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Book - 9915 Pg - 5880-5899  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 20 P.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.  
Attn: Thomas J. Pontes  
48 N. Washington Street, MA6-301-01-01  
North Attleboro, Massachusetts 02760

Parcel Tax Serial No. 15-01-127-015-2000  
15-01-127-015-6001, 15-01-128-020-2000,  
15-01-128-020-2001, and 15-01-128-020-6001

Space above this line for Recorder's Use

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

F-81618-F

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made as of February 8, 2011, by **Larry H. Miller Arena Corporation**, a Utah corporation, as trustor ("*Trustor*"), whose address is c/o Larry H. Miller Management Co., 9350 South 150 East, Suite 1000, Sandy, Utah 84070, to **Founders Title Company**, as trustee ("*Trustee*"), whose address is 746 E. Winchester, Suite 100, Salt Lake City, Utah 84107, for the benefit of **Bank of America, N.A.**, a national banking association, as beneficiary ("*Beneficiary*"), whose address is St. Louis - Credit Services, MO2-100-19-06, 100 N. Broadway, St. Louis, Missouri 63102; Attn: Notice Desk.

**I. GRANT IN TRUST.**

**1.1 The Property.** For the purpose of securing payment and performance of the Secured Obligations defined in Section 2 below, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as hereinafter defined) being hereinafter collectively referred to as the "*Property*"):

(a) The real property located in the County of Salt Lake, State of Utah, as described in Exhibit A hereto (the "*Land*");

(b) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land (the "*Arena*"), and all apparatus and equipment now or hereafter attached in any manner to the Arena or any other building on the Land, 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 (collectively, the "*Improvements*"), it being understood and agreed that the Improvements do not include any of the improvements and structures on the plaza surrounding the Arena;

(c) All easements and rights of way appurtenant to the Land; all crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all development rights or credits and air rights; all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the Land; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Land;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Land or the Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing;

(e) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or the other property described above or any part of them; and

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

1.2 **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the Utah Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become a fixture attached to the Land or any building located thereon.

## 2. **THE SECURED OBLIGATIONS.**

2.1 **Purpose of Securing.** Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1, makes the irrevocable and absolute assignment set forth in Section 3, and grants the security interest set forth in Section 4, all for the purpose of securing the following obligations (the "*Secured Obligations*") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations of **Miller Family Real Estate, L.L.C.**, a Utah limited liability company ("*Obligor*") to Beneficiary arising under the following instrument(s) or agreement(s) (collectively, the "*Debt Instrument*");

(i) Master Loan Agreement dated November 8, 2007, executed by Borrower, Beneficiary and the other parties named therein (as amended, modified, renewed, extended and/or restated from time to time).

(ii) Promissory Note dated November 8, 2007, in the maximum principal sum of \$3,520,000.00, executed by Borrower, and payable to the order of Beneficiary (as amended, modified, renewed, extended and/or restated from time to time).

(iii) Promissory Note dated December 17, 2007, in the maximum principal sum of \$5,019,200.00, executed by Borrower, and payable to the order of Beneficiary (as amended, modified, renewed, extended and/or restated from time to time).

(iv) Promissory Note dated January 25, 2008, in the maximum principal sum of \$11,760,000.00, executed by Borrower, and payable to the order of Beneficiary (as amended, modified, renewed, extended and/or restated from time to time).

(v) Promissory Note dated September 2, 2008, in the maximum principal sum of \$5,740,000.00, executed by Borrower, and payable to the order of Beneficiary (as amended, modified, renewed, extended and/or restated from time to time).

(vi) Promissory Note dated September 2, 2008, in the maximum principal sum of \$40,400,000.00, executed by Borrower, and payable to the order of Beneficiary (as amended, modified, renewed, extended and/or restated from time to time).

