay monthly to Beneficiary an amount equal to one-twelfth (1/12th) of the annual cost of any real property taxes and any assessments constituting a lien on the Property, together with an amount equal to the estimated next premiums for hazard and other required insurance. These funds will be held by Beneficiary (and may be commingled with other funds of Beneficiary) without interest and will be released to Borrower for the benefit of Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

5.3 Reserved.

5.4 Liens, Charges, and Encumbrances. Trustor shall immediately discharge any lien on the Property that Beneficiary has not expressly consented to in writing. Trustor shall cause Borrower to pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. This Section is subject to any right granted to Borrower (and therefore, Trustor) in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements.

5.5 Damages and Insurance and Condemnation Proceeds.

(a) At all times, Trustor shall cause Borrower to provide, and maintain in force, and pay the cost of property, commercial general liability, and other types and forms of insurance coverage with respect to such Property or the Loan as may be required by Beneficiary in accordance with Beneficiary's insurance requirements as delivered to Borrower from time to time, including but not limited to the following:

(i) Property All-Risk Insurance. Each policy of insurance shall be in an amount, for a term and in a form and content acceptable to the Beneficiary, shall insure against such risks of loss or damage as are commonly covered by all risk extended coverage policies of insurance and such other risks as Beneficiary may from time to time designate for coverage under Trustor's/Borrower's policies, and shall be provided through such insurance companies, as may be satisfactory to Beneficiary, with loss payable to Beneficiary and shall, if required by Beneficiary, be delivered to and remain in the possession of Beneficiary as further security for the performance by Trustor under this Deed of Trust. Such policy of insurance shall include a Beneficiary's Loss Payable Endorsement or Mortgagee Clause in favor of and in form acceptable to the Beneficiary. The amount of such insurance shall in no event be less than (i) the original amount of the applicable Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser. Trustor hereby assigns to Beneficiary all unexpired premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Beneficiary upon acquisition by Beneficiary of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Beneficiary is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Beneficiary alone and not to Trustor and Beneficiary jointly. So long as Trustor is not in default under the Loan Documents, Trustor shall be entitled to participate in the adjustment or compromise of any insurance loss.

(ii) Commercial General Liability Insurance And Loss Of Income Insurance. The Trustor shall cause Borrower, at its sole expense, to purchase and

maintain commercial general liability insurance coverage for the ownership, maintenance and use of the Property. Beneficiary may require such policies to: (a) be no less than a minimum amount of \$1,000,000 per occurrence and Umbrella/Excess Liability insurance in no less than \$10,000,000 per occurrence; (b) insure against such risks of liability as are commonly covered by broad form commercial liability policies in general use for owners of properties similar to the Property and such other risks as Beneficiary may from time to time designate for coverage under Trustor's policies; (c) be provided through such insurance companies as may be satisfactory to Beneficiary; and (d) include the Beneficiary and its successors and assigns, as additional insured or additional loss payees. Beneficiary may further require that the Trustor cause Borrower to provide, and maintain in force, at Borrower's sole expense, loss of rental income insurance, loss of earnings insurance, business interruption insurance or other forms of coverage to protect the income or earnings of the Property, in form, coverage and liability amount acceptable to Beneficiary.

(iii) Other Insurance. Trustor shall, at its sole expense, obtain and maintain such additional insurance coverages as Beneficiary may from time to time require against other insurable hazards or risks, including but not limited to, environmental impairment liability coverage; provided that Beneficiary may only require coverage for risks not required by Beneficiary at origination of the Loan if such hazards or risks are commonly insured against, and provided such insurance is reasonably available, for property similarly situated, due regard being given to the height and type of any buildings, their construction, use and occupancy.

Trustor shall cause Borrower to promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Beneficiary with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by the Beneficiary, a policy form renewing or extending such expiring insurance shall be delivered to Beneficiary if Beneficiary requests delivery of such policies to it. In the event Trustor or Borrower fails to provide insurance complying with the provisions hereof, Beneficiary may, but without obligation so to do, without notice to the Trustor, without demand upon Trustor, without releasing Trustor from any obligation hereof, and without curing any default of Trustor, obtain insurance, in any amounts determined by Beneficiary, through or from any insurance agency or insurer or insurance underwriter acceptable to Beneficiary, and pay the premium therefor, and Beneficiary by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto and any information concerning the Loan, Trustor, or the Property. Trustor hereby assigns to Beneficiary its interest, if any, in all insurance proceeds from each and every kind of insurance obtained by Trustor or Borrower related to the Property, including without limitation, all proceeds from insurance not specifically required by Beneficiary at the origination of the Loan or thereafter but which may be carried by Trustor from time to time with respect to the Property or the ownership, operation or income thereof, including, without limitation, earthquake insurance. If at any time Trustor obtains insurance related to the Property or the ownership, operation or income thereof, which is not specifically required by Beneficiary, including, without limitation, earthquake insurance, then Trustor shall nevertheless include

Beneficiary and its successors and assigns as additional insureds or additional loss payees thereto.

(b) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments, and rights to payment:

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) All interest which may accrue on any of the foregoing.

