

22 Block 44

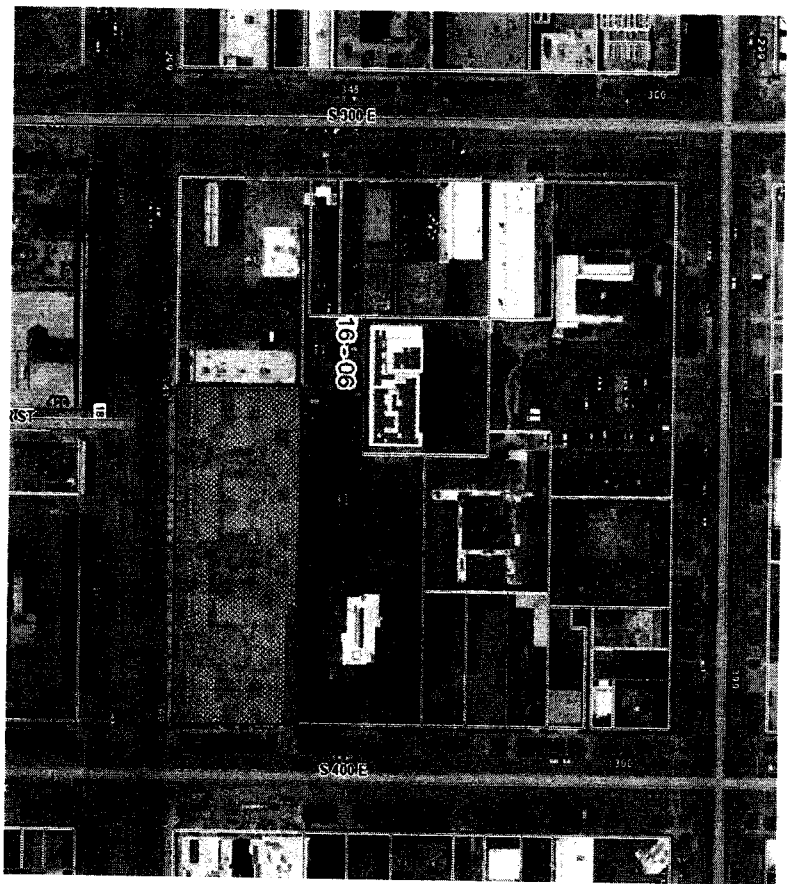
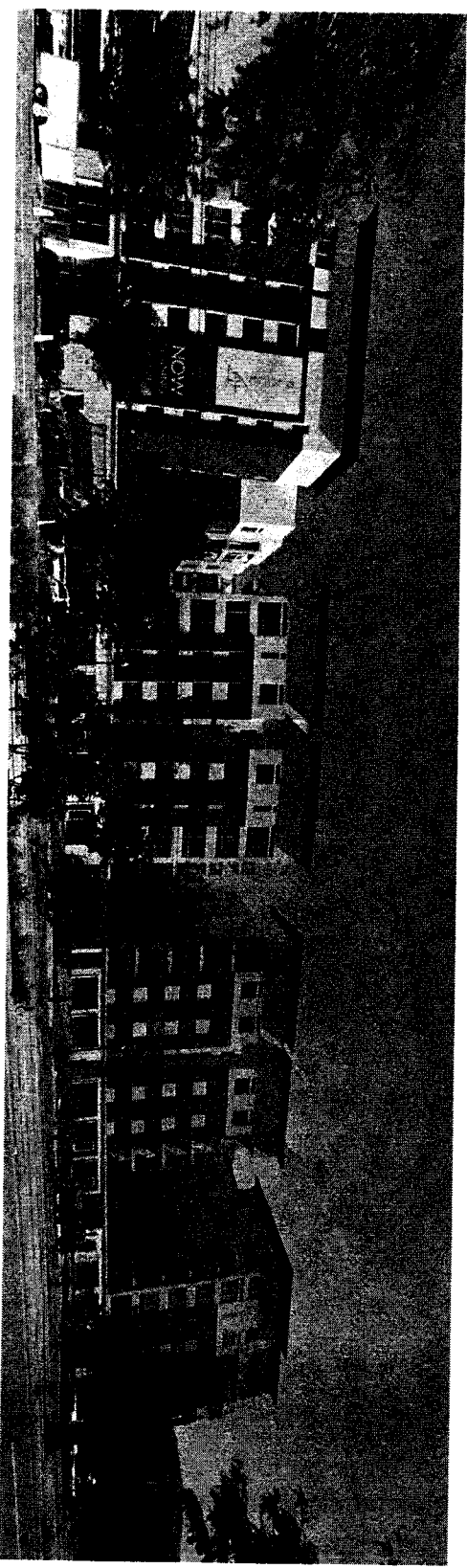
380 South 400 East
Salt Lake City, Utah

Property Owner
WDG UNIVERSITY BLVD LLC; ET AL

Parcel ID
1606401024

Acres
1.55

Tenant



12410829
11/10/2016 3:48:00 PM \$14.00
Book - 10498 Pg - 8284-8286
Gary W. Ott
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 3 P.

AFTER RECORDED, RETURN TO:

WDG University Blvd, LLC
Attn: Spencer Wright
1178 Legacy Crossing Blvd., Suite 100
Centerville, Utah 84014

01459-22714 / (currently known as 16-06-401-023)
Parcel ID#s 16-06401012; 16-06401013; 16-06401014; 16-06401015; 16-06401016

SPECIAL WARRANTY DEED

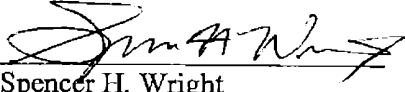
FOR THE SUM OF TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIERATION, the receipt and sufficiency of which are hereby acknowledged, WDG University Blvd., LLC, a Utah limited liability company ("Grantor"), hereby conveys and warrants against all who claim by, through, or under the Grantor, to WDG University Blvd, LLC, a Utah limited liability company ("Grantee"), as to an undivided fifty percent (50%) and 4th & 4th LLC, a Utah limited liability company ("Grantee"), as to an undivided fifty percent (50%) interest, in all of Grantor's right, title and interest in the parcel of land located in Salt Lake City, Salt Lake County, State of Utah as more particularly described in Exhibit "A" attached hereto and incorporated herein, together with all improvements located thereon, and all rights, titles and interests therein.

WITNESS the hand of said Grantor as of the 8 day of November, 2016.

WDG UNIVERSITY BLVD., LLC,
a Utah limited liability company


By: Millcreek Partners, LLC
Its: Manager

By: Teton Land Company, L.L.C.
a Utah limited liability company
Its: Manager

By: 
Spencer H. Wright
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 8 day of November, 2016, personally appeared before me Spencer H. Wright, manager of Teton Land Company, L.L.C. a Utah limited liability company, the manager of Millcreek Partners, LLC the manager of WDG University Blvd., LLC a Utah limited liability company, who has been proven on the basis of satisfactory evidence, being first duly sworn, acknowledges that he is the Manager of said company and that he voluntarily executed the foregoing instrument, that said instrument reflects the purpose of the foregoing and that it was signed on behalf of the foregoing by proper authority.


NOTARY PUBLIC

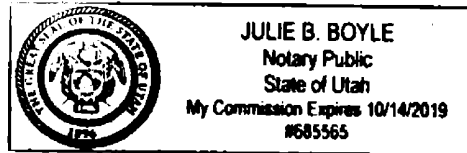


Exhibit "A"
Legal Description

File No: 01459-22714

The land referred to herein is situated in the County of Salt Lake, State of Utah, and is described as follows:

Part of Lots 1 and 2, Block 36, Plat "B", SALT LAKE CITY SURVEY, described as follows: Beginning at a point on the North right of way line of 400 South Street, said point also being the Westerly right of way line of 400 East Street, said point also being the Southeast corner of Lot 1, Block 36, Plat "B", SALT LAKE CITY SURVEY, and running thence South 89°59'01" West along the Southerly line of said Block 36, a distance of 410.76 feet to a point as described by Boundary Line Agreement recorded July 6, 2016 as Entry No. 12315767 in Book 10449, Page 8536 as being the East boundary of that certain property described in Book 5345 at Page 1634, thence along said boundary line North 00°02'12" West a distance of 165.09 feet along said property to a point on the North line of said Lot 2, thence North 89°58'53" East 410.76 feet to the Easterly line of said Block 36, thence South 00°02'13" East 165.09 feet along said Easterly line to the point of beginning.

When recorded, mail to:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

Tax Parcel No. 16-06-401-016; 16-06-401-015;
16-06-401-014; 06-06-401-013; and
06-06-401-012 (currently known as 16-06-401-023)

01459-22714

12410830
11/10/2016 3:48:00 PM \$82.00
Book - 10498 Pg - 8287-8323
Gary W. Ott
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 37 P.

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

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME ACCORDING TO CHANGES IN THE PRIME RATE ANNOUNCED BY BENEFICIARY OR ACCORDING TO CHANGES IN THE LONDON INTERBANK OFFERED RATE, IN ACCORDANCE WITH THE CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* §70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

This CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as it may be amended and modified from time to time, the "*Deed of Trust*") is made as of November 9, 2016, by and among **4TH AND 4TH LLC**, a Utah limited liability company ("*4th*"), having its principal office at 907 W Sunrise Ln, American Fork, UT 84003, and **WDG UNIVERSITY BLVD, LLC**, a Utah limited liability company ("*WDG University*" and, together with 4th, individually and collectively, as the context may require, "*Trustor*"), whose mailing address is 1178 Legacy Crossing Blvd., Suite 100, Centerville, Utah 84014, **STEWART TITLE INSURANCE AGENCY OF UTAH, INC.**, a Utah corporation

("Trustee"), whose mailing address is 1518 Woodland Park Dr. Layton, Utah 84041, and **WASHINGTON FEDERAL** ("Beneficiary"), whose mailing address is 1207 East Draper Parkway Draper, UT 84020.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to that certain real property located in the County of Salt Lake County, State of Utah, more particularly described in Exhibit A to this Deed of Trust (the "Property");

TOGETHER WITH all right, title, or interest of Trustor in any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (collectively, the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all right, title or interest of Trustor in all rents, subrents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and the Improvements (collectively, the "Rents"), subject to the terms and provisions of **Article 2** of this Deed of Trust with respect to all leases and subleases of the Property or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases, or subleases covering the Property or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in any and all agreements, documents, or instruments now or hereafter executed in connection with the creation and governance of the Association, as such agreements, documents, and instruments may be amended, modified, extended, renewed, or supplemented from time to time;

TOGETHER WITH all right, title or interest of Trustor in all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Property or the Improvements, or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title or interest of Trustor now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

TOGETHER WITH all right, title, or interest of Trustor now owned or hereafter acquired by Trustor in all licenses, permits, approvals, or other authorizations (federal, state, and local) used or useful in connection with or in any way relating to the Property or Improvements, including any building permits relating to the development of the Property and Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Property or the Improvements, including, without limitation, the property and interests in property described on Exhibit B attached hereto, (ii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Property or the Improvements, including, without limiting the foregoing, all of Trustor's present and future "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", (as such terms are defined in the *Utah Uniform Commercial Code*, U.C.A. §§ 70A-1-1 *et seq.*), (iii) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, (iv) all of Trustor's right, title and interest in and to all deposit accounts maintained with Beneficiary or any affiliate of Beneficiary and (v) all appurtenances and additions thereto and substitutions or replacements thereof (such personal property, together with proceeds (as hereinafter provided), are referred to herein collectively as the "*Personal Property*");

TOGETHER WITH all right, title, and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all right, title or interest of Trustor in all of the estate, interest, right, title, other claim, or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance, indemnities, performance or redemption bonds, judgments, awards of damages, and settlements with respect thereto) that Trustor now has or may hereafter acquire in the Property, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages); and

TOGETHER WITH all right, title or interest of Trustor in all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims, of any of the foregoing.

The entire estate, property, right, title, and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "*Trust Estate*."

TO HAVE AND TO HOLD the Trust Estate unto the Trustee and Trustee's successors, substitutes and assigns, IN TRUST, however, upon the terms, provisions, and conditions herein set forth.

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "*Obligations*"):

(a) Payment of indebtedness of Trustor a (i) in the total principal amount of THIRTY MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$30,800,000.00) (the "*Loan*"), with interest thereon, evidenced by that certain Secured Promissory Note of even date herewith evidencing the Loan (as it may be amended, modified, extended, and renewed from time to time, the "*Note*"), executed by Trustor, pursuant to that certain Construction Loan Agreement between Borrower, and Beneficiary of even date herewith (as it may be amended, modified, extended, and renewed from time to time, the "*Loan Agreement*") pursuant to which Beneficiary may make advances of Loan proceeds from time to time subject to the conditions and limitations therein. The Loan Agreement contains a provision providing for a variable rate of interest;

(b) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the default interest rate set forth in the Note and/or the Loan Agreement (which rate of interest is hereinafter referred to as the "Agreed Rate");

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Borrower, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

(d) performance of every obligation of Borrower contained in the Loan Agreement and other Loan Documents (as defined below);

(e) performance of every obligation of Borrower contained in any agreement, document, or instrument now or hereafter executed by Borrower reciting that the obligations thereunder are secured by this Deed of Trust including, without limitation, any Set-Aside Letter (as such term is defined in the Loan Agreement);

(f) for the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected; and

(g) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Note, Deed of Trust, and other documents evidencing or executed in connection with the debt set forth in the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

This Deed of Trust, the Note, the Loan Agreement, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "*Loan Documents*." Any references herein to the *Utah Code Annotated*, shall be deemed to be a reference to the current version of such statutes together with any successor or replacement statute or law therefor.

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1

COVENANTS AND AGREEMENTS OF TRUSTOR

1.1 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or perform each of the Obligations.

1.2 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair, ordinary wear and tear excepted. Except as otherwise contemplated by the Loan Agreement, Trustor shall not substantially remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary or as may be required by Requirements (defined below). Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Property and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished subject to Trustor's contest rights of such sums as permitted in the Loan Agreement. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, ordinary wear and tear excepted. Trustor shall perform its obligations under each Lease. "Requirement" and "Requirements" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (a) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (b) such obligations and requirements of, in, or in respect of (i) any consent, authorization, license, permit, or approval relating to the Trust Estate, (ii) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (iii) any Lien or Encumbrance, (iv) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected, and (v) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.3 Required Insurance. Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Trust Estate, at no expense to Trustee or Beneficiary, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as is required under the Loan Agreement.

1.4 Delivery of Policies, Payment of Premiums.

(a) At Beneficiary's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form reasonably satisfactory to Beneficiary or shall name Beneficiary as an additional insured. Trustor shall furnish Beneficiary with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party holding under Trustor; provided, however, all such policies shall meet the requirements referred to in **Section 1.3**. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) If Trustor fails to obtain, maintain, or deliver to Beneficiary the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Beneficiary may, at Beneficiary's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon

demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "Insurance Impounds"). In such event Trustor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Trustor set forth in **Section 1.3** to obtain and maintain insurance. Beneficiary may commingle Insurance Impounds with its own funds, and Trustor shall not be entitled to interest thereon. Beneficiary may reserve for future payments of premiums such portion of Insurance Impounds as Beneficiary in its absolute and sole discretion deems proper. If Trustor fails to deposit with Beneficiary sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand with interest from the date advanced at the Agreed Rate, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Beneficiary may, at any time, at Beneficiary's option, apply any Insurance Impounds or Impositions Impounds under this **Section 1.4** or **Section 1.8**, any funds paid as Rents, and any other funds of Trustor held by Beneficiary to payment of any of the Obligations, in such manner and order as Beneficiary may elect, notwithstanding that such Obligations may not yet be due.