(b) This Deed of Trust also secures payment of all obligations of Obligor under the Debt Instrument which arise after the Debt Instrument is extended, renewed, modified or amended pursuant to any written agreement between Obligor and Beneficiary, and all obligations of Obligor under any successor agreement or instrument which restates and supersedes the Debt Instrument in its entirety;

(c) Payment and performance of all obligations of Trustor under this Deed of Trust;

(d) Payment and performance of all obligations of Obligor under any Swap Contract with respect to which there is a writing evidencing the parties' agreement that said Swap Contract shall be secured by this Deed of Trust. "Swap Contract" means any document, instrument or agreement with Beneficiary, now existing or entered into in the future, relating to an interest rate swap transaction, forward rate transaction, interest rate cap, floor or collar transaction, any similar transaction, any option to enter into any of the foregoing, and any combination of the foregoing, which agreement may be oral or in writing, including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedule or confirmation, each as amended from time to time; and

(e) Payment and performance of all future advances and other obligations that Trustor (or any successor in interest to Trustor) or Obligor (if different from Trustor) may agree to pay and/or perform (whether as principal, surety or guarantor) to or for the benefit of Beneficiary, when a writing signed by Trustor (or any successor in interest to Trustor) evidences said parties' agreement that such advance or obligation be secured by this Deed of Trust.

This Deed of Trust does not secure any obligation which expressly states that it is unsecured, whether contained in the foregoing Debt Instrument or in any other document, agreement or instrument.

2.2 **Terms of Secured Obligations.** 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 Debt Instrument described in Paragraph 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Debt Instrument which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

### 3. **ASSIGNMENT OF RENTS.**

3.1 **Assignment.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Paragraph. **THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

3.2 **Grant of License.** Notwithstanding the provisions of Paragraph 3.1, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Paragraph 6.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of the security for the Secured Obligations, and exercise its remedies available under *Utah Code Annotated* §§ 57-26-106 through 57-26-109.

4. **GRANT OF SECURITY INTEREST.**

4.1 **Grant of Security Interest.** Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "*Personalty*"):

(a) All tangible personal property of every kind and description, whether stored on the Land or elsewhere, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment, and machinery, and which in all cases is (i) used or useful or acquired in connection with any construction undertaken on the Land or the maintenance of the Land and the Improvements, or (ii) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements;

(b) All crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the Land; and all architectural and engineering plans, specifications and drawings, and as-built drawings which arise from or relate to the Land or the Improvements;

(c) All general intangibles and rights relating to the Property, including, without limitation, all permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Land, Improvements, or other Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or other Property or any part of them;

(d) All deposit accounts from which Trustor may from time to time authorize Beneficiary to debit payments due on the Secured Obligations; all rights and interests under all Swap Contracts, including all rights to the payment of money from Beneficiary under any such Swap Contracts; and all accounts, deposit accounts, and general intangibles, including payment intangibles, described in any such Swap Contracts;

(e) All substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

5. **RIGHTS AND DUTIES OF THE PARTIES.**

5.1 **Representations and Warranties.** Trustor represents and warrants that Trustor lawfully possesses and holds a leasehold interest in the Land and the Improvements as stated in Exhibit A.

5.2 **Taxes, Assessments, Liens and Encumbrances.** Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust.

5.3 **Damages and Insurance and Condemnation Proceeds.**

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

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

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

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

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

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

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

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

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

(c) All proceeds of the Claims assigned to Beneficiary under this Paragraph shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees. Trustor further authorizes Beneficiary, at Beneficiary's option and in Beneficiary's sole discretion, and regardless of whether there is any impairment of the Property, (i) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Beneficiary may determine, or (ii) to hold the balance of such proceeds, or any portion of them, in an interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property, or (iii) to release the balance of such proceeds, or any portion of them, to Trustor. If any proceeds are released to Trustor, neither Beneficiary nor Trustee shall be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Beneficiary to be used to reimburse Trustor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing. Beneficiary may, at Beneficiary's option, condition disbursement of the proceeds on Beneficiary's approval of such plans and specifications prepared by an architect satisfactory to Beneficiary, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require.

5.4 **Insurance.** Trustor shall provide and maintain in force at all times all risk property damage insurance (including without limitation windstorm coverage, and hurricane coverage as

applicable) on the Property and such other type of insurance on the Property as may be required by Beneficiary in its reasonable judgment. At Beneficiary's request, Trustor shall provide Beneficiary with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be in an amount, for a term, and in form and content satisfactory to Beneficiary, and shall be written only by companies approved by Beneficiary. In addition, each policy of hazard insurance shall include a Form 438BFU or equivalent loss payable endorsement in favor of Beneficiary.