(c) Trustor shall immediately notify Beneficiary in writing if:

(i) Any damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

(ii) Any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(d) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Beneficiary may make any compromise or settlement of the action or proceeding with respect to its rights and interests. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(e) All proceeds of these assigned claims and all other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds (the "**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work of repair or reconstruction shall all be reasonably acceptable to Beneficiary; and

(ii) The Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) shall be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(iii) Unless otherwise agreed to by Beneficiary, Beneficiary shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, (1) all non-residential leases acceptable to Beneficiary will continue (or a replacement therefor reasonably satisfactory to Beneficiary immediately commences); (2) the Property will continue to operate in substantially the same manner, and will generate the same debt service coverage as immediately before the damage or condemnation occurred; and (3) the Property will be at least as valuable as it was immediately before the damage or condemnation occurred; and

(iv) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the applicable Note; and

(v) No Event of Default shall have occurred, and no event that, with the giving of notice or the passage of time, would be an Event of Default shall have occurred and be continuing under this Deed of Trust, the Notes, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds, and any funds which Trustor is required to provide, in an interest-bearing account and shall disburse them to Trustor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free; provided, however, if requested by Trustor, Beneficiary shall make partial progress payments of Net Claims Proceeds from time to time, provided that (1) such shall not be more frequently or for smaller amounts than Beneficiary approves in its sole and absolute discretion, (2) for each such disbursement, Beneficiary shall receive a disbursement request package including a written draw request, all in form and substance and containing such items, acceptable to Beneficiary in its sole and absolute discretion, together with such information and documentation relating thereto as Beneficiary requests to evidence the progress of construction and payment and lien releases relating thereto, all as determined by Beneficiary in its sole and absolute discretion. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary in its sole and absolute discretion may choose.

(f) Trustor hereby specifically, unconditionally, and irrevocably waives all rights of a property owner granted under any applicable laws or judicial decisions which provide for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

5.6 Surety Bond Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a "**Surety Bond**") related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Beneficiary.

(b) Trustor shall immediately notify Beneficiary in writing of:

(i) Any default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Beneficiary may make any compromise or settlement of any such action or proceeding.

(d) All proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Trustor may receive or be entitled to, shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If Trustor desires to use the balance of such proceeds (the "**Net Bond Proceeds**") to pay the costs of completing all or a part of the construction of certain of the Improvements, and each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Beneficiary, any replacement payment and performance bond for the construction work, shall all be acceptable to Beneficiary; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Beneficiary shall have approved any replacement contractor(s); and

(iii) Beneficiary shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract; and

(iv) The Net Bond Proceeds shall be sufficient in Beneficiary's determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of such construction; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the applicable Note; and

(vi) No Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred, and no event that, with the giving of notice or the passage of time, would be an Event of Default shall have occurred and be continuing under this Deed of Trust, the Notes, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Bond Proceeds, and any funds which Trustor is required to provide, in a non-interest-bearing account and shall disburse them to Trustor to pay costs of construction upon presentation of evidence reasonably satisfactory to Beneficiary that the construction has been completed satisfactorily and lien-free. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Bond Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary in its sole and absolute discretion may choose.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Beneficiary, including the letter of credit to be provided by the Contractor and held jointly by Borrower and Citicorp North America, Inc., as Bondowner Representative, the terms of such Surety Bond shall control.

5.7 Maintenance and Preservation of Property.

(a) Trustor shall cause Borrower to insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall cause Borrower to promptly and completely repair and/or restore the Property in a good and

workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under **Section 5.5** above.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Documents.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Documents as waste that arise out of Hazardous Materials (defined in the Loan Documents).

(f) Trustor shall cause Borrower to perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Trustor's interest in the Property is a leasehold interest, Trustor shall observe and perform all obligations of Trustor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Trustor shall preserve and protect such leasehold estate and its value.

(h) If any part of the Property is agricultural, except as otherwise set forth in the Loan Agreement or any other Loan Document, Trustor shall cause Borrower to (i) keep all trees, vines, and crops on the Property properly cultivated, irrigated, fertilized, sprayed, and fumigated, (ii) shall replace all dead or unproductive trees or vines with new ones, (iii) shall prepare for harvest, harvest, remove, and sell any crops growing on the Property, and (iv) shall keep and maintain all buildings, fences, ditches, canals, wells and other farming improvements on the Property in first class condition, order, and repair.

(i) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Trustor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Trustor's non-performance. Trustor irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Trustor under any such easement, right of way, or agreement.

5.8 Trustee's Acceptance of Trust. Trustee accepts this trust when this Deed of Trust is recorded.

5.9 Releases, Extensions, Modifications, and Additional Security.

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation;
or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) Alter, substitute or release any property securing the Secured Obligations.

(b) From time to time, when requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Consent to the making of any plat or map of the Property or any part of it; or

(ii) Join in granting any easement or creating any restriction affecting the Property; or

(iii) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(iv) Reconvey the Property or any part of it without any warranty.

5.10 Reconveyance. When all of the Secured Obligations have been paid and performed in full, and no further commitment to extend credit continues under the Secured Obligations, Beneficiary shall request Trustee in writing to reconvey the Property, and shall surrender this Deed of Trust and all notes and instruments evidencing the Secured Obligations to Trustee. When Trustee receives Beneficiary's written request for reconveyance and all fees and other sums owing to Trustee by Trustor under **Section 5.11** below, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. Such person or persons shall pay any costs of recordation. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness absent manifest error. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.11 Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance (full or partial). Trustor shall

also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses, and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under **Section 6.3** below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Beneficiary and/or Trustee), costs of any Foreclosure Sale (as defined in **Section 6.3(i)** below) and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Foreclosure Sale, Trustor shall pay all costs, expenses, or other advances that may be incurred or made by Trustee or Beneficiary in each of such Foreclosure Sales.