1.5 Casualties; Insurance Proceeds.

(a) Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Trust Estate, or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. So long as no Event of Default has occurred and is continuing, all proceeds shall be applied to the reconstruction of the Improvements on the same terms provided in the Loan Agreement for the disbursements of advances. If an Event of Default has occurred and is continuing, all proceeds of insurance will be applied by Beneficiary to payment of the Obligations in such order as Beneficiary shall determine.

(b) Provided Beneficiary makes proceeds available for restoration as provided in Section 1.5(a), Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** hereof and as required by the CC&R's (as defined in the Loan Agreement) or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust, or invalidate any act done pursuant to such default or notice of default.

1.6 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by **Section 1.3** shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.7 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment except such matters arising from Beneficiary's gross negligence or willful misconduct. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof, so long as such damage or destruction is not caused by Beneficiary; (ii) any restriction or prevention of or interference by any Person (as defined below), other than Beneficiary, with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; in each case, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, limited liability company, limited liability partnership, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.8 Impositions.

(a) Trustor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, non-governmental levies or assessments such as

maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Beneficiary which is measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in **Section 1.8(a)** and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Obligations, immediately due and payable and pay such Impositions. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

(c) Subject to the provisions of **Section 1.8(d)** and upon request by Beneficiary, Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this **Section 1.8**, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's absolute and sole discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "*Impositions Impounds*"). In such event, Trustor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Impositions Impounds or to

be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this **Section 1.8(e)**. Beneficiary may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Beneficiary may reserve for future payment of Impositions such portion of Impositions Impounds as Beneficiary may in its absolute and sole discretion deem proper. If Trustor fails to deposit with Beneficiary sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due.

(f) Trustor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

1.9 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

1.11 Actions By Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents beyond all applicable notice and cure periods, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust (other than Permitted Exceptions); and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary or except as permitted in the Loan Agreement, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable.

Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean:

(a) any sale, transfer, conveyance, hypothecation, encumbrance, lease (except for Leases of the Property at rates which are consistent with similar leases for space in similar buildings and any other Lease approved by Beneficiary) or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in Exhibit C to this Deed of Trust);

(b) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Trustor or any partner in Trustor to or in any Person (if Trustor or any partner in Trustor is a partnership, whether general or limited) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except for transfers of the direct or indirect interests of Trustor permitted under the Loan Agreement;

(c) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any membership interest in Trustor or any member in Trustor to or in any Person (if Trustor or any member in Trustor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except for transfers of the direct or indirect interests of Trustor permitted under the Loan Agreement;

(d) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Trustor or any partner in Trustor to or in any Person or any consolidation or merger of Trustor or any partner in Trustor into or with any Person (if Trustor or any partner or member in Trustor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except for transfers of the direct or indirect interests of Trustor permitted under the Loan Agreement; or

(e) the execution of any agreements to do any of the foregoing, except the Permitted Exceptions.

1.13 Eminent Domain.

(a) In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "Taking"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the "Condemnation Proceeds") are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary's option and in Beneficiary's sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(b) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

(c) In the event of a taking pursuant to a condemnation which would not prevent the Trust Estate from being operated for its intended purposes, Beneficiary shall have the right to apply all condemnation proceeds to the indebtedness evidenced by the Note unless the following conditions are met:

(i) Trustor shall have delivered notice to Beneficiary of its intention to commence repairs and restoration within twenty (20) Business Days following the settlement of any claim or claims under a condemnation proceeding where the proceeds thereof are to be applied to the restoration or repair of the damaged Improvements;

(ii) No Event of Default hereunder or under any of the Loan Documents shall have occurred and be continuing and no event shall have occurred and be continuing which, with the giving of notice or the passage of time, or both, would give rise to an Event of Default hereunder or thereunder;

(iii) All condemnation proceeds shall have been deposited with Beneficiary;

(iv) Grantor shall have delivered to Beneficiary (a) a budget of all costs of reconstruction of the Improvements (b) a construction schedule for the reconstruction of the Improvements and (c) a construction contract for such reconstruction work in form and content and with a contractor reasonably acceptable to Beneficiary;

(v) The Improvements can be restored to a complete operating unit; and

(vi) Beneficiary and all applicable governmental authorities shall have approved the final plans and specifications for reconstruction of the Improvements.

In the event of all the foregoing conditions have been fulfilled, all proceeds so applied to the reconstruction of the Improvements shall be disbursed in the same manner as provided in the Loan Agreement.

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the Obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without

conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

1.16 Inspections. Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.17 Ownership and Liens and Encumbrances.

(a) Liens in General. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Except in the case of mechanic's and materialmen's liens which are governed by **Section 1.17(b)** below, Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred twenty percent (120.0%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "*Lien or Encumbrance*" and "*Liens and Encumbrances*" mean, respectively, each and all of the following in respect of the Trust Estate: leases (except for Leases of the Property approved by Beneficiary in accordance with the Loan Agreement), other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions.

1.18 Mechanic's and Materialmen's Liens; State Construction Registry.

(a) Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

(b) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-

201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

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

(d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to *Utah Code Annotated* § 38-1a-503(2)(b)(ii) and Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction work that the claimant furnished before the recording of this Deed of Trust pursuant to *Utah Code Annotated* § 38-1a-503(2)(b)(i) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction lien or a-construction lien dates immediately after the recording of this Deed of Trust.

(e) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by *Utah Code Annotated* Section 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the County in which the Property is located.

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

(g) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by

whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

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

1.19 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.20 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.21 Financial Statements. Trustor shall deliver to Beneficiary such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement. Beneficiary shall have the right to audit, inspect and copy all of Trustor's books and records, relating thereto in accordance with the Loan Agreement.

1.22 Trade Names. At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that

Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

1.23 Leasehold. If a leasehold estate constitutes any portion of the Trust Estate, Trustor agrees not to materially amend or modify such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Beneficiary, which consent shall be exercised by Beneficiary in its reasonable discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to timely pay any sums due under any lease creating the leasehold estate on or before the date due and to timely perform all obligations and agreements under said leasehold. Trustor shall not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor, within three (3) days of its receipt, with respect to any such default or alleged default. Beneficiary shall have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All reasonable sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable upon demand and written notice and shall bear interest from date of expenditure at the Agreed Rate.

1.24 Non-Residential Status of Property. For purposes of *Utah Code Annotated* Section 57-1-25 and 78B-6-901.5, Trustor acknowledges that the a purpose for which this Deed of Trust is given is not to construct residential or residential rental property.

ARTICLE 2

ASSIGNMENT OF RENTS

2.1 Assignment of Rents. Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred and be continuing hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this **Article 2** is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the Rents are not contingent upon and may be exercised without possession of the Trust Estate.

2.2 Collection Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, in accordance with applicable law, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or

invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases, and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

2.3 Application of Rents.

(a) Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

(b) In connection herewith, Trustor further agrees that all Rents received by Beneficiary from any lessee may be allocated, if Beneficiary so elects, to the payment of all current obligations of such lessee under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Trustor's license to collect such Rents. Beneficiary may, but shall have no obligation to, pursue any lessee for the payment of Rents which may be due under its Lease with respect to any period prior to the exercise of Beneficiary's rights under this assignment or which may become due thereafter. Beneficiary shall not be liable to any lessee for the payment or return of any security deposit under any Lease unless and to the extent that such security deposit has been paid to and received by Beneficiary, and Trustor agrees to indemnify, defend and hold Beneficiary harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a lessee with respect thereto, except from such matters arising from Beneficiary's gross negligence or willful misconduct. Trustor further agrees that the collection of Rents by Beneficiary and the application of such Rents by Beneficiary to the costs, expenses and obligations referred to herein shall not cure or waive any default or Event of Default or invalidate any act (including, but not limited to, any sale of all or any portion of the Property or any property now or hereafter securing the Loan) done in response to or as a result of such Event of Default or pursuant to any notice of default or notice of sale issued pursuant to this Deed of Trust.

2.4 Protection of Leases. Trustor and Beneficiary agree that all lessees under any Leases shall be bound by and required to comply with the provisions of this assignment. In connection therewith, Trustor and Beneficiary further agree as follows:

(a) Notice to Lessees of Assignment. Upon the occurrence and during the continuance of an Event of Default, if requested by Beneficiary with respect to any Lease of the commercial space in the improvements on the Property, Trustor shall: (i) notify each lessee under any Lease of the commercial space now or hereafter existing, of the existence of this assignment and the rights and obligations of Trustor and Beneficiary hereunder; (ii) provide each present or future lessee of the commercial space with a copy of this Deed of Trust and the assignment of leases hereunder; and (iii) obtain each lessee's agreement to be bound and comply with the provisions of Article 2 hereof.

(b) Reference to Assignment. All Leases of the commercial space in the improvements on the Property hereafter executed with respect to the Property or any portion thereof shall contain a reference to this Deed of Trust and the assignment of leases hereunder and shall state that such lessee shall be bound by and shall comply with the provisions of **Article 2** hereof.

(c) Occurrence of Event of Default. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any lessee a notice to the effect that: (i) an Event of Default has occurred and that Beneficiary has revoked Trustor's license to collect the Rents; (ii) Beneficiary has elected to exercise its rights under this assignment; and (iii) such lessee is thereby directed to thereafter make all payments of Rents and to perform all obligations under its Lease for the benefit of Beneficiary or as Beneficiary shall direct.

(d) Notice to Lessee to Comply with Leases. Upon receipt of any such notice from Beneficiary, each lessee is hereby instructed by Trustor and Beneficiary to comply with the provisions of such notice, to make all payments of Rents and to perform all obligations under the Lease to and for the benefit of Beneficiary or as Beneficiary shall direct. Such notice and direction shall remain effective until the first to occur: (i) the receipt by Lessee of a subsequent notice from Beneficiary to the effect that such Event of Default has been cured or that Beneficiary has appointed Trustor to act as agent for Beneficiary pursuant to this assignment; (ii) the appointment of a receiver pursuant to this assignment, in which event such lessee shall thereafter make payments of Rents and perform all obligations under the Leases as may be directed by such receiver; or (iii) the issuance of an order of a court of competent jurisdiction terminating this assignment or otherwise directing such lessee to pay Rents and perform its obligations in a manner inconsistent with said notice.

(e) Lessee's Reliance on Notice from Beneficiary. Each lessee shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice.

(f) No Duty for Lessee to Investigate. Each lessee who receives a notice from Beneficiary pursuant to this assignment shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold such lessee harmless from and against any and all loss, claim, damage or liability arising from or related to payment of Rents or performance of obligations under any Lease by such lessee made in good faith in reliance on and pursuant to such notice.

(g) No Assumption by Beneficiary of Lease Obligations. The payment of Rents to Beneficiary pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Beneficiary shall not cause Beneficiary to assume or be bound by the provisions of such Lease, including, but not limited to, any duty to return any security deposit to the lessee under such Lease unless and to the extent such security deposit was paid to Beneficiary by Trustor.

(h) Assignment Binding on Lessees. The provisions of this **Section 2.4** are expressly made for the benefit of and shall be binding on and enforceable by each lessee under any Lease now or hereafter affecting all or any portion of the Property.

2.5 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

2.6 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee

shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

2.7 Assignment of Rents Act. This Article 2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "*Act*"), and in the event of any conflict or inconsistency between the provisions of this Article 9 and the provisions of the Act, the provisions of the Act shall control.

ARTICLE 3

SECURITY AGREEMENT

3.1 Creation of Security Interest.

(a) Trustor hereby grants to Beneficiary, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to Beneficiary all of Trustor's Personal Property (as defined herein) and all other personal property assets of Trustor, including, without limitation, "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", as defined in the Utah Commercial Code, as more particularly described on Exhibit B hereto, and all insurance claims and other proceeds or products thereof, whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor's possession and control or in the possession and control of a third party.

(b) This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

(c) Trustor further agrees, at the request and option of Beneficiary, to take any and all actions Beneficiary may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Beneficiary to enforce, Beneficiary's security interest in any and all of the Personal Property, including, without limitation, (i) causing Beneficiary's name to be noted as Beneficiary on any certificate of title for the Personal Property or any portion thereof if such notation is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (ii) complying with any provision of any statute, regulation or treaty of any State or the United States as to any Personal Property if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (iii) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Beneficiary, including, without limitation, any consent of any licensor, lessor or other person obligated on Personal Property and (iv) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Beneficiary.

3.2 Financing Statements. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the

scope of Article 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9-509(4)(b) of the Utah Uniform Commercial Code. Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

3.3 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(a) Commercial Use. The Personal Property is not used or bought for personal, family or household purposes.

(b) Location of Property; Replacement. The tangible portion of the Personal Property will be kept on or at the Property or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items.

(c) Trade Names. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any trade name or fictitious business name.

(d) Trustor's Legal Status. Trustor represents and warrants to Beneficiary as follows: (i) Trustor's exact legal name is as indicated in the introductory paragraph hereof and on the signature page hereof, (ii) Trustor is an organization of the type, and is organized in the jurisdiction set forth in the introductory paragraph hereof, (iii) Trustor's organizational identification number is as set forth in Exhibit D hereto, and (iv) the address listed in the introductory paragraph hereof accurately sets forth Trustor's place of business or, if more than one, its chief executive office, as well as Trustor's mailing address, if different. Trustor covenants with Beneficiary as follows: (x) without providing at least thirty (30) days prior written notice to Beneficiary, Trustor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (y) if Trustor does not have an organizational identification number and later obtains one, Trustor shall forthwith notify Beneficiary of such organizational identification number, and (z) Trustor will not change its type of organization, jurisdiction of organization or other legal structure.

(e) Adverse Claims. Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(f) Cumulative Rights. The grant of a security interest to Beneficiary by this Deed of Trust shall not be construed to derogate from or impair the lien or provisions of, or the rights of Beneficiary under, this Deed of Trust with respect to any property described herein which is real property, or which the parties have agreed to treat as real property.

(g) Ownership. Trustor is, or will be upon acquisition, and shall at all times remain the owner of the Personal Property, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Deed of Trust and except for the Permitted Exceptions. Trustor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Beneficiary.

(h) Farm Products. None of the Personal Property constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a)(34) of the Uniform Commercial Code of the State of Utah.

(i) Commercial Tort Claims. Trustor holds no commercial tort claims with respect to the Property.

(j) Fair Labor Standards Act. Trustor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act.

3.4 Power of Attorney.

(a) Appointment and Powers of Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Beneficiary's own name, for the purpose of carrying out the terms of this Deed of Trust, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Deed of Trust and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of Trustor, without notice to or assent by Trustor, to do the following:

(i) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Personal Property in such manner as is consistent with the Uniform Commercial Code of the State of Utah and as fully and completely as though Beneficiary were the absolute owner thereof for all purposes, and to do, at Trustor's expense, at any time, or from time to time, all acts and things which Beneficiary deems necessary or useful to protect, preserve or realize upon the Personal Property and Beneficiary's security interest therein, in order to effect the intent of this Deed of Trust, all at least as fully and effectively as Trustor might do, including, without limitation, (A) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (B) upon written notice to Trustor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if Beneficiary so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (C) the execution, delivery and recording, in connection with any sale or other disposition of any Personal Property, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Personal Property; and

(ii) to the extent that Trustor's authorization given in Section 3.2 is not sufficient, to file such financing statements with respect hereto, with or without Trustor's

signature, or a photocopy of this Deed of Trust in substitution for a financing statement, as Beneficiary may deem appropriate and to execute in Trustor's name such financing statements and amendments thereto and continuation statements which may require Trustor's signature.