**5.5 Maintenance and Preservation of Property.**

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

(b) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Paragraph 5.3.

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

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

(e) If the Property is agricultural, Trustor shall farm the Property in a good and husbandlike manner. Trustor shall keep all trees, vines and crops on the Property properly cultivated, irrigated, fertilized, sprayed and fumigated, and shall replace all dead or unproductive trees or vines with new ones. Trustor shall prepare for harvest, harvest, remove and sell any crops growing on the Property. Trustor shall keep all buildings, fences, ditches, canals, wells and other farming improvements on the Property in first class condition, order and repair.

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

**5.6 Releases, Extensions, Modifications and Additional Security.** Without affecting the personal liability of any person, including Trustor (or Obligor, if different from Trustor), for the payment of the Secured Obligations or the lien of this Deed of Trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Beneficiary and Trustee are respectively empowered as follows:

- (a) Beneficiary may from time to time and without notice:
- (i) release any person liable for payment of any Secured Obligation;
  - (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

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

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

(b) Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

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

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

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

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

5.7 **Reconveyance.** When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. 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 rights of persons claiming to be rightful grantees of any reconveyance.

5.8 **Compensation and Reimbursement of Costs and Expenses.**

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

(b) Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Property or to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Paragraph 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.

(c) Trustor shall pay all obligations arising under this Paragraph immediately upon demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

5.9 **Exculpation and Indemnification.**

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

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

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

(iii) Beneficiary's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any lease covering the Property;

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

(v) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in operating or managing the Property upon exercise of the rights or remedies afforded Beneficiary under Paragraph 6.3, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

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

(b) Trustor agrees to indemnify Trustee and Beneficiary against and hold them harmless from 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 which either may suffer or incur in performing any act required or permitted by this Deed of Trust or by law or because of any failure of Trustor to perform any of its obligations. This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

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

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

**5.12 Representation and Warranty Regarding Hazardous Substances.** Before signing this Deed of Trust, Trustor researched and inquired into the previous uses and ownership of the Property. Based on that due diligence, Trustor represents and warrants that to the best of its knowledge, no hazardous substance has been disposed of or released or otherwise exists in, on, under or onto the Property, except as Trustor has disclosed to Beneficiary in writing. Trustor further represents and warrants that Trustor has complied, and will comply and cause all occupants of the Property to comply, with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("*Environmental Laws*"). Trustor shall promptly, at Trustor's sole cost and expense, take all reasonable actions with respect to any hazardous substances or other environmental condition at, on, or under the Property necessary to (i) comply with all applicable Environmental Laws; (ii) allow continued use, occupation or operation of the Property; or (iii) maintain the fair market value of the Property. Trustor acknowledges that hazardous substances may permanently and materially impair the value and use of the Property. "*Hazardous substance*" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any current or future federal, state or local law



(whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

5.13 **Site Visits, Observation and Testing.** Beneficiary and its agents and representatives shall have the right at any reasonable time, after giving reasonable notice to Trustor, to enter and visit the Property for the purposes of performing appraisals, observing the Property, taking and removing environmental samples, and conducting tests on any part of the Property. Trustor shall reimburse Beneficiary on demand for the costs of any such environmental investigation and testing. Beneficiary will make reasonable efforts during any site visit, observation or testing conducted pursuant this Paragraph to avoid interfering with Trustor's use of the Property. Beneficiary is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by Beneficiary will be solely for the purposes of protecting Beneficiary's security and preserving Beneficiary's rights under this Deed of Trust. No site visit, observation or testing or any report or findings made as a result thereof ("*Environmental Report*") (i) will result in a waiver of any default of Trustor; (ii) impose any liability on Beneficiary; or (iii) be a representation or warranty of any kind regarding the Property (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event Beneficiary has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to Trustor or any other party, Trustor authorizes Beneficiary to make such a disclosure. Beneficiary may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in Beneficiary's judgment. Trustor further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to Trustor by Beneficiary or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of Trustor) by Trustor without advice or assistance from Beneficiary.