(b) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; or

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or

(iii) Any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property;

(iv) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in operating or managing the Property, after an Event of Default, unless the loss is caused solely by the gross negligence or willful misconduct of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Trustee and Beneficiary harmless, for, from, and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses, excepting those arising out of, or resulting, solely from Beneficiary's or Trustee's, as the case may be, gross negligence or willful misconduct, which either may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law; or

(ii) Because of any failure of Trustor to perform any of Trustor's obligations; or

(iii) Because of any alleged obligation of or undertaking by Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or reconveyance of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section immediately upon written demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the applicable Note, and shall bear interest from the date the obligation arises at the Default Rate (as such term is defined in such Note), or if no Default Rate is specified, at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof. If the instrument or agreement evidencing the Secured Obligations does not state a rate of interest, interest shall accrue at the rate of ten percent (10%) per annum.

5.12 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.13 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.14 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals. In addition, the Indemnified Parties (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation, or testing by any Indemnified Party be a representation that Hazardous Materials (as such term is defined in the Loan Documents) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Materials or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation, or testing by any Indemnified Party. The Indemnified Parties owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Materials or any other adverse condition affecting the Property. The

Indemnified Parties may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the Indemnified Parties. Trustor understands and agrees that the Indemnified Parties make no representation or warranty to Trustor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Trustor also understands that, depending on the results of any site visit, observation, or testing by any Indemnified Party which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results and that such reporting requirements are site-specific and are to be evaluated by Trustor without advice or assistance from the Indemnified Parties. Any Indemnified Party shall give Trustor reasonable notice before entering the Property. Such Indemnified Party shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section.

5.15 Notice of Change. Trustor shall give Beneficiary prior written notice of any change in: (a) the location of Trustor's place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Trustor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Land and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease not expressly permitted under this Deed of Trust or the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law, or otherwise. If Trustor is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of any member, termination of the limited liability company, or any transfer or transfers of, in the aggregate, more than forty-nine percent (49%) of the voting power or, in the aggregate, more than forty-nine percent (49%) of the ownership interests in Trustor. Notwithstanding the foregoing, the transfer of the membership interest in Trustor held by Wachovia Affordable Housing Community Development Corporation, a North Carolina corporation ("**Investor Member**") to an entity that controls, is controlled by, or is under common control with Investor Member, upon written notice to Beneficiary, shall not constitute an "Accelerating Transfer" and shall not require the consent of the Beneficiary.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill, and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, other than a transfer allowed pursuant to the express terms of the Loan Agreement as described in **Section 6.1(c)** below, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, Beneficiary

in its sole and absolute discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by **Section 6.3** below. Trustor acknowledges the materiality of the provisions of this **Section 6.1** as a covenant of Trustor, given individual weight and consideration by Beneficiary in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Beneficiary's interest in the Property and be deemed a breach of the foregoing covenant.

(c) Notwithstanding anything to the contrary contained herein, the Investor Member shall be permitted to remove a member or manager thereof for cause in accordance with the Operating Agreement (as defined in the Draw Agreement) without the consent of the Beneficiary so long as, concurrently therewith, the replacement member or manager is approved by Beneficiary or is not subject to the approval of Beneficiary pursuant to this paragraph. If the Investor Member exercises its right to remove the Related Member or Manager, the Beneficiary's consent shall not be required if the Investor Member or an entity that controls, is controlled by or is under common control with the Investor Member is the substitute Related Member or Manager. Substitution of any other person or entity as a member or manager shall be subject to the prior written consent of the Beneficiary in its sole discretion. Notwithstanding the foregoing, notice of any removal and substitution shall be promptly given to Beneficiary and the substitute Related Member or Manager shall assume all of the rights and obligations of the removed Related Member or Manager (as applicable under all of the Loan Documents and a copy of any amendment to the Operating Agreement shall be promptly submitted to Beneficiary).

6.2 Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "**Events of Default**;" any one singly, an "**Event of Default**");

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure either within fifteen (15) days (the "**Initial Cure Period**") after written notice from Beneficiary or Trustee, or within thirty (30) days after such written notice, so long as Trustor begins within the Initial Cure Period and diligently continues to cure the failure, and Beneficiary, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

(c) A default or Event of Default (as such term is defined in the applicable document, subject to any applicable notice and cure periods) occurs under any of the Secured Obligations; or

(d) A default or Event of Default (as such term is defined in the applicable document, subject to any applicable notice and cure periods) is declared under the Loan Agreement or any other Loan Document; or

(e) Trustor makes or permits the occurrence of an Accelerating Transfer in violation of **Section 6.1** above; or

(f) Any representation or warranty made or given by Trustor in this Deed of Trust proves to be false or misleading in any material respect; or

(g) Any default occurs under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Deed of Trust, including, without limitation, the Subordinate Loan Documents (as defined in the Loan Agreement) subject to any applicable notice and cure periods.

6.3 Remedies. Except as otherwise expressly set forth in the Loan Agreement or any other Loan Document, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) **Acceleration.** Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) **Receiver.** Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) **Entry.** Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and/or, if applicable, preparing for harvest, harvesting and selling any crops that may be growing on the property. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. The appointment granted in this **Section 6.3(c)** shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust, or any other Loan Document, Beneficiary shall not be considered to have accepted any property other than cash or

immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with Utah Uniform Commercial Code Section 70A-9a-620, as it may be amended or recodified from time to time. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 6.3(d) either with or without giving notice to any person.

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Utah Uniform Commercial Code.

(f) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. If Beneficiary brings such an action, Trustor agrees to pay Beneficiary's attorneys' fees (including the allocated costs of in-house counsel) and court costs as determined by the court (but not the jury).