(b) Ratification by Trustor. To the extent permitted by law, Trustor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

(c) No Duty on Beneficiary. The powers conferred on Beneficiary hereunder are solely to protect its interests in the Personal Property and shall not impose any duty upon it to exercise any such powers. Beneficiary shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Trustor for any act or failure to act, except for Beneficiary's own gross negligence or willful misconduct.

3.5 Use of Personal Property by Trustor. Unless an Event of Default has occurred and is continuing hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.6 Remedies Upon an Event of Default.

(a) Remedies. If an Event of Default shall have occurred and be continuing, in addition to the remedies provided in **Section 4.2** hereof, subject to compliance with applicable law, Beneficiary, without any other notice to or demand upon Trustor shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a Beneficiary under the Uniform Commercial Code of the State of Utah and any additional rights and remedies which may be provided to a Beneficiary in any jurisdiction in which Personal Property is located, including, without limitation:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at such location or locations within the jurisdiction(s) of Trustor's principal office(s) or at such other locations as Beneficiary, or an agent or representative designated by Beneficiary, may reasonably designate. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, the other Loan Documents or any other applicable law.

(b) Notice of Sale. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give to Trustor at least ten (10) Business Days prior written notice of the time and place of any public sale of Personal Property or of the time after which any private sale or any other intended disposition is to be made. Trustor hereby acknowledges that ten (10) Business Days prior written notice of such sale or sales shall be reasonable notice. Such notice may be mailed to Trustor at the address set forth in **Section 6.4**. In addition, Trustor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Beneficiary's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Personal Property and to exercise its rights and remedies with respect thereto.

(c) Proceeds of Dispositions; Expenses. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in protecting, preserving or enforcing Beneficiary's rights and remedies under or in respect of any of the Obligations or any of the Personal Property and arising from the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made). After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Personal Property shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Beneficiary may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State of Utah, any excess shall be returned to Trustor. In the absence of final payment and satisfaction in full of all of the Obligations, Trustor shall remain liable for any deficiency. Until paid, all amounts due and payable by Trustor hereunder shall be a debt secured by the Trust Estate and shall bear, whether before or after judgment, interest at the Agreed Rate.

3.7 Successive Remedies. Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

3.8 Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on Beneficiary to exercise remedies in a commercially reasonable manner, Trustor acknowledges and agrees that it is not commercially unreasonable for Beneficiary (a) to fail to incur expenses reasonably deemed

significant by Beneficiary to prepare Personal Property for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Personal Property to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Personal Property to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Personal Property or to fail to remove liens or encumbrances on or any adverse claims against Personal Property, (d) to exercise collection remedies against account debtors and other persons obligated on Personal Property directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Personal Property through publications or media of general circulation, whether or not the Personal Property is of a specialized nature, (f) to contact other persons, whether or not in the same business as Trustor, for expressions of interest in acquiring all or any portion of the Personal Property, (g) to hire one or more professional auctioneers to assist in the disposition of Personal Property, whether or not the Personal Property is of a specialized nature, (h) to dispose of Personal Property by utilizing Internet sites that provide for the auction of assets of the types included in the Personal Property or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Beneficiary against risks of loss, collection or disposition of Personal Property or to provide to Beneficiary a guaranteed return from the collection or disposition of Personal Property, or (l) to the extent deemed appropriate by Beneficiary, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Beneficiary in the collection or disposition of any of the Personal Property. Trustor acknowledges that the purpose of this **Section 3.8** is to provide non-exhaustive indications of what actions or omissions by Beneficiary would fulfill Beneficiary's duties under the Uniform Commercial Code or other law of the State or any other relevant jurisdiction in Beneficiary's exercise of remedies against the Personal Property and that other actions or omissions by Beneficiary shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this **Section 3.8**. Without limitation upon the foregoing, nothing contained in this **Section 3.8** shall be construed to grant any rights to Trustor or to impose any duties on Beneficiary that would not have been granted or imposed by this Deed of Trust or by applicable law in the absence of this **Section 3.8**.

3.9 Marshalling. Beneficiary shall not be required to marshal any present or future collateral security (including but not limited to the Personal Property) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Trustor hereby agrees that it will not invoke any law relating to the marshalling of Personal Property which might cause delay in or impede the enforcement of Beneficiary's rights and remedies under this Deed of Trust or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Trustor hereby irrevocably waives the benefits of all such laws.

3.10 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Certain financing statement information is set forth on Exhibit D to this Deed of Trust.

ARTICLE 4

REMEDIES UPON DEFAULT

4.1 Events of Default. Each of the following shall constitute an event of default ("*Event of Default*"):

(a) Failure by Trustor or Guarantor to pay the entire outstanding balance of the Note on the Maturity Date.

(b) Failure by Trustor or Guarantor to pay principal, interest, fees or other amounts owing under the Loan Documents except principal and except at maturity, within ten (10) days after the due date for such payment, unless cured within such ten (10) day period.

(c) Except as otherwise provided herein, any failure by Trustor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Trustor under any Loan Document and the expiration of thirty (30) days after written notice of such failure by Beneficiary to Trustor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Trustor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Trustor causes such failure to be cured no later than ninety (90) days after the date of such notice from Lender.

(d) Any representation or warranty by Trustor hereunder is materially false, incorrect, or misleading as of the date made.

(e) The occurrence of any Transfer, unless such Transfer is permitted by the Loan Agreement or prior to such Transfer the holder of the Note has delivered to Trustor the written consent of such holder to such Transfer.

(f) The occurrence of (i) any default and the failure to cure such default during applicable cure periods, if any, or (ii) any Event of Default, (as such term is defined in any other Loan Document), under any other Loan Document.

4.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in **Section 3.6** or **Section 2.2**:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan

Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in **Section 4.5**, or specifically enforce any of the covenants hereof;

(c) Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Trust Estate to be sold in accordance with *Utah Annotated Code* § 57-1-24 or other applicable law; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.3 Exercise of Power of Sale. After the lapse of such time as may then be required by *Utah Annotated Code* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Annotated Code* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Annotated Code* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Annotated Code* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Annotated Code* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the obligations secured by the trust deed.

THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this **Section 4.3**, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Annotated Code* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Estate, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Estate pursuant to this Deed of Trust.

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

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

4.5 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated.

4.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

4.7 Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Annotated Code* § 57-1-32 or other applicable law.

4.8 Reinstatement. If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Annotated Code* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Annotated Code* § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

4.9 Marshalling of Assets. Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary, or to require Trustee or Beneficiary, upon a foreclosure, to first resort to the sale of any portion of the Trust Estate which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

4.10 No Merger. In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

4.11 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Annotated Code* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder and under any other deed of trust affecting the Trust Estate now or at any time in the future be mailed to it at the address set forth in **Section 6.4.**

ARTICLE 5

RELEASE AND RECONVEYANCE OF TRUST ESTATE

5.1 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.2 Partial Reconveyance. At any time, without liability therefor and without notice, and without affecting the personal liability of Trustor or any other person for payment of the Obligations, Trustee may, with the consent of Beneficiary: (a) release and reconvey by deed of reconveyance any part of the Trust Estate from the lien hereof; (b) consent to the making and recording of any maps or plats of the Trust Estate; (c) join in granting any easement on the Trust Estate; or (d) join in any extension agreement or any agreement subordinating or modifying the lien or charge hereof. If Trustee shall perform any such acts or execute complete or partial reconveyances it shall be paid a fee in accordance with its established fees and charges therefor.

ARTICLE 6

MISCELLANEOUS

6.1 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

6.2 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, (except for any notice address which is a post office box, in which case notice shall be given by first class mail) through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Beneficiary: Washington Federal
1207 East Draper Parkway
Draper, UT 84020
Attention: James Endrizzi

with a copy to: Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

To Trustor: 4th and 4th LLC
1922 W 700 S
Orem, UT 84058
Attn: Steven Ray Black

WDG University Blvd, LLC
1178 Legacy Crossing Blvd., Suite 100
Centerville, Utah 84014
Attention: Gary M. Wright

6.3 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

6.4 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto. All exhibits hereto are incorporated herein by reference.

6.5 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the obligations, and all payments made on the obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

6.6 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

6.7 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorneys' fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

6.8 Governing Law. THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH EXCLUDING ANY UTAH CONFLICT OF LAWS RULES.

6.9 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

6.10 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

6.11 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

6.12 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

6.13 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

6.14 Status of Title. Trustor represents and warrants that it is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate in the Property and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust.

6.15 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

6.16 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor shall not assign or delegate its obligations under this Deed of Trust.

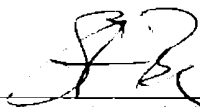
6.17 Time of the Essence. Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

6.18 Survival. The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

[Remainder of Page Intentionally Left Blank]

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

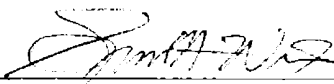
4TH AND 4TH LLC
a Utah limited liability company

By: 
Name: Steven Ray Black
Title: Manager

WDG UNIVERSITY BLVD, LLC
a Utah limited liability company

By: **MILLCREEK PARTNERS, LLC**
A Utah limited liability company
its manager

By: **TETON LAND COMPANY, L.L.C.**
a Utah limited liability company
its manager

By: 
Name: Spencer H. Wright
Title: Manager

“Trustor”

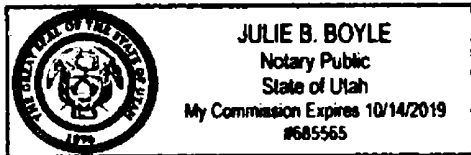
STATE OF UTAH)
 : ss.
COUNTY OF David)

The foregoing instrument was acknowledged before me this 1 day of ~~October~~^{November}, 2016 by Steven Ray Black, a manager of **4TH AND 4TH LLC**, a Utah limited liability company, for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC

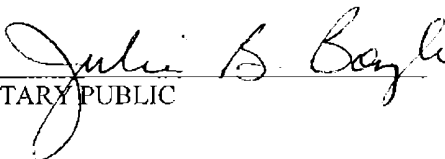
[Seal]



STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this 1 day of ~~October~~^{November}, 2016 by Spencer H. Wright, an individual, a Manager of TETON LAND COMPANY, L.L.C., a Utah limited liability company, the Manager of MILLCREEK PARTNERS, LLC, the Manager of **WDG UNIVERSITY BLVD, LLC**, a Utah limited liability company, for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC

[Seal]

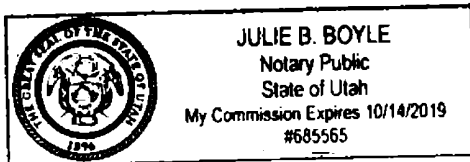


EXHIBIT A

PROPERTY DESCRIPTION

That certain real property owned by Trustor and situated in the County of Salt Lake, State of Utah and described as follows:

Part of Lots 1 and 2, Block 36, Plat "B", SALT LAKE CITY SURVEY, described as follows: Beginning at a point on the North right of way line of 400 South Street, said point also being the Westerly right of way line of 400 East Street, said point also being the Southeast corner of Lot 1, Block 36, Plat "B", SALT LAKE CITY SURVEY, and running thence South 89°59'01" West along the Southerly line of said Block 36, a distance of 410.76 feet to a point as described by Boundary Line Agreement recorded July 6, 2016 as Entry No. 12315767 in Book 10449, Page 8536 as being the East boundary of that certain property described in Book 5345 at Page 1634, thence along said boundary line North 00°02'12" West a distance of 165.09 feet along said property to a point on the North line of said Lot 2, thence North 89°58'53" East 410.76 feet to the Easterly line of said Block 36, thence South 00°02'13" East 165.09 feet along said Easterly line to the point of beginning.

EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY

All of Trustor's assets, including, without limitation, "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", as defined in the Uniform Commercial Code. Such assets include, without limitation:

(a) All personal property, (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Property or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Property, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Property, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants or purchasers of any portion of the Property or Improvements, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest, and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments evidencing securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Property, the Improvements, the personal property described in **Paragraph (a)** above or the operation, occupancy, or use thereof, including, without limitation, all governmental and private contracts, agreements, permits, licenses, and approvals relating to the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Property or Improvements (including, without limitation, contracts, agreements, permits, licenses and approvals relating to Project amenities, building maintenance, security service, elevator maintenance, landscaping services, parking lot and garage janitorial services), all names under or by which the Property or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks, copyrights, patent and copyright applications and registrations, patterns, designs, drawings, plans and specifications, other proprietary information and intellectual property, and royalties relating in any way to the Property or the Improvements, and all management agreements with respect to the management and operation of the Property, and all goodwill and software in any way relating to the Property or the Improvements;

(e) Trustor's rights under all insurance policies covering the Property, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Property;

- (g) All water, water stock and water rights relating to the Property;
- (h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate;
- (i) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Property and all studies, data, and drawings related thereto; and also all contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Property;
- (j) All of Trustor's rights as a declarant, developer or otherwise, including, without limitation, all voting and other rights under all covenants, conditions and restrictions affecting the Property or the Improvements;
- (k) All Trustor's rights in proceeds of the loan evidenced by the Note;
- (l) All of Trustor's rights under any agreements affecting the Property, whether now existing or hereafter arising; and
- (m) All proceeds from sale or disposition of any of the aforesaid collateral.

As used in this Exhibit B the terms "Obligations", "Note", "Trust Estate", "Property", "Improvements", and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

EXHIBIT C

PERMITTED EXCEPTIONS

1. Taxes for the year 2016 have been paid. *Parent* Tax ID No. 16-06-401-016.
Taxes for the year 2016 have been paid. *Parent* Tax ID No. 16-06-401-015.
Taxes for the year 2016 have been paid. *Parent* Tax ID No. 16-06-401-014.
Taxes for the year 2016 have been paid. *Parent* Tax ID No. 06-06-401-013.
Taxes for the year 2016 have been paid. *Parent* Tax ID No. 06-06-401-012 (currently known as 16-06-401-023).
Note: Tax ID No's. 16-06-401-016, 16-06-401-015, 16-06-401-014, 16-06-401-013 & 16-06-401-023 have been combined and subject property will be assessed under Current Tax ID No. (Not Yet Available) beginning January 1, 2017.
2. Subject property is included within the boundaries of Salt Lake City and is subject to the charges and assessments thereof. For status of the account call 483-6900. None due and payable at time of policy.
3. This policy does not insure water rights, claims or title to water.
4. Matters disclosed by Survey dated October 25, 2016, as Project No. 1506097A2, which among other things include the following:
 - A) Existing overhead Power lines, Power poles, and related facilities,
 - B) Existing Sewer Box, and related facilities.
5. Notice (record of basement sanitary sewer ejector pump), upon the terms and conditions therein provided, recorded July 23, 2015, as Entry No. 12097726, in Book 10345, Page 9714, of Official Records.
6. Utah Department of Transportation Drainage Agreement, upon the terms and conditions therein provided, recorded September 19, 2016, as Entry No. 12367843, in Book 10477, Page 3638, of Official Records.