5.14 **INDEMNITY REGARDING HAZARDOUS SUBSTANCES.** GRANTOR AGREES TO INDEMNIFY AND HOLD BENEFICIARY HARMLESS FROM AND AGAINST ALL LIABILITIES, CLAIMS, ACTIONS, FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES, COSTS AND EXPENSES (INCLUDING SUMS PAID IN SETTLEMENT OF CLAIMS AND ALL CONSULTANT, EXPERT AND LEGAL FEES AND EXPENSES OF BENEFICIARY'S COUNSEL) OR LOSS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM ANY OF THE FOLLOWING:

(a) ANY HAZARDOUS SUBSTANCE BEING PRESENT AT ANY TIME, WHETHER BEFORE, DURING OR AFTER ANY CONSTRUCTION, IN OR AROUND ANY PART OF THE PROPERTY, OR IN THE SOIL, GROUNDWATER OR SOIL VAPOR ON OR UNDER THE PROPERTY, INCLUDING THOSE INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEAN-UP, REMEDIAL, REMOVAL OR RESTORATION WORK, OR ANY RESULTING DAMAGES OR INJURIES TO THE PERSON OR PROPERTY OF ANY THIRD PARTIES OR TO ANY NATURAL RESOURCES.

(b) ANY USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL OR PRESENCE OF A HAZARDOUS SUBSTANCE. THIS INDEMNITY WILL APPLY WHETHER THE HAZARDOUS SUBSTANCE IS ON, UNDER OR ABOUT ANY OF GRANTOR'S PROPERTY OR OPERATIONS OR PROPERTY LEASED TO GRANTOR, WHETHER OR NOT THE PROPERTY HAS BEEN TAKEN BY BENEFICIARY AS COLLATERAL.

Upon demand by Beneficiary, Grantor will defend any investigation, action or proceeding alleging the presence of any hazardous substance in any such location, which affects the Property or which is brought or commenced against Beneficiary, whether alone or together with Grantor or any other person, all at Grantor's own cost and by counsel to be approved by Beneficiary in the exercise of its reasonable judgment. In the alternative, Beneficiary may elect to conduct its own defense at the expense of Grantor. Grantor's obligations to Beneficiary under this section, except the obligation to give notices to Beneficiary, shall survive termination of this Deed of Trust, repayment of Grantor's obligations to Beneficiary under this Deed of Trust, and foreclosure of this Deed of Trust encumbering the Property or similar proceedings.

5.15 **GROUND LEASE.** Trustor hereby represents, warrants, covenants and agrees that:

(a) This Deed of Trust is lawfully executed and delivered in conformity with that certain Lease (the "*Ground Lease*"), dated June 8, 1990, between the Redevelopment Agency of Salt Lake City, a body politic and corporate, as lessor ("*Ground Lessor*"), and Trustor, as lessee;

(b) Trustor will promptly pay, when due and payable, the rent, additional rents, taxes and all other sums and charges mentioned in and made payable by the *Ground Lease*;

(c) Trustor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under the *Ground Lease*, within the periods provided in the *Ground Lease*, and will do all things necessary to preserve and to keep unimpaired its rights under the *Ground Lease*;

(d) Trustor will promptly notify Beneficiary in writing of any default by Trustor or the *Ground Lessor* in the performance or observance of any of the terms, covenants or conditions on the part of Trustor or the *Ground Lessor* to be performed or observed under the *Ground Lease*;

(e) Trustor will (i) promptly notify Beneficiary in writing of the receipt by Trustor of any notice from the *Ground Lessor* under the *Ground Lease* and of any notice noting or claiming any default by Trustor in the performance or observance of any of the terms, covenants or conditions on the part of Trustor to be performed or observed under the *Ground Lease*, (ii) promptly notify Beneficiary in writing of the receipt by Trustor of any notice from the *Ground Lessor* of the *Ground Lease* to Trustor of termination of the *Ground Lease*, and (iii) promptly cause a copy of each such notice received by Trustor from the *Ground Lessor* under the *Ground Lease* to be delivered to Beneficiary;

(f) Trustor will not, without the prior written consent of Beneficiary, terminate, amend, modify or surrender or suffer or permit any termination, amendment, modification or surrender of the *Ground Lease* (provided, however, Trustor may extend the term of the *Ground Lease* without Beneficiary's consent as long as the extension does not modify or amend any right or obligation of the parties under the *Ground Lease* during its current term);