(g) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

A. For purposes of this power of sale, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the Utah Uniform Commercial Code, including any public or private sale, or in any manner

permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

B. In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Trustor agrees that the following procedures constitute a commercially reasonable sale. Beneficiary shall mail written notice of the sale to Trustor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Trustee's Sales of Real Property or Mixed Collateral.

A. Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 70A-9a-604 Utah Uniform Commercial Code. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with Utah Uniform Commercial Code Section 70A-9a-604, will sometimes be referred to as a "**Trustee's Sale.**"

B. Before any Trustee's Sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that sale.

C. At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or

implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrancers for value and without actual notice, that all requirements of this Deed of Trust and all requirements of law were met relating to the exercise of the power of sale and the Trustee's Sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary.

(h) **Attorney-in-Fact.** Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact following an Event of Default and during the continuance thereof to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Deed of Trust; and (2) in connection with taking the measures described in this Section, including endorsement of Trustor's name on any instruments.

(i) **Single or Multiple Foreclosure Sales.** Beneficiary may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted in **Section 6.3(g)** above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**;" any two or more, "**Foreclosure Sales**"). If the Property consists of more than one lot, parcel or item of property, Trustor may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Trustor, Trustee, or Beneficiary, may bid for and acquire the Property or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action, and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under **Section 5.11** above; and

(b) Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Beneficiary and Trustee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but not limited to, trustee's fees and reasonable attorneys' fees, the costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under **Section 5.11** above; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or, if permitted or required by applicable law, to the clerk of the District Court of the county in which the Trustee's Sale took place.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Trustee's Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Beneficiary, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Beneficiary in its sole and absolute discretion may choose.

6.6 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums, other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under this **Section 6**, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it. Beneficiary shall have no liability for any funds which it does not actually receive.

7. Environmental. "Hazardous Material" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601 et seq., as amended or hereafter amended; (ii) "hazardous wastes," as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sec. 6902 et seq., as amended or hereafter amended; (iii) any pollutant or contaminant or hazardous,

dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive materials, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sec. 2011 et seq., as amended or hereafter amended; (vi) asbestos or asbestos-containing materials in any form or condition; and (vii) mold. **“Remedial Work”** means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Environmental Laws (as hereinafter defined), (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Environmental Laws, or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Environmental Laws or the presence of any Hazardous Material on, under or near the Property (collectively **“Claim”**).

7.1 Environmental Representations, Warranties And Covenants. Trustor (also referred to herein as **“Indemnitor”**) represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof:

(a) The Property (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, from and after the date of this Security Instrument will be in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified above, all as amended and modified from time to time (collectively, **“Environmental Laws”**). All Hazardous Materials generated or handled on the Property from and after the date of this Deed of Trust will be stored and disposed of in a lawful manner. The Indemnitor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Property, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(b) No generation, manufacture, storage, use, handling, treatment, transportation or disposal of Hazardous Material has occurred as a result of the presence or disposal of Hazardous Materials or is occurring on or from the Property. No Hazardous Material shall be introduced to or handled on the Property. No environmental or public health or safety hazards currently exist as a result of the presence or disposal of Hazardous Materials with respect to the Property or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) have ever been or are present on or under the Property.

(c) There have been no past, and there are no pending or to Trustor's knowledge threatened: (i) actions or proceedings by any governmental agency or any other entity

regarding public health risks or the environmental condition of the Property, or the disposal or presence of Hazardous Materials, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notice of noncompliance or other proceedings of any kind relating to Hazardous Materials or Environmental Laws that could impair the value of the Property, or the priority of the Beneficiary's mortgage lien. The Indemnitor shall immediately notify the Beneficiary and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Property or compliance with Environmental Laws. The Indemnitor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the extent required by applicable law. The Indemnitor shall keep the Property free of any lien imposed pursuant to any Environmental Laws.

(d) The Indemnitor shall provide such information and certifications, which the Beneficiary may reasonably request from time to time to ensure the Indemnitor's compliance with Trustor's obligations under this Deed of Trust. To investigate the Indemnitor's compliance with Environmental Laws and with this Deed of Trust, the Beneficiary shall have the right, but no obligation, at any time and from time to time to enter upon the Property, take samples, review books and records of the Indemnitor, interview the employees and officers of the Indemnitor, and conduct similar activities. The Indemnitor shall cooperate in the conduct of such an audit. No inspection or failure to inspect the Property by Beneficiary shall impose any liability upon Beneficiary for the discovery, failure to discover, evaluation, or remediation of any Hazardous Material that may exist on or affecting the Property. Beneficiary shall not be liable or responsible for any loss, damage, injury or liability to the Property or to any persons or property thereon arising from any entry or inspection by Beneficiary pursuant to this paragraph, except only for any loss, damage, injury or liability which is caused solely by the gross negligence of Beneficiary (which for purposes of this Deed of Trust shall mean an action taken by Beneficiary with reckless disregard of the consequences thereof), provided that in no event shall Beneficiary be liable under any circumstances for any consequential damages suffered by Trustor or any other person or entity.

The Beneficiary is entitled to rely upon the Indemnitor's representations and warranties contained herein despite any independent investigations by the Beneficiary or its consultants. The Indemnitor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Property and shall have no right to rely upon any environmental investigations or findings made by the Beneficiary or its consultants.