EXHIBIT D

FINANCING STATEMENT INFORMATION

The Beneficiary/Secured Party is:

Washington Federal
1207 East Draper Parkway
Draper, UT 84020

The Debtor is:

4th and 4th LLC
1922 W 700 S
Orem, UT 84058
Attention: Steven Ray Black

Organizational ID No.: 9328068-0160

WDG University Blvd, LLC
1178 Legacy Crossing Blvd., Suite 100
Centerville, Utah 84014
Attention: Gary M. Wright

Organizational ID No.: 9758154-0160

The Collateral is the Personal Property (including all fixtures) described on Exhibit B to the Deed of Trust.

13754912
8/25/2021 3:53:00 PM \$40.00
Book - 11228 Pg - 3325-3360
RASHELLE HOBBS
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 36 P.

This document prepared by;

After recording return to:

Snell & Wilmer L.L.P
15 W South Temple, Suite 1200
Salt Lake City, UT 84101
Attention: Brian D. Cunningham, Esq.
Telephone: 801-257-1954
E-mail: bcunningham@swlaw.com

Tax Parcel No. 16-06-401-024

1330013



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

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING ("**Deed of Trust**") is made as of August 24, 2021, by and among:

Trustor:

4TH AND 4TH LLC
6237 West 9960 North
Highland, UT 84003
Attention: Steven Ray Black

WDG UNIVERSITY BLVD LLC
1178 Legacy Crossing Boulevard, Suite 100
Centerville, Utah 84014
Attention: Spencer H. Wright

Deed of Trust
4840-3074-9682
4840-3074-9682

Trustee: **STEWART TITLE INSURANCE AGENCY OF UTAH, INC**
1518 Woodland Park Drive
Layton, Utah 84041

Beneficiary: **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION**
405 S Main Street, Suite 100
Salt Lake City, Utah 84111
Attention: Justin Thorn

Capitalized terms used in this Deed of Trust without definition have the meanings given to them in the Loan Agreement referred to below.

1. GRANT AND SECURED OBLIGATIONS.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Trustor hereby irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns to Trustee in trust, with power of sale and with right of entry and possession, all estate, right, title and interest that 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**"):

1.1.1 The real property located in the county of Salt Lake, State of Utah, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (the "**Premises**");

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

1.1.3 All existing and future appurtenances, privileges, easements, franchises, and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances that may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (including the Water Rights, as such term is hereinafter defined), and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed;

1.1.4 Subject to, and without in any way limiting the absolute assignment in Section 2 below, all existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, and any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith (collectively, the "**Leases**");

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises or Improvements;

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment, and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration, and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

1.1.7 All building materials, equipment, work in process and other personal property of any kind, whether stored on the Premises or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

1.1.8 All of Trustor's interest in and to all operating accounts, the proceeds of the Loan, whether disbursed or not, all reserve accounts, impound accounts, and any other bank accounts of Trustor relating to the Project or the operation thereof;

1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, 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), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally;

1.1.10 All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits, other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "**Governmental Authority**"); all present and future monetary deposits to any Governmental Authority, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Premises or the Improvements; all refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Authority for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Trustor with respect to the Premises or Improvements or upon any or all of the Premises or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Premises or Improvements;

1.1.11 All insurance policies pertaining to the Premises, the Improvements, or any other property described in this Section 1.1, and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any property described in this Section 1.1 into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding or any settlement in lieu thereof, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described in this Section 1.1, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

1.1.12 All of Trustor's right, title, and interest in and to any and all units, common elements, declarant rights, development rights, and any other rights relating to the Premises or the Improvements, whether now existing or subsequently arising, under any and all condominium declarations, covenants, conditions, and restrictions, development agreements, or other agreements or declarations now existing or later executed relating to the Premises or Improvements, and all Laws now existing or later enacted relating to the Premises or Improvements, including those relating to condominiums, and all rights of Trustor in connection with any owner's association, condominium association, architectural control committee, or similar association or committee, established in connection with the Project, including Trustor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

1.1.13 All of Trustor's right, title, and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Trustor of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an "**Interest Rate Agreement**"), all whether now or hereafter entered into by Trustor with respect to the Loan, including any and all amounts payable to Trustor, any deposit account or accounts with Beneficiary in the name of Trustor for deposit of payments to Trustor in connection with any Interest Rate Agreement or swap transaction, and any and all funds now or hereafter on deposit therein;

1.1.14 All of Trustor's right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements; (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (defined below); (iv) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i)-(iii); and (v) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (iv) (collectively, the "**Contracts**");

1.1.15 All of Trustor's right, title, and interest in and to all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements;

1.1.16 To the fullest extent not prohibited by applicable Laws, all of Trustor's rights in all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or

hereafter issued in connection with the construction, development, ownership, operation, management, leasing, or use of the Premises or Improvements (the "**Project Licenses**");

1.1.17 All books, records, and data pertaining to any and all of the property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data ("**Books and Records**"); and

1.1.18 All products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above.

Notwithstanding the foregoing, the definition of Property specifically excludes, and Grantor does not grant a security interest in, any personal property that constitutes 'contents' for which flood insurance would be required under applicable law if such personal property 'contents' were collateral for the Loan.

1.2 Secured Obligations.

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

1.2.1.1 Payment of all obligations at any time owing under a promissory note (the "**Note**") of even date herewith, payable by Trustor, as maker, in the stated principal amount of **TEN MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$10,500,000.00)** to the order of Beneficiary;

1.2.1.2 Payment and performance of all obligations of Trustor under this Deed of Trust;

1.2.1.3 Payment and performance of all obligations of Trustor under the Term Loan Agreement of even date herewith between Trustor, as "Borrower," and Beneficiary, as "Lender" (the "**Loan Agreement**");

1.2.1.4 Payment and performance of any obligations of Trustor under any Loan Documents that are executed by Trustor, but specifically excluding any obligations of Trustor under any guaranty of the Secured Obligations or any separate indemnity agreement executed in connection with the Loan (each an "**Indemnity Agreement**"), including any environmental, hazardous materials, or building access indemnity agreement;

1.2.1.5 Payment and performance of all obligations of Trustor arising from any Interest Rate Agreements, including any Cash Settlement Amount or any payments on Early Termination payable by Trustor under any Swap Transaction or Confirmation. Capitalized terms used in this subsection not otherwise defined in this Deed of Trust are defined in the *2006 ISDA Definitions* published by the International Swap Dealers Association, Inc.;

1.2.1.6 Payment and performance of all of the Related Obligations.

1.2.1.7 All other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation is secured by this Deed of Trust;

1.2.1.8 Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the foregoing Secured Obligations; and

1.2.1.9 Payment and performance of all future advances with respect to any of the foregoing Secured Obligations.

1.2.2 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 Note or the Loan Agreement that permit borrowing, repayment, and re-borrowing, or that provide for a change in the interest rate of any Secured Obligation.

1.2.3 This Deed of Trust shall not secure any obligations of guarantors or other third parties under any guaranties of the Secured Obligations or any Indemnity Agreement.

1.2.4 Trustor understands that the Loan is cross-defaulted with all Related Obligations, such that a default under any of the Related Obligations constitutes a default under the Loan. Additionally, all of the Related Obligations are cross-collateralized, such that following an Event of Default under any portion of the Related Obligations, Beneficiary, in its discretion, may exercise its rights and remedies against any and all of the collateral securing any of the Related Obligations. Notwithstanding such cross-collateralization, Beneficiary has the sole and exclusive right to segregate the separate security interests granted for the Related Obligations so that the security instrument given for a particular portion of the Related Obligations will act as security only for such obligations of Trustor as Beneficiary, in its sole discretion, elects, and thereby to remove all other obligations of Trustor from the scope of the obligations secured thereby. Beneficiary may exercise its right to segregate the different collateral as security for particular obligations of Trustor unilaterally, and without prior notice to or consent by Trustor or any other party, by providing written notice to Trustor at any time prior to a foreclosure sale of any portion of any of the collateral for the Related Obligations that identifies by any reasonable means those particular obligations of Trustor that remain secured by each security instrument and provides that any other obligations of Trustor to Beneficiary are no longer secured by such security instrument(s). Such notice shall be effective immediately to amend the Loan Documents in accordance therewith. Trustor hereby irrevocably designates and appoints Beneficiary as its agent and representative, and, where permitted by applicable Law, its attorney-in-fact, such power of attorney coupled with an interest, for the limited purpose of preparing any amendments required in accordance with this Section.

2. ASSIGNMENT OF LEASES AND RENTS.

2.1 Assignment. Trustor hereby collaterally assigns and grants to Beneficiary a security interest in, as additional security for the Secured Obligations, all of the right, title and interest of Trustor in and to (a) any and all Leases; and (b) all rents, including but not limited to "Rents" as defined in the Act, issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property (collectively, "**Rents**"), including minimum rents, additional rents, advance rents, termination payments, bankruptcy claims, forfeited security deposits, common area maintenance charges, parking revenues, entrance fees, service fees, damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Trustor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant under the Leases; together with any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Trustor may have against any tenant, resident, occupant, lessee, or licensee under the Leases (each a "**Tenant**") or against any other occupant of the Premises or Improvements.

2.2 Right to Collect Rents. Trustor may collect and retain possession of the Rents as they become due and payable, unless or until the occurrence of an Event of Default (defined below). Upon the occurrence of an Event of Default, such right to collect and retain Rents shall automatically terminate without notice to Trustor, and without prejudice to Beneficiary. Beneficiary may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Beneficiary and Trustor agree that the mere recordation of this Deed of Trust entitles Beneficiary immediately to collect and receive Rents upon the occurrence of an Event of Default without first taking any enforcement action under applicable Laws, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

2.3 No Encumbrance. Trustor shall not assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in any of the Leases or Rents.

2.4 Collection and Application of Rents.

2.4.1 Right to Collect; Attorney-in-Fact. Subject to the right to collect rents granted to Trustor above, Beneficiary has the right, power, and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, to, at such times as Beneficiary in its sole discretion may so choose, (a) demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (b) give receipts, releases and satisfactions for any and all Rents; (c) sue either in the name of Trustor or in the name of Beneficiary for any and all Rents; (d) perform any obligation, covenant or agreement of Trustor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys' fees; (e) delegate any and all rights and powers given to Beneficiary by this assignment of Leases and Rents; (f) appear in any bankruptcy, insolvency or reorganization proceeding involving any Tenant under the Leases and to collect any award or payment due Trustor pursuant to any such proceeding; and/or (g) use such measures, legal or equitable, in its discretion to carry out and effectuate the terms and intent of this assignment of Leases and Rents. All such actions shall be taken at the expense of Trustor, who agrees to reimburse Beneficiary, upon demand, for all amounts

expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and the obligation to perform such actions shall be secured by this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all awards or payments received by Beneficiary shall be applied to the Secured Obligations in such order as Beneficiary may elect in its sole discretion.

2.4.2 Trustor as Trustee. From and after the occurrence of an Event of Default, Trustor shall be the agent of Beneficiary in collection of the Rents, and any Rents so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary, and Trustor shall, within one (1) Business Day after receipt of any Rents, pay the same to Beneficiary to be applied by Beneficiary as set forth below for the "Application of Rents and Other Sums."

2.4.3 Possession of Property Not Required. Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. If an Event of Default 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 and any receiver appointed for all or any portion of the Property shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Deed of Trust and at law and in equity.

2.4.4 Application of Rents. Beneficiary shall apply all Rents collected by it in the manner provided below for the "Application of Rents and Other Sums."

2.5 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 Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

2.5.1 Responsible for the control, care, management or repair of the Property;

2.5.2 A "mortgagee in possession" for any purpose;

2.5.3 Responsible for performing any of the obligations of the lessor under any Lease;

2.5.4 Responsible for any waste committed by Tenants or other occupants of the Property 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;

2.5.5 Responsible for any loss sustained by Trustor resulting from Beneficiary's failure to lease the Premises or Improvements or from any other act or omission of Beneficiary in managing the Property or administering the Leases; or

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

2.6 Consent to Payment of Rents Directly to Beneficiary. At any time, Beneficiary may, at its option, notify any Tenant or other parties of the existence of this assignment of Leases and Rents. Trustor hereby specifically authorizes, instructs, and directs each and every present and future Tenant of all or any part of the Premises or Improvements to pay all unpaid and future Rents directly to Beneficiary upon receipt of demand from Beneficiary to so pay the same, and Trustor hereby agrees that each such present and future Tenant may rely upon such written demand from Beneficiary to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Beneficiary is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. To the extent permitted by applicable law, Trustor hereby waives any right, claim or demand that Trustor may now or hereafter have against any present or future Tenant by reason of such payment of Rents to Beneficiary, and any such payment shall discharge such Tenant's obligation to make such payment to Trustor.

2.7 Leasing. Trustor shall not lease the Premises or Improvements except in accordance with the provisions of the Loan Agreement.

2.8 Further Actions. Trustor shall punctually observe, perform, and discharge all obligations, terms, covenants, conditions, and warranties to be performed by Trustor pursuant to the Leases. Trustor agrees to execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's judgment

to carry out the purposes of this assignment of Leases and Rents, including any consents to this assignment of Leases and Rents. In addition, Trustor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any tenant thereunder, and shall pay on demand all costs and expenses, including attorneys' fees that Beneficiary may incur in connection with Beneficiary's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Beneficiary until repaid by Trustor.

2.9 Application of Rents. All Rents collected following an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor under the Leases, and then to the Secured Obligations. Beneficiary or the receiver shall be liable to account only for those Rents actually received.

2.10 Utah Uniform Assignment of Rents Act. This Section 2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the "**Act**"), and in the event of any conflict or inconsistency between the provisions of this Section 2 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

3. SECURITY ASSIGNMENT OF CONTRACTS.

3.1 Assignment. To the fullest extent not prohibited by applicable Laws, Trustor hereby grants, assigns, and pledges to Beneficiary all of Trustor's right, title, and interest in and to all of the Contracts as security for the Secured Obligations.

3.2 Trustor's Covenants. Trustor hereby covenants and represents to Beneficiary as follows:

3.2.1 Trustor shall punctually observe, perform, and discharge each and every obligation, covenant, condition, and agreement of the Contracts to be performed by Trustor.

3.2.2 Trustor shall enforce performance by the other part(y)(ies) to any Contract, of each and every obligation, covenant, condition and agreement to be performed by such other part(y)(ies).

3.2.3 Trustor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in any Contract. In addition, Trustor shall not consent to, suffer or permit any future assignment or transfer of any material Contract by any party without Beneficiary's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

3.2.4 Trustor shall not materially alter, amend, modify or terminate any of the Contracts without the prior written consent of Beneficiary except for service contracts entered into in the ordinary course of business.

3.2.5 Upon Beneficiary's request following an Event of Default, Trustor shall deliver to Beneficiary all of the original Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto.

3.2.6 Trustor shall execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's judgment to carry out the purposes of this assignment of Contracts, including any consents to this assignment of Contracts.

3.3 Beneficiary's Remedies upon Default. Upon the occurrence of an Event of Default, Beneficiary, at its sole option, and without any notice whatsoever to Trustor, and without assuming any of the obligations of Trustor under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any default of Trustor in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof; (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Trustor under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Trustor or Beneficiary, with such third parties as Beneficiary may in its discretion select, and upon such terms and conditions as Beneficiary in its reasonable discretion may determine; (f) compromise amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Beneficiary by this assignment of Contracts; (i) perform any obligation, covenant or agreement of Trustor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and

paying attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Trustor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of this assignment of Contracts. All such actions shall be taken at the expense of Trustor.