(g) Trustor will, promptly after written demand from Beneficiary, use its best efforts to obtain from the *Ground Lessor* of the *Ground Lease* and deliver to Beneficiary a certificate stating that the *Ground Lease* is in full force and effect, is unmodified except as shall be stated and disclosed, that no notice of termination thereon has been served on the lessee thereof, stating the date to which the rent has been paid and stating whether or not there are any defaults or rights of set-off thereunder and specifying the nature of such defaults or set-off rights, if any;

(h) Trustor will furnish to Beneficiary, upon demand, proof of payment of all items which are required to be paid by Trustor pursuant to the *Ground Lease*;

(i) Trustor shall permit Beneficiary to take such other action as Beneficiary considers reasonably necessary to cure or remedy any default under the *Ground Lease* or preserve the interest of Beneficiary in the *Ground Lease* and shall execute and deliver, on request of Beneficiary, such instruments as Beneficiary may deem useful or required to permit Beneficiary to cure the default. Upon receipt by Beneficiary from the *Ground Lessor* under the *Ground Lease* of any written notice of default by Trustor thereunder, Beneficiary may rely thereon and take any action to cure such default even though the existence of such default or the nature thereof be questioned or denied by Trustor or by any party on behalf of Trustor. Trustor hereby expressly grants to Beneficiary, and agrees that Beneficiary shall have, the absolute and immediate right to enter in and upon the Property to such extent and as often as Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Trustor. Beneficiary may pay and expend such sums of money as Beneficiary, in its sole discretion, deems necessary for any such purpose, and all sums so paid and expended by Beneficiary, and the interest thereon, shall be added to the Indebtedness and be secured by the lien of this Deed of Trust. For the purpose of curing any such default, Beneficiary may (but shall be under no obligation to) do any act or execute any document in the name of Trustor or as its attorney-in-fact, as well as in the name of

Beneficiary. Trustor hereby irrevocably appoints Beneficiary its true and lawful attorney-in-fact, to do any and all acts and to execute any and all documents which Beneficiary considers reasonably necessary to preserve any rights of Trustor in, to or under the Ground Lease; and

(j) No event has occurred or is continuing which constitutes a default or event of default by Trustor under the Ground Lease. There does not exist any event which with the passage of time or the giving of notice or both would constitute a default or event of default by Trustor under the Ground Lease. Trustor has not received any notice of default under the Ground Lease, and no legal proceedings have been threatened or commenced against Trustor by the Ground Lessor under the Ground Lease.

6. **ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.**

6.1 **Accelerating Transfers.**

(a) "*Accelerating Transfer*" means any sale, contract to sell, conveyance, encumbrance, or other transfer, whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it, including any transfer or exercise of any right to drill for or to extract any water (other than for Trustor's own use), oil, gas or other hydrocarbon substances or any mineral of any kind on or under the surface of the Property. If Trustor is a corporation, "*Accelerating Transfer*" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Trustor is a partnership, "*Accelerating Transfer*" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Trustor is a limited liability company, "*Accelerating Transfer*" also means withdrawal or removal of any managing member, termination of the limited liability company or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the voting power or in the aggregate more than fifty percent of the ownership of the economic interest in the Trustor.

(b) Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by Paragraph 6.3 of this Deed of Trust.

6.2 **Events of Default.** The occurrence of any one or more of the following events, at the option of Beneficiary, shall constitute an event of default ("*Event of Default*") under this Deed of Trust:

(a) Obligor fails to make any payment, when due, under the Debt Instrument (after giving effect to any applicable grace period), or any other default occurs under and as defined in the Debt Instrument or in any other instrument or agreement evidencing any of the Secured Obligations and such default continues beyond any applicable cure period;

(b) Trustor fails to make any payment or perform any obligation which arises under this Deed of Trust;

(c) Trustor makes or permits the occurrence of an Accelerating Transfer in violation of Paragraph 6.1;

(d) Any representation or warranty made in connection with this Deed of Trust or the Secured Obligations proves to have been false or misleading in any material respect when made;

(e) Any default occurs under any other deed of trust on all or any part of the Property, or under any obligation secured by such deed of trust, whether such deed of trust is prior to or subordinate to this Deed of Trust;

(f) An event occurs which gives Beneficiary the right or option to terminate any Swap Contract secured by this Deed of Trust; or

(g) Any default by either Trustor or Lessor under the Ground Lease.