7.2 Remedial Work. As soon as possible, but no later than sixty (60) days after receipt by Indemnitor of any Claim, Indemnitor shall perform or cause others qualified to do so to commence and/or perform any and all necessary Remedial Work in response to any Claim. Subject to the terms of any leases and applicable laws, in response to Indemnitor's knowledge of the presence of any Hazardous Material on or under the Property or real property immediately adjacent to the Property, Indemnitor shall immediately perform or cause tenants to immediately perform all Remedial Work. All Remedial Work shall be performed by contractors approved by Beneficiary and in accordance with all applicable Environmental Laws and any other applicable laws, rules, regulations, or orders. All costs and expenses of any Remedial Work shall be paid by Indemnitor, it being understood that Beneficiary shall incur no cost, expense or liability in connection with any Remedial Work. Beneficiary shall have the right, but no obligation, to join

and participate in, as a party if it so elects at Beneficiary's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims, provided, however, Indemnitor shall reimburse Beneficiary for its attorneys' fees and costs incurred if such participation is deemed reasonably necessary by Beneficiary to protect its security interest in the Property.

7.3 Environmental Indemnification. The term "**Beneficiary's Environmental Liability**" shall mean any losses, liabilities, obligations, penalties, claims, litigation demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against the Beneficiary in connection with or arising from: (a) any Hazardous Material, on, in, under or affecting all or any portion of the Property, the groundwater, or any surrounding areas; (b) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to herein; (c) any violation or claim of violation relating to or affecting the Property by the Indemnitor or any third party of any Environmental Laws; (d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material; (e) any claim by the Indemnitor against the Beneficiary under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted; or (f) any actions taken by Beneficiary to enter and inspect the property or to appoint a receiver for Trustor or the Property.

7.4 Indemnify And Defend. The Indemnitor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Beneficiary and at the Indemnitor's sole cost) and hold the Beneficiary free and harmless from and against the Beneficiary's Environmental Liability. The indemnification provided for in this paragraph shall specifically apply to and include any Beneficiary's Environmental Liability in connection with the exercise of Beneficiary's rights (a) to enter and inspect the Property including, without limitation, the cost of repair of any physical injury to the Property caused by such entry and inspection, (b) to appoint a receiver for Trustor or the Property, including, without limitation, costs to determine the value of the Property and to establish the degree to which the Property may be environmentally impaired. It is expressly understood and agreed that to the extent that the Beneficiary is strictly liable under any Environmental Laws, the Indemnitor's obligation to the Beneficiary under this indemnity shall likewise be without regard to fault on the part of the Indemnitor with respect to the violation or condition which results in liability to the Beneficiary.

7.5 Secured Obligations; Survival. Indemnitor's obligations hereunder shall be secured by this Deed of Trust for so long as this Deed of Trust shall remain a lien upon the Property, provided, however, that any termination of the lien of this Deed of Trust shall not terminate or otherwise affect Indemnitor's obligations hereunder and Indemnitor's obligations hereunder shall survive (i) any foreclosure, deed in lieu of foreclosure or reconveyance of this Deed of Trust, (ii) any sale or other transfer of the Property by either Indemnitor or Beneficiary, and (iii) repayment of the Loan. The rights of Beneficiary under the environmental provisions in this Deed of Trust shall be in addition to any other rights and remedies of Beneficiary against Indemnitor under any other document or instrument now or hereafter executed by Indemnitor, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights. The

obligations of Indemnitor hereunder shall be personal to each Indemnitor and their respective representatives, administrators, executors, successors and assigns, and shall not run, and shall not be deemed to run, with the land.

8. Non-Borrower Trustor Provisions

8.1 Conditions to Exercise of Rights. Trustor hereby waives any right it may now or hereafter have to require Beneficiary, as a condition to the exercise of any remedy or other right against Trustor hereunder or under any other document executed by Trustor in connection with any Secured Obligation: (a) to proceed against any Borrower or other person, or against any other collateral assigned to Beneficiary by Trustor or any Borrower or other person; (b) to pursue any other right or remedy in Beneficiary's power; (c) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or any collateral (other than the Property) for any Secured Obligation.

8.2 Defenses. Trustor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purposes represented to Trustor by any Borrower or otherwise intended or understood by Trustor or any Borrower; (d) any act or omission by Beneficiary which directly or indirectly results in or contributes to the release of any Borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than this Deed of Trust) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (f) any failure of Beneficiary to marshal assets in favor of Trustor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Beneficiary; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Beneficiary to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Beneficiary, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Trustor further waives any and all rights and defenses that Trustor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Subject to Section 14 hereof Beneficiary may collect from Trustor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Beneficiary forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Beneficiary may collect from Trustor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Trustor

may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Trustor may have because Borrower's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Trustor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Trustor. Notwithstanding the foregoing, Trustor does not waive any rights it may have (i) in connection with statutes of limitations or (ii) under the 1963 Government Code Tort Claims Act.

8.3 Subrogation. Trustor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Trustor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Beneficiary with respect to any Secured Obligation.

8.4 Borrower Information. Trustor warrants and agrees: (a) that Beneficiary would not make the Loan but for this Deed of Trust; (b) that Trustor has not relied, and will not rely, on any representations or warranties by Beneficiary to Trustor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Property; (c) that Trustor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (d) that Trustor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (e) that, other than as set forth in that certain Subordination Agreement of even date herewith by and among Borrower, Beneficiary and Authority, Beneficiary shall have no duty to disclose or report to Trustor any information now or hereafter known to Beneficiary with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (f) that Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

8.5 Reinstatement of Lien. Beneficiary's rights hereunder shall be reinstated and revived, and the enforceability of this Deed of Trust shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Beneficiary is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.

8.6 Subordination. Until all of the Secured Obligations have been fully paid and performed: (a) Trustor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Trustor (collectively, the "**Subordinated Debt**") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; and (b) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Trustor after a default by Trustor hereunder or by Borrower under the Loan Agreement, such payment or distribution shall be held in trust and immediately paid over to Beneficiary, is hereby assigned to Beneficiary as security for the Secured

Obligations, and shall be held by Beneficiary in an interest bearing account until all Secured Obligations have been fully paid and performed.