3.4 No Liability of Beneficiary. Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of this assignment of Contracts. Further, nothing in this Deed of Trust shall obligate Beneficiary to assume any obligations under any Contract, unless and until Beneficiary becomes the owner of the Property and affirmatively assumes a particular Contract in writing.

3.5 Instructions to Contracting Parties. Upon an Event of Default, this assignment of Contracts constitutes an irrevocable direction to and full authority from Trustor to any other party to any Contract to pay directly to Beneficiary, upon Beneficiary's request, all amounts that may be or become due to Trustor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Trustor to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

3.6 Application of Income. Notwithstanding any other provision of this Deed of Trust, the payments, proceeds and income collected by Beneficiary with respect to the Contracts may be applied, in whatever order Beneficiary in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Trustor.

3.7 Interpretation. The terms of any separate assignment of Contracts or assignment of construction documents shall supersede and control over any inconsistent terms of this assignment of Contracts.

4. SECURITY AGREEMENT AND FINANCING STATEMENT.

4.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, a collateral assignment of and granting of a security interest in the Leases and Rents, and a security assignment of Contracts, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable Laws to be personal property or fixtures. To the extent that any Property (including the Leases, Rents, or Contracts), is or may be determined to be personal property or fixtures, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under Article 9 of the Uniform Commercial Code of the state in which the Premises are located, as amended or recodified from time to time (the "**Project State UCC**"), covering all such Property.

4.2 Perfection of Security Interest.

4.2.1 Trustor hereby irrevocably authorizes Beneficiary, at any time and from time to time, to prepare and file, in any filing office in any Uniform Commercial Code jurisdiction necessary to perfect the security interests granted herein, any financing statements and amendments thereto that (a) indicate the "collateral" (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset included in the collateral falls within the scope of Article 9 of the Project State UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information for the sufficiency of the filing or acceptance of any financing statement or amendment by the filing office, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary subject to Trustor's rights under Section 9a-509 of the Utah Uniform Commercial Code. Trustor agrees to furnish any such information to Beneficiary promptly upon Beneficiary's request.

4.2.2 Trustor shall pay all fees and costs that Beneficiary may incur in filing one or more financing statements and 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 and in obtaining such record searches as Beneficiary may reasonably require to confirm the perfection and priority of the security interests granted herein.

4.2.3 Trustor shall cooperate with Beneficiary in any way necessary to perfect and continue the perfection of Beneficiary's security interest in any part of the Property.

4.2.4 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 as a lien on the Project or the rights or obligations of the parties under it.

4.2.5 Trustor shall not terminate any financing statement filed to perfect Beneficiary's security interest without Beneficiary's express written consent, which consent shall not be reasonably withheld or delayed.

4.2.6 It shall be an immediate Event of Default if Trustor fails to execute such additional documentation or to take such further actions necessary to perfect Beneficiary's security interest at Beneficiary's reasonable request, or if Trustor fails to comply with the terms of any such agreements that may be established pursuant to the terms hereof.

4.3 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the Project State UCC, covering any Property that now is or later may become fixtures attached to the Premises or Improvements.

4.4 Representations, Warranties, and Covenants.

4.4.1 Trustor represents and warrants to Beneficiary that (a) Trustor's exact legal name is as set forth on signature page of this Deed of Trust, which name is stated to be the Trustor's name on the public organic record most recently filed with the Trustor's jurisdiction of organization; (b) Trustor is an organization of the type, and is organized in the jurisdiction, set forth on the signature page of this Deed of Trust; (c) Trustor's organizational identification number, if any, is set forth on the signature page of this Deed of Trust; (d) Trustor's address set forth in the preamble of this Deed of Trust is its principal place of business and the location of its chief executive offices and the address at which it will keep its Books and Records.

4.4.2 Trustor shall not, without prior written notice to Beneficiary: (a) change the location of its principal place of business or chief executive office from that specified in the preamble of this Deed of Trust; (b) change its name, identity or corporate structure in a manner that would affect the perfection or priority of Beneficiary's financing statement(s) against all or any portion of the Property without further action by Beneficiary; or (c) change the jurisdiction of its incorporation or organization. In addition, Trustor shall keep all Property that is personal property, to the extent not delivered to Beneficiary, at the Project or such other locations as have been disclosed in writing to Beneficiary, and Trustor shall not remove the personal property from such locations without providing written notice to Beneficiary of the new location of such personal property.

4.4.3 Trustor will fully and punctually perform any duty required of it under or in connection with any of the Property that is personal property, and will not take any action that would impair, damage or destroy Beneficiary's rights to such Property or the value thereof. Trustor will timely take any and all action reasonably required to maintain the continued performance by every other party to any agreement comprising the Property.

4.5 Uniform Commercial Code Remedies. Following an Event of Default, Beneficiary may exercise any or all of the remedies granted to a secured party under the Project State UCC.

5. COMMON INTEREST OWNERSHIP LAWS.

Trustor hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Property to the Utah Condominium Ownership Act, or any other law later enacted or effective related to condominiums or common interest ownership communities, without Beneficiary's prior written consent and any attempt by Trustor to do so shall be null and void and at Beneficiary's option, shall be an Event of Default under this Deed of Trust.

6. RIGHTS AND DUTIES OF THE PARTIES.

6.1 Representations and Warranties. Trustor represents, warrants, and covenants that:

6.1.1 Trustor lawfully possesses and holds indefeasible fee simple title to all of the Premises and Improvements, subject only to the Permitted Encumbrances;

6.1.2 Trustor has or will have good title to all Property other than the Premises and Improvements, free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office, except for Permitted Encumbrances;

6.1.3 True, correct and complete copies of the Contracts and Leases have been delivered to Beneficiary, including all amendments, modifications, exhibits and addenda thereto;

6.1.4 Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts, there are no outstanding assignments of the Leases, Rents, or Contracts, Trustor is the absolute owner of the landlord's interest in the Leases, and Trustor has performed no act or executed any other instrument that might prevent Beneficiary from enjoying and exercising any of its rights and privileges evidenced by this Deed of Trust with respect to the Leases, Rents, and Contracts;

6.1.5 No Rents have been discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than one (1) month prior to the accrual thereof;

6.1.6 No default exists under any of the Leases or Contracts by any party and no fact or circumstance exists under any of the Leases or Contracts that, with the lapse of time or giving of notice or both, would constitute a default by any party under such Leases or Contracts;

6.1.7 The Leases and Contracts were duly executed, are in full force and effect, and are the valid and binding obligations of the parties thereto and are enforceable in accordance with their respective terms;

6.1.8 Upon recording of this Deed of Trust in the real estate records of the county where the Premises are located and the filing of a UCC financing statement in the applicable Uniform Commercial Code jurisdiction, this Deed of Trust will create a second lien on the Property subordinate to the lien of the deed of trust securing the Related Obligations;

6.1.9 The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

6.1.10 To Trustor's knowledge, the Project Licenses held by Trustor include all licenses and permits necessary for the occupancy and operation of the Project; the Project Licenses are in full force and effect; Trustor has at all times complied with all material terms and requirements of the Project Licenses, and Trustor has received no notices contrary to the foregoing; no suspension, revocation or cancellation of the Project Licenses is threatened, and no event has occurred, nor do any circumstances exist that may (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License; and all applications required to have been filed for the renewal of any Project License have been duly filed on a timely basis with the appropriate authority, and all other required filings have been made with respect to the Project Licenses on a timely basis with the appropriate authority.

6.2 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

6.3 Use of Property. Unless required by applicable Laws or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Trustor shall not initiate or acquiesce to a change in the zoning classification of the Property without Beneficiary's prior written consent. Trustor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime or improvement district.

6.4 Taxes, Assessments, Liens, Charges and Encumbrances. Trustor shall pay, prior to delinquency, all taxes, levies, charges, assessments, water and sewer rates, rents insurance premiums, charges, and impositions, attributable to the Property.

6.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the following provisions shall govern:

6.5.1 Application of Insurance Proceeds. In the event of any loss, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Beneficiary shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

6.5.1.1 The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without imposition of any prepayment fee otherwise payable under the

Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof, or

6.5.1.2 The reimbursement of Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Beneficiary may, at its option, condition the reimbursement on Beneficiary's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may reasonably require.

6.5.2 Repair or Replacement. Notwithstanding Section 6.5.1 above, Beneficiary shall make insurance proceeds available to Trustor to pay for costs associated with the repair or restoration of the Property, provided the following conditions are satisfied:

6.5.2.1 There is no Event of Default hereunder nor does any event or condition then exists which with the giving of notice, the passage of time, or both, will constitute an Event of Default.

6.5.2.2 The following conditions shall have been satisfied: (i) Trustor shall have furnished to Beneficiary and Beneficiary shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Trustor for such restoration and rebuilding work, including, without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule; (ii) Beneficiary shall have reviewed and approved the construction contract for the repair and restoration, and if required by Beneficiary, Beneficiary shall have received payment and performance bonds with dual obligee rider; (iii) Beneficiary shall have received evidence satisfactory to it that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Beneficiary shall have received from Trustor the amount of the deficiency for disbursement with the insurance proceeds; (iv) Beneficiary shall have received evidence satisfactory to it that Trustor has funds available to it sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (v) Trustor shall have furnished to Beneficiary and Beneficiary shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same has been approved by all governmental authorities having jurisdiction over the Property; (vi) in Beneficiary's judgment, the rebuilding and restoration work can be completed at least five (5) months prior to the maturity date of the Note, as such date may be extended; and (vii) Beneficiary must be satisfied that the leases of the Property will remain in full force and effect pending the completion of the repairs, or Beneficiary shall have received evidence satisfactory to it that upon completion of the repair or restoration work, the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

6.5.2.3 Each disbursement of the insurance proceeds shall be made in accordance with Beneficiary's then standard procedures for disbursement of construction loan proceeds.

6.5.2.4 Trustor shall execute and deliver to Beneficiary such additional security documents and instruments as Beneficiary deems reasonably necessary to continue and perfect Beneficiary's security interest in the Property.

6.5.3 Condemnation. Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Beneficiary, and all proceeds of any such awards, payments, damages, or claims shall be paid to Beneficiary. Beneficiary shall apply any such proceeds in the manner and upon the terms and conditions set forth in Sections 6.5.1 and 6.5.2 above relating to the application of insurance proceeds.

6.5.4 Duty to Repair and Maintain. Except to the extent that insurance or condemnation proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Trustor from restoring, repairing, or maintaining the Property as provided in Section 6.6, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

6.6 Maintenance and Preservation of Property.

6.6.1 Trustor shall insure the Property as required by the Loan Agreement and keep the Property, including improvements, fixtures, equipment, machinery, and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Trustor when necessary to keep such items in good repair in good condition and repair.

6.6.2 Neither Trustor nor any Tenant shall remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other land use classification that affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

6.6.3 If all or part of the Improvements becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Improvements in a good and workmanlike manner in accordance with sound building practices, regardless of whether Net Claims Proceeds are available for disbursement pursuant to the terms of the Loan Agreement.

6.6.4 Trustor shall take all action necessary to keep the Property at all times in compliance with: (a) all applicable Laws and all orders of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including the Americans with Disabilities Act; and (b) all public and private covenants, conditions, restrictions and equitable servitudes affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on the Property if doing so 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 Agreement.

6.6.5 Trustor shall not commit waste or permit impairment or deterioration of the Property.

6.6.6 Trustor shall not abandon the Property.

6.6.7 Trustor shall give notice in writing to Beneficiary, appear in and defend any action or proceeding purporting to affect the Property, the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Beneficiary.

6.6.8 Trustor shall perform all other acts that from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

6.7 Preservation of Project Licenses.

6.7.1 Trustor shall, within twenty (20) days after demand by Beneficiary, deliver to Beneficiary a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Beneficiary;

6.7.2 Trustor shall not take any action or make any omission that would (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License;

6.7.3 Trustor shall cause all filings for the renewal of any Project License to be made on a timely basis with the appropriate authority; and

6.7.4 Trustor shall notify Beneficiary immediately of any notice or claim known to Trustor alleging a material violation of any Project License or threatening to revoke, withdraw, suspend, cancel, or terminate any Project License, and Trustor shall take all action necessary to defend such allegation and, as applicable, reinstate such Project License.

6.8 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Deed of Trust:

6.8.1 Release any person liable for payment of any Secured Obligation;

6.8.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

6.8.3 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;

- 6.8.4 Alter, substitute or release any property securing the Secured Obligations;
- 6.8.5 Consent to the making of any plat or map of the Property or any part of it;
- 6.8.6 Join in granting any easement or creating any restriction affecting the Property;
- 6.8.7 Join in any subordination or other agreement affecting this Deed of Trust or the lien of it;
- 6.8.8 Apply any other security for the Secured Obligations held by Beneficiary; and
- 6.8.9 Release the Property or any part of it.

6.9 Protection of Beneficiary's Security.

6.9.1 If there occurs a Default or Event of Default under this Deed of Trust or the other Loan Documents, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Beneficiary therein, including eminent domain, insolvency, enforcement of local Laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Beneficiary, at Beneficiary's option, may cure any breach or default of Trustor, make such appearances, disburse such sums, enter upon the Premises and Improvements, and/or take such action as Beneficiary deems necessary, in its sole discretion to protect Beneficiary's security and the second priority lien of this Deed of Trust. Such actions may include, without limitation: (a) appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; (b) paying, purchasing, contesting, or compromising any encumbrance, tax, assessment, charge, lien or claim of lien that is or, in Beneficiary's reasonable judgment, may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among the parties to this Deed of Trust; (c) purchasing fuel and providing utilities; (d) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; (e) otherwise caring for and incurring expenses to protect any and all of the Property; (f) employing counsel, accountants, contractors, and other appropriate persons to assist Beneficiary; and/or (g) such other actions reasonably necessary to protect Beneficiary's security.

6.9.2 Nothing contained in this Deed of Trust shall require Beneficiary to incur any expense or take any action hereunder.

6.9.3 The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of the right of Beneficiary to accelerate the maturity of any of the Secured Obligations. Beneficiary's receipt of any Claims Proceeds shall not operate to cure or waive any Default or Event of Default.

6.10 Release and Reconveyance. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Trustor under this Deed of Trust and the other Loan Documents have been received, Beneficiary shall request that Trustee reconvey this Deed of Trust and release the lien created thereby, and release all notes and instruments evidencing the Secured Obligations. Trustor shall pay any costs of preparation and recordation of such reconveyance and releases. 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. Neither Beneficiary nor Trustee shall have any duty to determine the right of persons claiming to be rightful grantees of any reconveyance.

6.11 Compensation, Exculpation, Indemnification.

6.11.1 Compensation.

6.11.1.1 Trustor agrees to pay or reimburse Beneficiary for all amounts advanced by Beneficiary in connection with Section 6.9 and Section 6.10 above.

6.11.1.2 Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including exercising their rights with respect to the Leases, Rents, and Contracts, providing a statement of the Secured Obligations, or releasing the lien of this Deed of Trust. Trustor also agrees to pay or reimburse all of Beneficiary's and Trustee's costs and expenses that may be incurred in rendering any such services, including all costs of administering the Leases and Contracts.