6.3 **Remedies.** At any time after the occurrence of an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately, and may terminate any Swap Contract secured by this Deed of Trust in accordance with its terms.

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

(c) Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Trustor hereby irrevocably constitutes and appoints Beneficiary as its 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. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Paragraph.

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

(e) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(f) Beneficiary may cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and/or sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee

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 a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee. Any person, including Trustor, Trustee or Beneficiary, may purchase at the trustee's sale to the extent permitted by then applicable law. Beneficiary shall have the benefit of any law permitting credit bids. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(g) Beneficiary may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee may sell the Personalty at a public sale to be held at the time and place specified in the notice of sale. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

#### 6.4 Application of Sale Proceeds and Rents.

(a) Beneficiary and 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 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.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Paragraph 6.3, in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

### 7. MISCELLANEOUS PROVISIONS.

#### 7.1 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee 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 or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy

afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust:

- (i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property;
- (ii) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Property;
- (iii) Beneficiary receives and applies to any Secured Obligation 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;
- (iv) Beneficiary makes a site visit, observes the Property and/or conducts tests thereon;
- (v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;
- (vi) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Deed of Trust or invokes any right or remedy provided under this Deed of Trust; or
- (vii) Any notice of default and election to sell under this Deed of Trust is cancelled.

**7.2 Powers of Beneficiary and Trustee.**

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

(b) Beneficiary may take any of the actions permitted under Paragraphs 6.3(b) and/or 6.3(c) 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.

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

**7.3 Nonborrower Trustor.**

(a) If any Trustor ("*Nonborrower Trustor*") is not the Obligor under the Debt Instrument described in Paragraph 2.1(a), such Nonborrower Trustor authorizes Beneficiary to perform any of the following acts at any time, all without notice to Nonborrower Trustor and without affecting Beneficiary's rights or Nonborrower Trustor's obligations under this Deed of Trust:

(i) Beneficiary may alter any terms of the Debt Instrument or any part of it, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Debt Instrument or any part of it;

(ii) Beneficiary may take and hold security for the Debt Instrument, accept additional or substituted security for the Debt Instrument, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, sell or otherwise dispose of any such security;

(iii) Beneficiary may apply any security now or later held for the Debt Instrument in any order that Beneficiary in its sole discretion may choose, and may direct the order and manner of any sale of all or any part of it and bid at any such sale;

(iv) Beneficiary may release Obligor of its liability for the Debt Instrument or any part of it;

(v) Beneficiary may substitute, add or release any one or more guarantors or endorsers of the Debt Instrument; and

(vi) Beneficiary may extend other credit to Obligor, and may take and hold security for the credit so extended, whether or not such security also secures the Debt Instrument.

(b) Nonborrower Trustor waives:

(i) Any right it may have to require Beneficiary to proceed against Obligor, proceed against or exhaust any security held from Obligor, or pursue any other remedy in Beneficiary's power to pursue;

(ii) Any defense based on any legal disability of Obligor, any discharge or limitation of the liability of Obligor to Beneficiary, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other cause, or any claim that Nonborrower Trustor's obligations exceed or are more burdensome than those of Obligor;

(iii) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness of Obligor, and demands and notices of every kind;

(iv) Any defense based on or arising out of any defense that Obligor may have to the payment or performance of the Debt Instrument or any part of it; and

(v) Until the Secured Obligations have been paid and performed in full, all rights of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute, all rights to enforce any remedy that the Beneficiary may have against Obligor, and all rights to participate in any security now or later to be held by Beneficiary for the Debt Instrument.

(c) Nonborrower Trustor assumes full responsibility for keeping informed of Obligor's financial condition and business operations and all other circumstances affecting Obligor's ability to pay and perform its obligations to Beneficiary, and agrees that Beneficiary shall have no duty to disclose to Nonborrower Trustor any information which Beneficiary may receive about Obligor's financial condition, business operations, or any other circumstances bearing on its ability to perform.