8.7 Intentionally Omitted.

8.8 Lawfulness and Reasonableness. Trustor warrants that all of the waivers in this Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Trustor may destroy or impair rights which Trustor would otherwise have against Beneficiary, Borrower and other persons, or against collateral. Trustor agrees that all such waivers are reasonable under the circumstances.

8.9 Enforceability. Trustor hereby acknowledges that: (a) the obligations undertaken by Trustor in this Deed of Trust are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Beneficiary's consideration for entering into this transaction, Beneficiary has specifically bargained for the waiver and relinquishment by Trustor of all such defenses, and (d) Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Trustor does hereby represent and confirm to Beneficiary that Trustor is fully informed regarding, and that Trustor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Trustor, and (iv) the legal consequences to Trustor of waiving such defenses. Trustor acknowledges that Trustor makes this Deed of Trust with the intent that this Deed of Trust and all of the informed waivers herein shall each and all be fully enforceable by Beneficiary, and that Beneficiary is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

8.10 Disclosure of Information; Participations. Trustor understands and agrees that Beneficiary may elect, at any time, to sell, assign, or participate all or any part of Beneficiary's interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Beneficiary with respect to: (a) the Property and Collateral and its operation; (b) any party connected with the Loan (including, without limitation, the Trustor, the Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Beneficiary may have with any party connected with the Loan.

8.11 Arbitration

(a) **Arbitration.** Upon the demand of any party, any dispute shall be resolved by binding arbitration (except as set forth herein below) in accordance with the terms of this Deed of Trust. A "**Dispute**" shall mean any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to, this Deed of Trust and each other document, contract and instrument required hereby or now or hereafter delivered to

Beneficiary in connection herewith, or any past, present or future extensions of credit and other activities, transactions or obligations of any kind related directly or indirectly to any of the foregoing documents, including without limitation, any of the foregoing arising in connection with the exercise of any self-help, ancillary or other remedies pursuant to any of the foregoing documents. Any party may by summary proceedings bring an action in court to compel arbitration of a Dispute. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute.

(b) **Governing Rules.** Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other administrator as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. All Disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the foregoing documents. The arbitration shall be conducted at a location in Utah selected by the AAA or other administrator. If there is any inconsistency between the terms hereof and any such rules, the terms and procedures set forth herein shall control. All statutes of limitation applicable to any Dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to matters directly relevant to the Dispute being arbitrated. Judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction; provided however, that nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under Section 91 of Title 12 of the United States Code or any similar applicable state law.

(c) **No Waiver; Provisional Remedies, Self-Help and Foreclosure.** No provision hereof shall limit the right of any party to exercise self-help remedies such as setoff, foreclosure against or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies, including without limitation, injunctive relief, sequestration, attachment, garnishment or the appointment of a receiver from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of any such remedy shall not waive the right of any party to compel arbitration or reference hereunder.

(d) **Arbitrator Qualifications and Powers; Awards.** Arbitrators must be active members of the Utah State Bar or retired judges of the state or federal judiciary of Utah, with expertise in the substantive law applicable to the subject matter of the Dispute. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (i) shall resolve all Disputes in accordance with the substantive law of the State of Utah, (ii) may grant any remedy or relief that a court of the State of Utah could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award, and (iii) shall have the power to award recovery of all costs and fees, to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Utah Rules of Civil Procedure or other applicable law. Any Dispute in which the amount in controversy is \$5,000,000 or less shall be decided by a single arbitrator who shall not render an award of greater than \$5,000,000 (including damages, costs, fees and expenses). By submission to a single arbitrator, each party expressly waives any right or claim to recover more than \$5,000,000. Any Dispute in which the amount in controversy exceeds \$5,000,000 shall be decided by majority vote of a panel of three

arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations.

(e) **Judicial Review.** Notwithstanding anything herein to the contrary, in any arbitration in which the amount in controversy exceeds \$25,000,000, the arbitrators shall be required to make specific, written findings of fact and conclusions of law. In such arbitrations (i) the arbitrators shall not have the power to make any award which is not supported by substantial evidence or which is based on legal error, (ii) an award shall not be binding upon the parties unless the findings of fact are supported by substantial evidence and the conclusions of law are not erroneous under the substantive law of the State of Utah, and (iii) the parties shall have in addition to the grounds referred to in the Federal Arbitration Act for vacating, modifying or correcting an award the right to judicial review of (1) whether the findings of fact rendered by the arbitrators are supported by substantial evidence, and (2) whether the conclusions of law are erroneous under the substantive law of the State of Utah. Judgment confirming an award in such a proceeding may be entered only if a court determines the award is supported by substantial evidence and not based on legal error under the substantive law of the State of Utah.

(f) **Real Property Collateral.** Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Utah, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

(g) **Miscellaneous.** To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the foregoing documents or the subject matter of the Dispute shall control. This Deed of Trust may be amended or modified only in writing signed by Beneficiary and Trustor. If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust. This arbitration provision shall survive termination, amendment or expiration of any of the foregoing documents or any relationship between the parties.

8.12 Integration; Interpretation. This Deed of Trust and the other Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. This Deed of Trust and the other Loan Documents shall not be modified except by written

instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing.