6.11.1.3 Whether or not any lawsuit is filed, Trustor agrees to pay or reimburse Beneficiary or Trustee, as applicable, for all costs, expenses, or other advances that may be incurred or made by Beneficiary or Trustee in any litigation or proceeding affecting this Deed of Trust, the Loan Documents, or the Property (including probate, discretionary review, bankruptcy, and on appeal), and any efforts to enforce any terms of this Deed of Trust, exercise any rights or remedies afforded to Beneficiary or Trustee hereunder, under the other Loan Documents, or at law or in equity, or defend any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other Legal Expenses, receiver's fees, and any cost of evidence of title.

6.11.1.4 Trustor further agrees to pay all costs, expenses, and other advances that may be incurred or made by Beneficiary and/or Trustee in connection with one or more Foreclosure Sales (as defined below) of the Property.

6.11.1.5 All such expenditures, advances, costs, and expenses made or incurred by Beneficiary or Trustee shall be immediately due and payable by Trustor, with interest thereon at the Default Rate, and shall be secured by this Deed of Trust.

6.11.2 Exculpation. Neither Beneficiary nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following, and, to the extent permitted by applicable law, Trustor expressly waives and releases all liability of the types described below, and agrees not to assert or impose any such liability against or upon Beneficiary or Trustee:

6.11.2.1 Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust or any of the other Loan Documents;

6.11.2.2 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, including any of the Leases or Contracts; or

6.11.2.3 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 managing the Property, after an Event of Default, unless the loss is caused solely by the willful misconduct or bad faith of Beneficiary.

6.11.3 INDEMNIFICATION. TRUSTOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY BENEFICIARY AND TRUSTEE 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 THAT EITHER OF THEM MAY SUFFER OR INCUR (EXCEPT TO THE EXTENT ARISING FROM BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT):

6.11.3.1 In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law or in equity;

6.11.3.2 Arising out of or resulting from the assignment of Leases and Rents as set forth above, including claims or demands for security deposits from Tenants deposited with Trustor, and from and against any and all claims and demands whatsoever that may be asserted against Beneficiary to satisfy any obligations of the landlord under the Leases;

6.11.3.3 Arising out of or resulting from the assignment of Contracts as set forth above, including the exercise or enforcement of any of the rights of Trustor thereunder;

6.11.3.4 Because of any failure of Trustor to perform any of its obligations;

6.11.3.5 Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee 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;

6.11.3.6 By reason of (a) suspension, revocation, cancellation, or termination of any Project License or (b) any alleged obligation or undertaking on the part of Beneficiary or Trustee to perform or discharge any of the terms of, or any agreements or Laws pertaining to, the Project Licenses; or

6.11.3.7 By reason of Beneficiary's security interest in the Project Licenses.

Such indemnity shall include, all costs, expenses and attorneys' fees incurred by Beneficiary in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Beneficiary until repaid by Trustor, and shall be immediately due and payable to Beneficiary by Trustor upon demand and shall be secured by this Deed of Trust. This agreement by Trustor to hold harmless, indemnify, and defend Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations, the full or partial release of this Deed of Trust, and any foreclosure of this Deed of Trust, or transfer by deed in lieu thereof.

6.11.4 Payment by Trustor. Trustor shall satisfy all obligations to pay money arising under this Deed of Trust and the other Loan Documents immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest at the Applicable Rate or Default Rate, as applicable, from the date the obligation arises.

6.12 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 created under it, against all adverse claims. Trustor shall give Beneficiary prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

6.13 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, that 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.

6.14 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, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material is or is not present in, on or under the Property, or that there has been or shall be compliance with any Laws pertaining to Hazardous Material or any other applicable Laws. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, nor its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Prior to an Event of Default, Beneficiary shall give Trustor reasonable notice before entering the Property, and Beneficiary shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section. Trustor shall bear all expense of any site visit, observation or testing.

6.15 Books and Records. Trustor agrees to maintain full and accurate records and books of account prepared in a manner reasonably acceptable to Beneficiary covering any of the Property and to deliver, upon request, to Beneficiary such of the books as relate to the Property, including all invoices, shipping documents, contracts, orders, order acknowledgments, correspondence and other instruments and papers in Trustor's possession. Beneficiary shall at all reasonable times have free access to Trustor's ledgers, books of account and other written records evidencing or relating to the Property and the right to make and retain copies or memoranda of the same.

7. ENVIRONMENTAL AND BUILDING LAWS.

7.1 Definitions.

7.1.1 "Building Laws" means all federal, state, and local laws, statutes, regulations, ordinances and requirements, now or hereafter in effect, applicable to the construction, ownership, operation, or maintenance of the Property, including all building, zoning, planning, subdivision, fire, traffic, safety, health, labor, air quality, wetlands, shoreline and flood plain laws, statutes, regulations, ordinances and requirements, and all applicable requirements of the Fair Housing Act of 1968, the Americans with Disabilities Act of 1990, and all other Laws relating to the marketing and use of the Project in a non-discriminatory manner, and all government and private covenants, conditions and restrictions applicable to the Property, as now in effect or hereafter amended.

7.1.2 "Environmental Laws" means all federal, state, and local laws, statutes, regulations, ordinances, rules, requirements, judgments, injunctions, decrees, covenants, conditions, and restrictions, now or hereafter in effect, relating to the use, release, handling, storage, transportation, clean-up, or other disposal of Hazardous Substances, or relating to the water

quality, air quality, soils quality, and other environmental quality of real property and improvements constructed upon real property, or otherwise to industrial hygiene or to environmental or unsafe conditions or to human health, as such laws and ordinances may be amended from time to time, including, without limitation: (i) the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), (ii) the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), and (iii) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), all as now or hereafter amended.

7.1.3 "Environmental Proceedings" means any lawsuit or proceeding, whether civil (including actions by private parties), criminal, or administrative, relating to the environmental condition of the Project or the presence, generation, treatment, storage, or use of Hazardous Substances thereon or the release, disposal, or discharge of Hazardous Substances therefrom.

7.1.4 "Environmental Report" means an environmental site assessment report addressed to Beneficiary, or subject to a separate letter agreement permitting Beneficiary to rely on such environmental report, prepared at Trustor's expense by a qualified environmental consultant approved by Beneficiary and dated not more than six (6) months prior to the Closing Date or otherwise accepted by Beneficiary for purposes of the Secured Obligations.

7.1.5 "Hazardous Substances" means any waste, pollutants, contaminants, gasoline, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, petroleum or petroleum product, asbestos, tremolite, anthophyllite or actinolite, polychlorinated biphenyls, explosives, radioactive materials, or other chemical, substance, or material that: (i) after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities, or (ii) is now or at any time in the future becomes regulated under, or is defined, classified or designated as hazardous, toxic, radioactive or dangerous, or other comparable term or category under any Environmental Laws.

7.1.6 "Nearby Property" means real property that is adjacent to or in the immediate vicinity of the Site that could reasonably cause contamination of the Site or could become contaminated with Hazardous Substances as a result of construction, operations, or other activities involving Hazardous Substances on, over, or under the Site or on, over, or under such adjacent or nearby property.

7.1.7 "Remedial Work" means all actions necessary or desirable to clean up any Hazardous Substances affecting the Site or Nearby Property, including removal, treatment, containment, or any other remedial action required by Governmental Authorities or as otherwise required to restore the Site or Nearby Property to a safe condition in compliance with applicable Laws, including Environmental Laws, and all actions necessary or desirable to modify the Site or marketing materials to comply with applicable Laws, including Building Laws.

7.1.8 "Site" means, for the purposes of this Section, the Premises and all Improvements, fixtures, and personal property now or hereafter located thereon, the soil and groundwater thereof, any streams crossing or abutting the Premises, and any aquifer underlying the Premises.

7.1.9 "Transition Date" means, with reference to all or any portion of the Property that is being foreclosed or transferred by deed in lieu of foreclosure, the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of foreclosure has become effective and has been recorded in the county where the Premises are located.

7.2 Representations and Warranties. Trustor makes the following representations and warranties to Beneficiary, which representations and warranties shall be continuing so long as any amount remains owing under the Secured Obligations or Beneficiary retains any interest in the Site:

7.2.1 Environmental Laws. Except for any contamination or environmental condition that has otherwise been disclosed in writing by Trustor to Beneficiary prior to the date hereof, Trustor has no knowledge of: (a) the presence of any Hazardous Substances on the Site, (b) any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on or into the Site or from the Site onto the Nearby Property, and (c) any failure of the Site to comply fully with all applicable Environmental Laws. To Trustor's knowledge, Trustor's intended uses of the Site, including, but not limited to, any improvements and materials to be constructed and installed on and in the Site and the work method for accomplishing such construction, comply fully with all Environmental Laws.

7.2.2 Building Laws. Except for any non-compliance that has been disclosed in writing by Trustor to Beneficiary, Trustor has no knowledge of any failure of the Project or the plans and specifications for any improvements on the Project to comply fully with all applicable Building Laws. To Trustor's knowledge, Trustor's intended uses of the Project, including, but not limited to, any improvements and materials to be constructed and installed on or at the Site, the work method for accomplishing such construction, and the plan for marketing the improvements constructed on the Site comply fully with all Building Laws.

7.3 No Waivers of Other Indemnifications Relating to Environmental Condition. Except as set forth herein or in any separate Indemnity Agreement executed by Trustor in connection with the Secured Obligations or as otherwise disclosed in writing by Trustor to Beneficiary prior to the date hereof: (a) Trustor has not and will not release or waive the liability of any past or current owner, lessee, or operator of the Site, any party who performs work on the Site, or any party who may be responsible for the presence of or removal of Hazardous Substances on or from the Site or the Nearby Property, and (b) Trustor has made no prior promises of indemnification to any party relating to the existence or non-existence of Hazardous Substances on the Site.

7.4 Obligation to Comply with Environmental and Building Laws. Trustor shall, as applicable, construct, keep, and maintain the Site in compliance with any and all laws relating to public safety and the condition of the environment, including, but not limited to, the Environmental Laws and the Building Laws.

7.5 Prohibited Activities. Trustor covenants that, so long as Trustor owns any interest in the Site, Trustor and Trustor's agents, contractors, authorized representatives, and employees shall not engage in any of the following prohibited activities, and Trustor shall use diligent efforts to assure that Trustor's invitees and Tenants, and such Tenants' employees, agents, and invitees do not: (a) cause or permit any release or discharge of Hazardous Substances on the Site in any manner or quantity that would violate any Environmental Law; (b) cause or permit any manufacturing, storage, holding, handling, usage, placement, transporting, spilling, leaking, discharging, or dumping of Hazardous Substances in or on any portion of the Site other than in full compliance with all Environmental Laws; (c) suffer or permit any other act upon or concerning the Site that would result in a violation of any Environmental Law; or (d) suffer or permit any other act upon or concerning the Site that would result in a violation of any of the Building Laws or require any alterations or improvements to be made on the Site under any of the Building Laws.

7.6 Obligation to Cure Non-Compliance.

7.6.1 If Trustor at any time becomes aware of (a) any Hazardous Substances on or other environmental problem or liability with respect to the Site or any Nearby Property in any manner or quantity that would violate any Environmental Law, (b) any failure of the Project or the improvements to be constructed on the Site to comply with any of the Environmental Laws, (c) any failure of the Project or the related improvements or the marketing efforts and other operations undertaken with respect thereto to comply with any of the Building Laws, or (d) any lien, action, or notice resulting from violation of any Environmental Laws or Building Laws, Trustor shall immediately notify Beneficiary, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition and provide all notices that state or federal law may require.

7.6.2 If, upon giving such notice or for any other reason, one or more Governmental Authorities having appropriate jurisdiction requires removal or treatment of Hazardous Substances from or on the Site or the making of alterations to the Project to conform to Building Laws, or such removal, treatment, or alteration is required by Environmental Laws or Building Laws, Trustor will: (a) to the extent required by Environmental Laws, perform Remedial Work that is necessary or desirable to clean up any Hazardous Substances affecting the Site, including, without limitation, removal, treatment, containment, or any other remedial action required to restore the Site to a safe condition in compliance with applicable laws and regulations, including, without limitation, Environmental Laws, (b) take all actions that are necessary or desirable to modify the Site and all related improvements and marketing materials so as to achieve compliance with applicable laws and regulations, including, without limitation, Building Laws, and/or (c) attempt, through appropriate legal or administrative proceedings, to obtain a stay of enforcement proceedings if Trustor believes in good faith that Trustor is not required by law to cure such Hazardous Substances condition or to make alterations to comply with Building Laws.

7.7 Remedial Work.

7.7.1 All Remedial Work to be performed at the Site or any Nearby Property shall be conducted:

(a) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer;

(b) pursuant to a detailed written plan for the Remedial Work approved by any public or private agencies or persons with a legal or contractual right to such approval and otherwise acceptable to Beneficiary;

(c) with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and

(d) only following receipt of any required permits, licenses or approvals.

7.7.2. The selection of contractors and consulting environmental engineers for Remedial Work, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work, and the written plan for the Remedial Work (and any changes thereto) shall each be subject to Beneficiary's prior written approval, which shall not be unreasonably withheld or delayed. In addition, Trustor shall submit to Beneficiary, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, contracts and similar information prepared or received by Trustor in connection with any Remedial Work or Hazardous Substances relating to the Site or the Nearby Property.

7.8 Indemnification of Beneficiary; Payment of Attorneys' Fees. Trustor shall indemnify and hold Beneficiary harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, and costs and expenses (including reasonable attorneys' fees and costs) that result in actual cost and expense to Beneficiary prior to the Transition Date, and arise directly or indirectly from or out of, or in any way connected with: (a) the inaccuracy of the representations contained in Section 7.2 hereof; (b) any activities on the Site during Trustor's ownership, possession, or control of the Site that directly or indirectly result in the Site or any Nearby Property becoming contaminated with Hazardous Substances; (c) the discovery and/or cleanup of Hazardous Substances that were deposited on or were existing on the Site prior to such Transition Date or that were deposited on any Nearby Property as a result of Trustor's actions or omissions; or (d) any alleged or actual failure of any improvements now or hereafter constructed on the Site to continuously comply with all Building Laws now or hereafter enacted at any time. Trustor acknowledges that, as between Trustor and Beneficiary, Trustor will be solely responsible for all costs and expenses relating to the cleanup of Hazardous Substances from the Site or the cleanup of any Hazardous Substances from any Nearby Property as a result of Trustor's actions or omissions and the modification and correction of any of the improvements constructed on the Site so as to comply fully with all Building Laws.

7.9 Remedies on Default. A default by Trustor under any of the covenants, representations, or warranties Set forth in this Section 7 shall, upon the expiration of any applicable cure period, constitute an Event of Default entitling Beneficiary to exercise any and all of the rights and remedies available to Beneficiary under the Loan Documents; *provided, however*, that such Event of Default shall not form the basis for any claim for damages or indemnification hereunder by Beneficiary against Trustor except to the extent of sums actually advanced by Beneficiary pursuant to the terms hereof as a consequence of such default prior to the Transition Date.

7.10 Scope. The foregoing remedies and indemnification do not apply to any deposit or release of Hazardous Substances on the Site caused solely by Beneficiary, its agents, representatives, or employees, or by any receiver for the Site or Property appointed at the request of Beneficiary. Trustor acknowledges that, as between Trustor and Beneficiary, Trustor will be solely responsible for all costs and expenses relating to the clean-up of Hazardous Substances from the Site or from any Nearby Property or to the modification and correction of any of the Improvements to comply fully with all Building Laws.

8. UNAUTHORIZED TRANSFERS [Include only if the Loan Agreement does not include these provisions.]

8.1 Definitions.

8.1.1 "Unauthorized Transfer" means any Transfer not expressly permitted under the Loan Agreement or consented to by Beneficiary in writing in advance of the Transfer.