(d) No provision or waiver in this Deed of Trust shall be construed as limiting the generality of any other provision or waiver contained in this Deed of Trust.

(e) For purposes of this Paragraph 7.3, all references to the Debt Instrument shall also include any instrument or agreement executed by Obligor subsequent to the date of this Deed of Trust which is secured by this Deed of Trust in accordance with the provisions of Paragraphs 2.1(c) and 2.1(d).

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

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

7.6 **Applicable Law.** This Deed of Trust shall be governed by the laws of the State of Utah.

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

7.8 **Dispute Resolution Provision.** This paragraph, including the subparagraphs below, is referred to as the "*Dispute Resolution Provision*." This Dispute Resolution Provision is a material inducement for the parties entering into this agreement.

(a) This Dispute Resolution Provision concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this agreement (including any renewals, extensions or modifications); or (ii) any document related to this agreement (collectively a "*Claim*"). For the purposes of this Dispute Resolution Provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of Beneficiary involved in the servicing, management or administration of any obligation described or evidenced by this agreement.

(b) At the request of any party to this agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "*Act*"). The Act will apply even though this agreement provides that it is governed by the law of a specified state.

(c) Arbitration proceedings will be determined in accordance with the Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("*AAA*"), and the terms of this Dispute Resolution Provision. In the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, Beneficiary may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property collateral for this credit is located or if there is no such collateral, in the state specified in the governing law section of this agreement. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and shall dismiss the arbitration if the Claim is barred under the applicable statutes of limitation. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as set forth at subparagraph (h) of this Dispute Resolution Provision. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this agreement.



(f) This paragraph does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) Any arbitration or court trial (whether before a judge or jury) of any Claim will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). The Class Action Waiver precludes any party from participating in or being represented in any class or representative action regarding a Claim. Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court and not by an arbitrator. The parties to this agreement acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. **The Parties acknowledge and agree that under no circumstances will a class action be arbitrated.**

(i) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. **WHETHER THE CLAIM IS DECIDED BY ARBITRATION OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

7.9 **Interpretation.** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "*obligations*" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. 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.

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

7.11 **Entire Agreement.** Pursuant to *Utah Code Annotated §25-5-4*, Trustor is notified and acknowledges that the written loan documents, including this Deed of Trust, represent the final agreement between the parties and may not be contradicted by evidence of any alleged prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

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

7.13 **Severability.** If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

7.14 **Notices.** Trustor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Trustor as debtor under the Uniform Commercial Code. Beneficiary's address given below is the address for Beneficiary as secured party under the Uniform Commercial Code.

Addresses for Notices to Trustor: Larry H. Miller Arena Corporation  
c/o Larry H. Miller Management Co.  
9350 South 150 East, Suite 1000  
Sandy, Utah 84070  
Attn: Robert D. Tingey, General Counsel

Address for Notices to Beneficiary: Bank of America, N.A.  
St. Louis – Credit Services  
MO2-100-19-06  
100 N. Broadway  
St. Louis, Missouri 63102  
Attn: Notice Desk

7.15 **Second Lien.** The lien created by this Deed of Trust shall be subordinate to the lien securing payment of a line of credit in the original principal amount of \$30,000,000.00, dated July 16, 2009, executed by Trustor, and payable to the order of Beneficiary (the "*Prior Note*"), as amended by that certain First Modification Agreement dated to be effective June 30, 2010, executed by Trustor, Karen Gail Miller, and Beneficiary, whereby the original principal amount was increased to \$35,000,000.00, and as further amended by that certain Second Modification Agreement dated to be effective September 27, 2010, executed by Trustor, Karen Gail Miller, and Beneficiary. The *Prior Note* is secured by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded in the real property records of Salt Lake County, Utah, as Entry No. 10758580, in Book 9747, beginning on Page 5605, as amended by that certain First Amendment to Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture filing dated June 30, 2010, and recorded in the real property records of Salt Lake County, Utah, as Entry No. 10994806, in Book 9842, beginning on Page 5018. If there is a default in the payment of any principal of or interest on the *Prior Note* or in the observance of any covenant or condition of any instrument securing it, then the debt evidenced by the *Note* secured hereby shall immediately become payable at the option of Beneficiary. If Trustor fails to perform any of Trustor's obligations in the *Prior Note* or in any instrument securing it, Beneficiary may perform those obligations and shall be reimbursed by Trustor, on demand, at the place where the *Note* secured hereby is payable, for any amounts so paid, including attorney's fees, plus interest on those amounts from the date of payment at the interest rate stated in the *Note* secured hereby. The amount to be reimbursed shall be secured by this Deed of Trust.