8.13 Accommodation Instrument. Beneficiary acknowledges and agrees that this Deed of Trust is an accommodation only and that, as of the date of its making, Trustor does not have physical possession of the Property and does not own the Improvements. Accordingly, with respect to any covenant of this Deed of Trust the performance of which reasonably requires physical possession of the Property or ownership of the Improvements, Trustor shall have no obligation therefor unless and until Trustor possesses the Property or owns the Improvements, as applicable. Furthermore, notwithstanding anything to the contrary in this Deed of Trust, neither Trustor nor any elected official, officer, employee, attorney or other agent of Trustor shall be personally liable for the payment of any sums required to be paid under this Deed of Trust or under the Loan Agreement, the Notes or any other agreement the obligations under which are secured by this Deed of Trust. The liability of Trustor or any elected official, officer, employee, attorney, or other agent of Trustor for any failure to pay any amounts due hereunder shall be limited to, and be satisfied solely out of, the Property. Beneficiary shall have the right, in the event of nonperformance or nonpayment of any obligation contained in or secured by this Deed of Trust, to perform or pay or advance such obligation on Trustor's behalf and include any amounts expended by Beneficiary in such performance, payment or advance in the Secured Obligations hereunder. If a Default shall occur hereunder, Beneficiary shall have the right to foreclose this Deed of Trust and to include any such amounts in its credit bid at foreclosure, but Trustor shall not be obligated to pay or reimburse any such amount or for any deficiency judgment as a result of nonpayment of any such amount.

9. Miscellaneous Provisions.

9.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and certain of them contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property.

9.2 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. In the event of reinstatement of the Secured Obligations after an Event of Default in accordance with applicable law, Trustee shall record a Cancellation of Notice of Sale. Reinstatement of an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Beneficiary to declare other Events of Default or the right to cause Trustee to record a Notice of Sale, nor otherwise affect this Deed of Trust or any of the Loan Documents, or any of the rights, obligations, or remedies of Beneficiary or Trustee under this Deed of Trust or any of the Loan Documents.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default, or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee, or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Beneficiary, its agent, or a receiver takes possession of all or any part of the Property in the manner provided this Deed of Trust; or

(ii) Beneficiary collects and applies Rents and enforces any Lease provision as permitted under **Section 2.3** and **Section 6.6** above, either with or without taking possession of all or any part of the Property; or

(iii) Beneficiary receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under **Section 5.5** above; or

(iv) Beneficiary makes a site visit, observes the Property, and/or conducts tests as permitted under **Section 5.14** above; or

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations; or

(vi) Beneficiary, Trustee, their agent, or any receiver performs any act which it is empowered or authorized to perform, or invokes any right or remedy provided under this Deed of Trust.

9.3 Powers of Beneficiary and Trustee.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If either Beneficiary or Trustee performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by **Section 5.9** or **Section 6.3(d)** above, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to

grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Beneficiary may take any of the actions permitted under **Section 6.3(b)** and/or **Section 6.3(c)** above, regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(d) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming, or approving acts in executing this trust and enforcing such rights and remedies.

9.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

9.5 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

9.6 Governing Law. This Deed of Trust is governed by the laws of the State of Utah, without regard to the choice of law rules of that state.

9.7 Successors in Interest. The terms, covenants, and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, and permitted successors, and assigns of the parties. However, this **Section 9.7** does not waive the provisions of **Section 6.1** above.

9.8 Statute of Limitations. To the extent not expressly prohibited by law, Trustor hereby waives the right to plead the statute of limitations as a defense to any and all obligations secured by this Deed of Trust.

9.9 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the recorder(s) of the county or counties where the Land and the Improvements are situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

9.10 Time of Essence. Time is of the essence of this Deed of Trust.

9.11 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed, and contingent obligations. It further includes all principal, interest, prepayment fees, late charges, loan fees, and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items, or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated by reference in this Deed of Trust.

(d) No course of prior dealing, usage of trade, or parol or extrinsic evidence of any nature shall be used to supplement, modify, or vary any of the terms hereof.

9.12 In-House Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

9.13 Waiver of Marshaling. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

9.14 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN ANY JUDICIAL ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE LOAN OR THE LOAN DOCUMENTS, INCLUDING ANY ACTION OR PROCEEDING INVOLVING A CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO REQUEST OR DEMAND A TRIAL BY JURY. VENUE FOR ANY ACTION RELATED TO THE LOAN OR LOAN DOCUMENTS SHALL BE IN AN APPROPRIATE COURT IN UTAH SELECTED BY BONDOWNER REPRESENTATIVE TO WHICH BORROWER HEREBY CONSENTS OR TO AN APPROPRIATE COURT IN ANOTHER VENUE HAVING JURISDICTION OVER THE PARTIES SELECTED BY BONDOWNER REPRESENTATIVE TO WHICH BORROWER ALSO HEREBY CONSENTS..

9.15 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust, except that if such provision relates to the payment

of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

9.16 Notices. All notices, requests, demands or other communications to the respective parties hereto (unless otherwise expressly stipulated in any of the Loan Documents) shall be deemed to have been duly given or made if addressed as follows:

If to Beneficiary, to: Utah Housing Corporation
2479 Lake Park Blvd.
West Valley City, UT 84120

with a copy to: Citicorp North America, Inc.
12501 Lakefront Place
Louisville, KY 40299
Attention: Douglas Leezer

with a copy to: Citicorp North America, Inc.
Citibank Community Development
701 East 60th Street North, MC 1126
Sioux Falls, SD 57117
Attention: Dawn Bagley
Loan Administrator
Loan Number: 10 7001985 (Tax-Exempt)
10 7008055 (Taxable)