8.1.2 "Transfer" means (a) any sale, transfer, lease, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation, or other disposition, whether voluntary or involuntary, of (i) all or any portion of the Project or other security for the Loan, (ii) all or any portion of Trustor's right, title, and interest (legal or equitable) in and to the Project or any other security for the Loan, or (iii) any interest in Trustor or any Guarantor, or any interest in any entity that directly or indirectly holds an interest in, or directly or indirectly controls, Trustor or any Guarantor, including any Transfer resulting from the death of an individual Trustor or Guarantor, or (b) any material change in the management of Borrower or any Guarantor.

8.2 Transfers. 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 or acquiesce in the making of any Transfer without Beneficiary's prior express written consent to the particular transaction and the transferee. Beneficiary may withhold such consent in its sole discretion.

8.2.1 Any Unauthorized Transfer shall be null and void, and of no effect, and shall also constitute, at Beneficiary's option, an immediate Event of Default by Trustor under the Loan Documents. If any Unauthorized Transfer occurs, Beneficiary may, in its sole discretion, declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by this Deed of Trust and any of the other Loan Documents.

8.2.2 As a condition of approving any Transfer, Beneficiary may impose such requirements and conditions as it determines are appropriate in its reasonable discretion. In connection with Beneficiary's approval of any Transfer, Trustor and the assuming party shall pay, in advance, any and all reasonable costs and expenses incurred by Beneficiary, including reasonable attorneys' and accountants' fees.

8.2.3 No approval of any Transfer shall cause a release of Trustor or any Guarantor from any liability under the Loan Documents without Beneficiary's prior written consent, which consent may be freely withheld in Beneficiary's sole discretion.

9. DEFAULT AND REMEDIES.

9.1 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 (each an "**Event of Default**" and some or all, collectively, "**Events of Default**").

9.1.1 Failure of Trustor to (a) make any payment required under this Deed of Trust within ten (10) days after demand, if due on demand, or when otherwise due, or (b) perform or observe any agreement, covenant, or condition required under this Deed of Trust within thirty (30) days after written notice from Beneficiary to Trustor to do so (or if the failure is such that the cure cannot be completed within said thirty (30) day period, failure by Trustor to commence the cure within said thirty (30) day period and thereafter continue the cure with diligence and complete the cure within ninety (90) days after such written notice), unless a different cure period is provided in herein, in which case the specific cure period shall control, or such event is identified as an immediate Event of Default for which no cure period is applicable; *provided, however*, that no cure period shall apply if Trustor received notice from Beneficiary of the failure of Trustor to perform a similar covenant, agreement, or obligation within the previous twenty-four (24) month period, in which case the failure to perform shall constitute an immediate Event of Default.

9.1.2 An "Event of Default" occurs under the Loan Agreement or any other Loan Document.

9.1.3 Any default by Trustor under any Permitted Encumbrance that is not cured within any applicable cure period therefor.

9.1.4 Any representation, warranty, or statement made herein, in any other Loan Document, or any other material information furnished by Trustor to Beneficiary or any other holder of the Note, is determined by Beneficiary to have been false or misleading in any material respect at the time made.

9.1.5 Any breach or default by Trustor under the Leases or under any material Contract that has continued beyond any applicable cure period therefor.

9.2 Remedies. At any time after an Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary under the Loan Documents, at law, or in equity. 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.

9.2.1 Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

9.2.2 Additional Advances. Beneficiary may terminate any commitment to make any additional advances under the Loan or any other loan secured by this Deed of Trust.

9.2.3 Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under, or through Trustor, and without regard to the solvency or insolvency of Trustor or the then-value of the Property, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable Laws, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, the right and power to sell the Property, such rights and powers as Beneficiary would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Trustor hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.

9.2.4 Entry; Protection of Security.

9.2.4.1 Beneficiary, in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, may do the following: (a) enter, take possession of, manage, and operate all or any part of the Property, including taking possession of the then-owner's Books and Records; (b) terminate Trustor's right and license to collect the Rents and administer the Leases, and thereafter collect the Rents, enter into, enforce, modify, or cancel Leases on such terms and conditions as Beneficiary may consider appropriate, evict Tenants, fix and modify Rents, and employ managers and other personnel to administer the Leases; (c) exercise all of Trustor's rights with respect to the Contracts, and employ managers and other personnel to administer the Contracts; (d) complete construction on and make repairs, replacement and alterations to the Premises and Improvements and to the fixtures, equipment and personal property located in or on the Premises or Improvements; (e) purchase and pay for such additional furniture and equipment as in the reasonable discretion of Beneficiary may be necessary to maintain a proper rental income from the Property; (f) otherwise care for and incur expenses to protect any and all of the Property; (g) take any action permitted under Section 6.9 above; (h) take any other action Beneficiary may, in its reasonable discretion, consider necessary and appropriate to protect the security of this Deed of Trust; and (i) employ counsel, accountants, contractors and other appropriate persons to assist Beneficiary in any of the foregoing.

9.2.4.2 If Beneficiary so requests, Trustor shall assemble all of the Property not then located at the Premises and make all of it available to Beneficiary at the site of the Premises.

9.2.4.3 Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

9.2.4.4 Beneficiary may take any of the actions permitted under this Section either with or without giving notice to any person.

9.2.5 Lawsuits; Foreclosure.

9.2.5.1 Beneficiary may commence and maintain an action or actions, at law or in equity, in any court of competent jurisdiction, to enforce the payment and/or performance of the Secured Obligations (including to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy).

9.2.5.2 Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially foreclose the lien hereof upon the Property or any part thereof (each such proceeding, a "**Foreclosure Sale**"), for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable Laws.

9.2.5.3 In addition to the right to appoint a receiver upon an Event of Default, Trustee or Beneficiary may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment.

9.2.5.4 If this Deed of Trust is foreclosed by judicial action, and the Property sold at a Foreclosure Sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises and to the Improvements as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon at the Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

9.2.5.5 To the maximum extent permitted by applicable Laws, Beneficiary will be entitled to a judgment providing that, if the Foreclosure Sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

9.2.6 Power of Sale.

9.2.6.1 Beneficiary shall have the right to invoke the power of sale to cause Trustee to sell all or part of the Property in accordance with applicable Laws. Under this power of sale, Beneficiary shall have the discretionary right to cause Trustee to sell some or all of the Property, including any Property that constitutes personal property, in any combination and in any manner permitted by applicable Laws. Any such Foreclosure Sale pursuant to the power of sale is referred to herein as a "**Trustee's Sale.**"

9.2.6.2 Before any Trustee's Sale, Beneficiary or Trustee shall give and record such notice of default and election to sell as may then be required by *Utah Code Annotated* § 57-1-24 through § 57-1-26 or other applicable Laws. When all legally mandated time periods have elapsed, 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, and Beneficiary may impose such terms and conditions of sale as are permitted or allowed by applicable Laws.

9.2.6.3 From time to time in accordance with then applicable Laws, Trustee may, and in any event at Beneficiary's request shall, continue any Trustee's Sale by public announcement at the time and place scheduled for that sale, or may, in its discretion, give a new notice of sale.

9.2.6.4 Also, Beneficiary may from time to time discontinue or rescind any notice of default or notice of sale before any Trustee's Sale, by executing and delivering to Trustee a written notice of such discontinuance or rescission. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee other declarations or notices of default to satisfy the Secured Obligations, nor otherwise affect any provision, covenant, or condition of any Loan Document, or any of the rights, obligations, or remedies of Trustee or Beneficiary hereunder or thereunder.

9.2.7 Other Remedies. In addition to, but not in lieu of, any other rights and remedies hereunder, Beneficiary shall have the right to institute suit and obtain a protective or mandatory injunction against Trustor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Beneficiary may exercise all rights and remedies contained in this instrument (including all rights and remedies with respect to the assignments of Leases and Contracts) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable Laws, and shall have the benefit of all of the provisions of such applicable Laws, including all amendments thereto that may become effective from time to time after the date hereof.

9.2.8 Sale of Personal Property. Beneficiary and/or (as required by applicable Laws) Trustee, shall have the discretionary right to cause some or all of the Property that constitutes personal property to be sold or otherwise disposed of in any combination and in any other manner permitted by applicable Laws.

9.2.8.1 For purposes of this power of sale, Beneficiary and/or (as required by applicable Laws) Trustee may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or (as required by applicable Laws) Trustee, may dispose of any personal property in any manner permitted by Article 9 of the Project State UCC, including any public or private sale, or in any manner permitted by any other applicable Laws.

9.2.8.2 In connection with any sale or other disposition of such 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 thirty (30) days prior to 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 Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

9.2.9 Single or Multiple Foreclosure Sales.

9.2.9.1 If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or (as required by applicable Laws) Trustee may (a) designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and (b) elect to dispose of the lots, parcels and/or items through a one Foreclosure Sale or multiple Foreclosure Sales. This Section 9.2.9 is subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Project, if consisting of several known lots or parcels, shall be sold.

9.2.9.2 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 liens of this Deed of Trust on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

9.3 Purchase at Foreclosure Sale.

9.3.1 At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws the extent permitted by then applicable Laws.

9.3.2 To the fullest extent not prohibited by applicable Laws, the sales price of any Property sold at a Foreclosure Sale shall include all expenditures and expenses that may be paid or incurred by or on behalf of Trustee and Beneficiary in connection with such Foreclosure Sale and enforcement of this Deed of Trust, including attorneys' fees and other legal costs, survey charges, appraiser's fees, inspecting engineer's or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of a sale decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title.

9.3.3 Instead of paying cash for such Property, Beneficiary may credit the sales price of the Property against the Secured Obligations in such order as Beneficiary in its sole discretion may choose.

9.3.4 At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, unless other terms and conditions of sale are prescribed by Beneficiary in accordance with and as permitted by applicable Laws. Trustee shall execute and deliver to the purchaser(s) at such sale 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.

9.4 Fair Value. To the extent the applicable Laws require that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by applicable Laws and the additional factors set forth below, and Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

9.4.1 The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the Foreclosure Sale.

9.4.2 An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges that are incurred by the seller of real property.

9.5 Tenants. Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any Tenant of the Property.

9.6 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale as follows: *First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed; *Second:* To payment of the obligations secured by the Deed of Trust; and, *Third:* The balance, if any, to the person or persons legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

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

10. THE TRUSTEE.

10.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys, (c) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, and Trustee shall not be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (d) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for rendering Trustee's services hereunder. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses that may be incurred by Trustee in the performance of Trustee's duties.

10.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

10.3 Successor Trustees. Trustee may resign by giving notice of resignation in writing to Beneficiary. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, prefers to appoint a substitute trustee or multiple substitute trustees in accordance with the criteria described in *Utah Code Annotated* § 57-1-21, or successive substitute trustees or successive multiple substitute trustees, to act instead of the original Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees in succession) who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the then-existing Trustee. Such appointment shall be executed in accordance with *Utah Code Annotated* § 57-1-22 by any authorized agent of Beneficiary. Trustor hereby ratifies and confirms any and all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable Laws. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of their duties, rights, and obligations hereunder.

10.4 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or any substitute trustee

such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

10.5 Succession Instruments. Any substitute trustee appointed in accordance with applicable Laws, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, and trusts of the substitute trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

10.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

11. MISCELLANEOUS PROVISIONS.

11.1 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 contain further agreements and affirmative and negative covenants by Trustor that apply to this Deed of Trust and to the Property.

11.2 No Waiver or Cure.

11.2.1 Each waiver by Beneficiary must 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 to take action on account of any default of Trustor. Consent by Beneficiary 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 consent to be obtained in any future or other instance.

11.2.2 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 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.

11.2.2.1 Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

11.2.2.2 Automatic termination of the right to collect Rents and administer the Leases.

11.2.2.3 Beneficiary exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

11.2.2.4 Beneficiary exercises any of its rights under the assignment of Contracts or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

11.2.2.5 Beneficiary takes any action to preserve its security hereunder or cure any default of Trustor under the Leases or Contracts.

11.2.2.6 Beneficiary or Trustee 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 this Deed of Trust.

11.2.2.7 Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Documents.

11.2.2.8 Beneficiary or Trustee 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.

11.2.2.9 Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

11.3 Powers of Beneficiary.

11.3.1 If Beneficiary performs any act that it is empowered or authorized to perform under this Deed of Trust, 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.

11.3.2 Beneficiary may take any of the actions permitted under this Deed of Trust 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.

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

11.4 Assignment. All rights of Beneficiary hereunder shall inure to the benefit of its successors and assigns, and all obligations of Trustor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Beneficiary in, to, and under this Deed of Trust shall pass to and may be exercised by any assignee of such rights of Beneficiary. Trustor hereby agrees that if Beneficiary gives notice to Trustor of an assignment of said rights, upon such notice, the liability of Trustor to the assignee of Beneficiary shall be immediate and absolute. Trustor will not set up any claim against Beneficiary or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Beneficiary or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents, or Contracts.

11.5 No Offset. Trustor's obligation to timely pay and perform all obligations under the Note, this Deed of Trust, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Trustor or any guarantor may have or claim against Beneficiary or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Trustor or any guarantor may have in damages or otherwise against Beneficiary or any other person or entity if Trustor maintains a separate action thereon.

11.6 Imposition of Mortgage Tax. Trustor shall pay the cost of any Mortgage Tax due in connection with this Deed of Trust or the indebtedness secured hereby. For purposes of this Section, "**Mortgage Tax**" means: (a) a specific tax on mortgages or other security instruments or on all or any part of the indebtedness secured by a mortgage or other security instrument; or (b) a specific tax on the owner of the Property covered by a mortgage or security instrument which the taxpayer is authorized or required to deduct from payments on debt secured by the mortgage or security instrument; or (c) a tax on property covered by a mortgage or security instrument chargeable against a lender, beneficiary or trustee or the holder of the note secured by the security instrument; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the obligations secured hereby or on payments of principal and interest made by a Trustor under a security instrument. If any Mortgage Tax is enacted subsequent to the date of this Deed of Trust, enactment of the Mortgage Tax shall constitute an Event of Default, and Beneficiary may exercise any or all of the remedies available to it upon the occurrence of any Event of Default, unless the following conditions are met: (i) Trustor can lawfully pay the Mortgage Tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee; and (ii) Trustor pays the Mortgage Tax (including any tax on the payment made) within thirty (30) days after notice from Beneficiary that the tax law has been enacted.

11.7 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.

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

11.9 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, successors, and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

11.10 Interpretation.

11.10.1 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.

11.10.2 The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

11.10.3 The word "or" has the inclusive meaning represented by the phrase "and/or."

11.10.4 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 in this Deed of Trust.

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

11.12 Waiver of Statutory Rights. To the fullest extent not prohibited by Law:

11.12.1 Trustor hereby agrees that it will not apply for or avail itself of any appraisalment, valuation, stay, extension, or exemption Laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such Laws.

11.12.2 Trustor for itself and all who may claim through or under it, to the extent permitted by applicable law, waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

11.12.3 To the extent permitted by applicable law, Trustor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust, and agrees to take any and all further actions as may be necessary to waive the right of redemption.

11.12.4 To the extent permitted by applicable law, Trustor hereby waives any defense of laches and all statutes of limitation with respect to enforcement of this Deed of Trust.