7.16 **Limitation.** Notwithstanding anything herein to the contrary, recovery under this Deed of Trust is limited to Fourteen Million and No/100 Dollars (\$14,000,000.00) in principal indebtedness, plus interest thereon and costs and expenses incurred by Beneficiary in accordance with this Deed of Trust.

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

TRUSTOR:

Larry H. Miller Arena Corporation  
(a Utah corporation)

By Karen G. Miller  
Karen G. Miller, President

OBLIGOR:


Miller Family Real Estate, L.L.C.  
(a Utah limited liability company)

By: [Signature]  
Gregory S. Miller, Operating Manager

ACKNOWLEDGMENT

State of Utah )  
County of Salt Lake ) :ss

The foregoing instrument was acknowledged before me this 25th day of March, 2011, by Karen G. Miller, President of Larry H. Miller Arena Corporation, a Utah corporation, on behalf of said corporation.


(Seal)   
My Commission expires 7-1-2011

**JANET B. LAYOSA**  
NOTARY PUBLIC-STATE OF UTAH  
9350 S. 150 E. # 1000  
SANDY, UTAH 84070  
COMM. EXP. 07-01-2011

[Signature]  
(Signature of person taking acknowledgment)  
(Title) Janet B. Layosa  
Residing at:  
Salt Lake County, Utah

State of Utah )  
County of Salt Lake ) :ss

The foregoing instrument was acknowledged before me this 24th day of March, 2011, by Gregory S. Miller, Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, on behalf of said limited liability company.

(Seal)   
My Commission expires 7-1-2011

**JANET B. LAYOSA**  
NOTARY PUBLIC-STATE OF UTAH  
9350 S. 150 E. # 1000  
SANDY, UTAH 84070  
COMM. EXP. 07-01-2011

[Signature]  
(Signature of person taking acknowledgment)  
(Title) Janet B. Layosa  
Residing at:  
Salt Lake County, Utah

## EXHIBIT A TO DEED OF TRUST

### Description of Property

The leasehold estate created by a lease dated June 8, 1990, between **Redevelopment Agency of Salt Lake City**, a body politic and corporate, as lessor, and Trustor, as lessee, recorded (or a memorandum of which was recorded) on June 8, 1990, as Entry No. 4927051, in Book 6227, Page 1487, of Official Records of Salt Lake County, Utah, in the real property described below, together with all rights and privileges of Trustor under any option to purchase said real property or any right of first refusal granted to Trustor under the lease or otherwise, and all right, title and interest which Trustor now has or may hereafter acquire in and to said real property and in and to the buildings and improvements located thereon as of the date of the lease or at any time thereafter erected:

All of Block 79, Plat "A", Salt Lake City Survey.

Said property also described as:

PARCEL 1: A parcel of land in Block 79, Plat "A", Salt Lake City Survey, Salt Lake County, Utah, being more particularly described as follows:

BEGINNING at the Northeast corner of said Block 79, said point being South 00°01'30" East 67.93 feet and South 89°58'36" West 63.92 feet from the Salt Lake City Monument representing the centerline intersection of 300 West Street and South Temple Street; thence South 00°01'30" East 329.33 feet; then South 89°58'19" West 660.35 feet; thence North 00°01'12" West 329.38 feet; thence North 89°58'36" East 660.32 feet to the POINT OF BEGINNING.

PARCEL 2: The South ½ of Block 79, Plat "A", Salt Lake City Survey.

Parcel Tax Serial No. 15-01-127-015-2000, 15-01-127-015-6001, 15-01-128-020-2000, 15-01-128-020-2001, and 15-01-128-020-6001

### Street Address of Property

301 West South Temple, Salt Lake City, UT 84101