If to Trustor, to: c/o Cowboy Partners, L.C.
6440 S. Wasatch Boulevard, Suite 100
Salt Lake City, UT 84115
Attention: Mark Cornelius

with a copy to: Poole & Associates, L.C.
4543 South 700 East, Suite 200
Salt Lake City, UT 84107
Attention: Dennis K. Poole

If to Investor Member, to: Wachovia Affordable Housing
Community Development Corporation
301 South College Street, TW-17
Charlotte, NC 28288-0173
Attention: Michael Loose

with a copy to: John Simon, Esq.
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

and a copy to: James F. Powers, Esq.
Senior Vice President and

W02-WEST:ICTLD400025290.3

-40-

Assistant General Counsel
Wachovia Corporation
One Wachovia Center, TW-31
301 South College Street
Charlotte, NC 28288

or to such other address or such other person as either party may from time to time hereafter specify to the other in writing delivered in the manner provided herein. Any notice, request, demand or other communication to be given or made hereunder may (except to the extent otherwise required by law) be given or made by registered or certified U.S. mail, return receipt requested with postage prepaid, or by personal service (including service by a reputable overnight courier service, such as FedEx, DHL or other comparable courier). Unless otherwise expressly stipulated in this Agreement, notices shall be deemed to have been given or made, (i) in the case of notice by mail on the earlier of the receipt date reflected on the return receipt or three (3) calendar days after deposit in the U.S. mails, and (ii) in the case of delivery by courier, by the execution by the addressee of the courier's delivery receipt. The address provided above for Trustor is also the mailing address of Trustor as debtor under the Utah Uniform Commercial Code. Beneficiary's address given above is the address for Beneficiary as secured party under the Utah Uniform Commercial Code.

9.17 Extended Use Agreement. Beneficiary acknowledges that Borrower and the Credit Agency intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "**Code**"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income housing unit or increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement requirements by the Credit Agency is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

9.18 Notwithstanding any provision in this Deed of Trust or any other Loan Document to the contrary, Beneficiary will give the Investor Member a copy of any notice given by Beneficiary to Borrower regarding a "Default" or "Event of Default" and will give the Investor Member the same opportunity to cure such Default or Event of Default as is given Trustor under this Deed of Trust or the other Loan Documents. Investor Member shall have the right, but not the obligation, to cure defaults within the time periods provided to Trustor herein. With respect to any right of cure provided herein, performance of a cure by Investor Member shall have the same effect as would like performance by Trustor. Beneficiary shall not, under any circumstances, incur any liability as a result of Investor Member not receiving any notice, for any reason, including for reason of Beneficiary's failure to provide such notice, provided, however, if requested by Investor Member, Beneficiary shall send (or re-send) such notice to Investor Member as requested. The failure of Investor Member to receive a notice shall in no way extend any cure period set forth in any Loan Document, or limit, diminish, delay, or affect in any way Beneficiary's rights or remedies under the Loan Documents. Nothing herein is intended to modify any covenant, term or condition contained in the Loan Documents. It shall be the obligation of Trustor and Investor Member to provide and update their addresses for


notice purposes hereunder and Beneficiary shall have no duty to verify the accuracy or completeness of such information.

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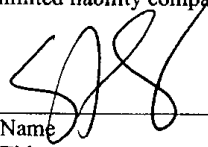
IN WITNESS WHEREOF, Trustor has executed this Deed of Trust the date first above written.

"TRUSTOR"

TRIPLE S INVESTMENTS CO., LLC,
a Utah limited liability company

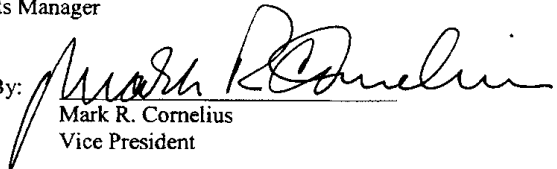
By: 
Name _____
Title _____

SCS CLOCKTOWER, L.L.C.,
a Utah limited liability company

By: 
Name _____
Title _____

CPLC PROPERTIES, LLC,
a Utah limited liability company

By: Cowboy Partners, L.C.,
a Utah limited liability company
its Manager

By: 
Mark R. Cornelius
Vice President

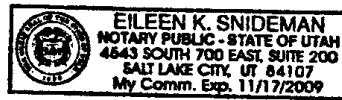
STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On OCTOBER 19, 2006, before me, EILEEN K. SNIDEMAN,
Notary Public, personally appeared BOYD ANDERSON.

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Eileen K. Snideman



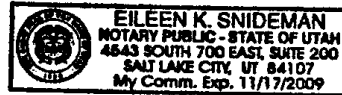
STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On OCTOBER 19, 2006, before me, EILEEN K. SNIDEMAN,
Notary Public, personally appeared SCOT C. SAFFORD.

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Eileen K. Snideman



STATE OF UTAH)
)
COUNTY OF SALT LAKE)

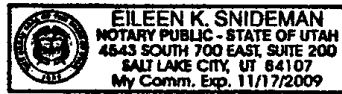
On OCTOBER 18, 2006, before me, EILEEN K. SNIDEMAN,

Notary Public, personally appeared MARK R. CORNELIUS,

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Eileen K. Snideman



STATE OF UTAH)
)
COUNTY OF _____)

On _____, 2006, before me, _____,

Notary Public, personally appeared _____,

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit "A"

Property Description

Lot 4, HIGBURY COMMONS AT LAKE PARK SUBDIVISION, West Valley City, Utah,
according to the official plat thereof on file and of record in the office of the Salt Lake County
Recorder, Utah.

(14-25-102-001)