11.13 Severability. If any provision of this Deed of Trust is 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 or has a material adverse effect on Beneficiary's security for the Secured Obligations, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

11.14 Notices. Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Loan Agreement.

11.15 Beneficiary's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary not to exceed the maximum amount secured hereby.

11.16 WAIVER OF TRIAL BY JURY. TRUSTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE

LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR OR BENEFICIARY. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

11.17 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling to the extent necessary to create, preserve, and/or maintain a valid security interest upon the Property; otherwise the provisions of the Loan Agreement shall be controlling.

11.18 Applicable Law. The creation, perfection, and enforcement of the lien of this Deed of Trust shall be governed by the Laws of the state in which the Premises are located. In all other respects, this Deed of Trust shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

11.19 Counterparts. This Deed of Trust may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Deed of Trust may be detached from any counterpart of this Deed of Trust without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Deed of Trust identical in form hereto but having attached to it one or more additional signature pages.

11.20 Notice of Indemnification. TRUSTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY TRUSTOR OF BENEFICIARY FROM CLAIMS OR LOSSES ARISING AS A RESULT OF BENEFICIARY'S OWN NEGLIGENCE.

11.21 State Specific Provisions. With respect to Property that is located in the State of Utah, the following state-specific provisions apply, notwithstanding anything contained herein to the contrary:

11.21.12 Water Rights.

11.21.1.1 Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 6.16, the term "**Governmental Authorities**" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Deed of Trust.

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

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

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

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

11.21.1.6 As used herein, "**Water Rights**" in addition to any foregoing meaning assigned in this Deed of Trust, means and included all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights,

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

11.21.2 Utah Construction Registry.

11.21.2.1 Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Annotated § 38-1a-201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

11.21.2.2 Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

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

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

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

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

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

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

11.21.4.1 The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

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

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

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

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

11.21.7 Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited against the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default in accordance with the Utah Uniform Commercial Real Estate Receivership Act, Trustee or Beneficiary

may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

11.21.7.1 Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or specifically enforce any of the covenants hereof.

11.21.7.2 Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or specifically enforce any of the covenants hereof. Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with Utah Code Annotated § 57-1-24 or other applicable law. After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 through § 57-1-26 or other applicable Law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Annotated §§ 57-1-25 and 57-1-26 or other applicable Law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

11.21.8 Obligations of Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor or Guarantor with respect to the Premises.

In the event of any inconsistencies between the terms and conditions of this Section 11.21 containing Utah state law provisions and the terms and conditions of any other part of this Deed of Trust, the terms and conditions of this Section shall control and be binding. When necessary to avoid any inconsistency or to ensure compliance with Utah law, any procedures provided for in this Deed of Trust that are inconsistent with those required by Utah law shall be modified by and replaced with the procedures or requirements of the laws of the State of Utah.

11.21.9 Status of the Property. For purposes of Utah Code Annotated § 57-1-25 and Utah Code Annotated § 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

11.21.10 Waiver of Certain Rights. With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, to the extent permitted by applicable law, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Annotated § 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

11.21.12 NOTICE RE ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS

REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

11.20.13 Non-Agricultural Use. Trustor represents and warrants to Beneficiary that (a) the Property is not used principally for agricultural purposes, and (b) the loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.

11.22 Incorporation of Exhibits and Riders. The following Exhibits and/or Riders attached to this Deed of Trust are incorporated herein and expressly made a part hereof by this reference:

11.22.1 Exhibit A – Legal Description

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Executed as of the date of this Deed of Trust.

TRUSTOR / DEBTOR:


4TH AND 4TH LLC
a Utah limited liability company

By: _____
Name: Steven Ray Black
Title: Manager

WDG UNIVERSITY BLVD, LLC
a Utah limited liability company

By: MILLCREEK PARTNERS LLC
a Utah limited liability company
its manager

By: TETON LAND COMPANY, L.L.C.
a Utah limited liability company
its manager


By:  _____
Name: Spencer H. Wright
Title: Manager

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING PAGE.]

Executed as of the date of this Deed of Trust.

TRUSTOR / DEBTOR:

4TH AND 4TH LLC
a Utah limited liability company

By: 
Name: Steven Ray Black
Title: Manager

WDG UNIVERSITY BLVD, LLC
a Utah limited liability company

By: MILLCREEK PARTNERS LLC
a Utah limited liability company
its manager

By: TETON LAND COMPANY, L.L.C.
a Utah limited liability company
its manager

By: _____
Name: Spencer H. Wright
Title: Manager

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING PAGE.]

STATE OF UTAH)
 : ss.
COUNTY OF Utah)

On this 19th day of August, in the year 2021, before me, Brianna Whiting a notary public, personally appeared STEVEN RAY BLACK, a manager of 4TH AND 4TH LLC, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same on behalf of such limited liability company.

Witness my hand and official seal.

Brianna Whiting
NOTARY PUBLIC
[Seal]



~~STATE OF UTAH)
 : ss.
COUNTY OF _____)~~

~~On this _____ day of August, in the year 2021, before me, _____ a notary public, personally appeared SPENCER H. WRIGHT, an individual, a Manager of TETON LAND COMPANY, L.L.C., a Utah limited liability company, the Manager of MILLCREEK PARTNERS LLC, the Manager of **WDG UNIVERSITY BLVD, LLC**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same on behalf of such limited liability company.~~

~~Witness my hand and official seal.~~

~~_____
NOTARY PUBLIC
[Seal]~~

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this _____ day of August, in the year 2021, before me, _____ a notary public, personally appeared STEVEN RAY BLACK, a manager of **4TH AND 4TH LLC**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same on behalf of such limited liability company.

Witness my hand and official seal.

NOTARY PUBLIC
[Seal]

STATE OF UTAH)
 : ss.
COUNTY OF Davis)

On this 16 day of August, in the year 2021, before me, Julie B Boyle a notary public, personally appeared SPENCER H. WRIGHT, an individual, a Manager of TETON LAND COMPANY, L.L.C., a Utah limited liability company, the Manager of MILLCREEK PARTNERS LLC, the Manager of **WDG UNIVERSITY BLVD, LLC**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same on behalf of such limited liability company.

Witness my hand and official seal.

Julie B Boyle

NOTARY PUBLIC
[Seal]

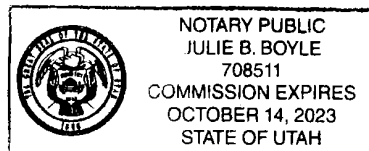


EXHIBIT A
DESCRIPTION OF PREMISES

That certain real property owned by Trustor and situated in the County of Salt Lake, State of Utah and described as follows:

Part of Lots 1 and 2, Block 36, Plat "B", SALT LAKE CITY SURVEY, described as follows: Beginning at a point on the North right of way line of 400 South Street, said point also being the Westerly right of way line of 400 East Street, said point also being the Southeast corner of Lot 1, Block 36, Plat "B", SALT LAKE CITY SURVEY, and running thence South 89°59'01" West along the Southerly line of said Block 36, a distance of 410.76 feet to a point as described by Boundary Line Agreement recorded July 6, 2016 as Entry No. 12315767 in Book 10449, Page 8536 as being the East boundary of that certain property described in Book 5345 at Page 1634, thence along said boundary line North 00°02'12" West a distance of 165.09 feet along said property to a point on the North line of said Lot 2, thence North 89°58'53" East 410.76 feet to the Easterly line of said Block 36, thence South 00°02'13" East 165.09 feet along said Easterly line to the point of beginning.

Tax Serial Number:
16-06-401-024

RECORDATION REQUESTED BY:
SUNWEST BANK
SALT LAKE CITY BANKING OFFICE
10011 CENTENNIAL PKW., SUITE 450
SANDY, UT 84070

13884780 B: 11302 P: 5860 Total Pages: 18
02/04/2022 11:15 AM By: ggasca Fees: \$40.00
TRD- TRUST DEED
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: STEWART TITLE OF UTAH
6955 S UNION PARK CTR STE 100MIDVALE, UT 840476516

WHEN RECORDED MAIL TO:
SUNWEST BANK
LOAN SERVICING DEPARTMENT
5660 E. FRANKLIN ROAD, STE. 301
NAMPA, ID 83687

SEND TAX NOTICES TO:
WDG UNIVERSITY BLVD, LLC
4TH AND 4TH LLC
1178 WEST LEGACY CROSSING BLVD STE 100
CENTERVILLE, UT 84014

FOR RECORDER'S USE ONLY

1530985

DEED OF TRUST

THIS DEED OF TRUST is dated January 25, 2022, among WDG UNIVERSITY BLVD, LLC, A UTAH LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED FIFTY PERCENT (50%), whose address is 1178 WEST LEGACY CROSSING BLVD STE 100, CENTERVILLE, UT 84014 AND 4TH AND 4TH LLC, A UTAH LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED FIFTY PERCENT (50%), whose address is 1922 W 700 S OREM, UT, 84058 ("Trustor"); SUNWEST BANK, whose address is SALT LAKE CITY BANKING OFFICE, 10011 CENTENNIAL PKW., SUITE 450, SANDY, UT 84070 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and STEWART TITLE OF UTAH, INC, whose address is 1518 NORTH WOODLAND PARK DRIVE, LAYTON, UT 84041 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SALT LAKE County, State of Utah:

Part of Lots 1 and 2, Block 36, Plat "B", SALT LAKE CITY SURVEY, described as follows: Beginning at a point on the North right of way line of 400 South Street, said point also being the Westerly right of way line of 400 East Street, said point also being the Southeast corner of Lot 1, Block 36, Plat "B", SALT LAKE CITY SURVEY, and running thence South 89°59'01" West along the Southerly line of said Block 36, a distance of 410.76 feet to a point as described by Boundary Line Agreement recorded July 6, 2016 as Entry No. 12315767 in Book 10449, Page 8536 as being the East boundary of that certain property described in Book 5345 at Page 1634, thence along said boundary line North 00°02'12"

West a distance of 165.09 feet along said property to a point on the North line of said Lot 2, thence North 89°58'53" East 410.76 feet to the Easterly line of said Block 36, thence South 00°02'13" East 165.09 feet along said Easterly line to the point of beginning.

The Real Property or its address is commonly known as 380 SOUTH 400 EAST, SALT LAKE CITY, UT 84111. The Real Property tax identification number is 16-06-401-024.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

TRUSTOR'S REPRESENTATIONS AND WARRANTIES. Trustor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Trustor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) to Trustor's actual knowledge, the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Trustor and do not result in a violation of any law, regulation, court decree or order applicable to Trustor; (d) Trustor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Trustor about Borrower (including without limitation the creditworthiness of Borrower).

TRUSTOR'S WAIVERS. To the extent permitted by applicable law, Trustor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Trustor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Trustor shall perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Trustor agree that Borrower's and Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 57-1-19, et seq.

Duty to Maintain. Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any

Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction Loan. If some or all of the proceeds of the loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the

Improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Trustor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any restructuring of the legal entity (whether by merger, division or otherwise) or any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing Indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$10,000.00. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain flood insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Flood insurance may be purchased under the National Flood Insurance Program, from private insurers providing "private flood insurance" as defined by applicable federal flood insurance statutes and regulations, or from another flood insurance provider that is both acceptable to Lender in its sole discretion and permitted by applicable federal flood insurance statutes and regulations.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$50,000.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year,

Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to comply with any obligation to maintain Existing Indebtedness in good standing as required below, or to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

EXISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness are a part of this Deed of Trust:

Existing Lien. The lien of this Deed of Trust securing the Indebtedness may be secondary and

inferior to an existing lien. Trustor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

No Modification. Trustor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Trustor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Borrower's and Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Borrower and Trustor pay all the Indebtedness when due, and Trustor otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Trustor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Other Defaults. Borrower or Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Trustor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition

contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Borrower or any Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Trustor's property or Borrower's ability to repay the Indebtedness or Borrower's or Trustor's ability to perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Trustor or on Borrower's or Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Borrower's or Trustor's existence as a going business or the death of any member, the insolvency of Borrower or Trustor, the appointment of a receiver for any part of Borrower's or Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Borrower or Trustor under the terms of any other agreement between Borrower or Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's or Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Existing Indebtedness. The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing

such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

Right to Cure. If any default, other than a default in payment, is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Trustor, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower or Trustor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. To the extent permitted by applicable law, Trustor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower or Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Borrower and Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of SALT LAKE County, State of Utah. The instrument shall contain, in addition to all other matters required by state law, the

names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust or required by law, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Deed of Trust, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all notices given under Utah Code Ann. Section 57-1-26 shall be given as required therein. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided by applicable law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Utah.

Choice of Venue. If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of SALT LAKE County, State of Utah.

Joint and Several Liability. All obligations of Borrower and Trustor under this Deed of Trust shall be joint and several, and all references to Trustor shall mean each and every Trustor, and all references to Borrower shall mean each and every Borrower. This means that each Trustor signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners,

members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Deed of Trust.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means SUNWEST BANK, and its successors and assigns.

Borrower. The word "Borrower" means WDG WASHINGTON, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499

("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means SUNWEST BANK, its successors and assigns.

Note. The word "Note" means the Promissory Note dated June 28, 2021, in the original amount of \$23,200,000.00, the Promissory Note dated June 28, 2021, in the original amount of \$8,075,000.00, and the Promissory Note dated June 28, 2021, in the original amount of \$12,400,000.00 for an aggregate amount of \$43,675,000.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, security agreements, mortgages, deeds of trust, security deeds,

collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means STEWART TITLE OF UTAH, INC, whose address is 1518 NORTH WOODLAND PARK DRIVE, LAYTON, UT 84041 and any substitute or successor trustees.

Trustor. The word "Trustor" means WDG UNIVERSITY BLVD, LLC; and 4TH AND 4TH LLC.

EACH TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND EACH TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:

WDG UNIVERSITY BLVD, LLC

MILLCREEK PARTNERS LLC, Member/Manager of WDG UNIVERSITY BLVD, LLC

TETON LAND COMPANY, L.L.C., Manager of MILLCREEK PARTNERS LLC

By: [Signature]
SPENCER H. WRIGHT, Manager of TETON LAND COMPANY, L.L.C.

4TH AND 4TH LLC
By: [Signature]
STEVEN RAY BLACK, Member/Manager of 4TH AND 4TH LLC

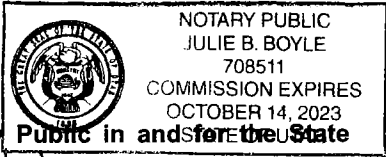
LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Davis)

On this 1st day of Utah, 20 22, before me, the undersigned Notary Public, personally appeared **SPENCER H. WRIGHT, Manager of TETON LAND COMPANY, L.L.C., Manager of MILLCREEK PARTNERS LLC, Member/Manager of WDG UNIVERSITY BLVD, LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By [Signature]

Residing at Davis Co. Utah



Notary Public in and for the State of Utah

My commission expires 10-14-2023

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)

) SS

COUNTY OF Davis)

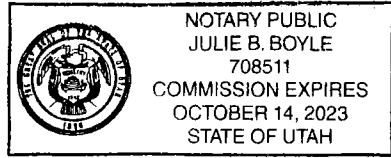
On this 2nd day of February, 20 22, before me, the undersigned Notary Public, personally appeared **STEVEN RAY BLACK, Member/Manager of 4TH AND 4TH LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By Julie B. Boyle

Residing at Davis County, Utah

Notary Public in and for the State of Utah

My commission expires 10-14-2023



REQUEST FOR FULL RECONVEYANCE
(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

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