W2803929

E# 2803929 PG 1 OF 40
Leann H. Kilts, WEBER COUNTY RECORDER
15-Jul-16 0322 PM FEE $105.00 DEP KI
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

MOUNTAIN WEST DEBT FUND, LP
Attn: Rocky Derrick
357 West 200 South, Suite 200,
Salt Lake City, Utah 84101

Weber County Parcel Identification Numbers: 21-126-0001; 21-126-0007; 21-126-0002; 21-126-0008; 21-126-0003; 21-130-0001; 21-130-0002; 21-130-0003; 21-126-0006; 21-130-0004; 21-130-0005; 21-130-0006; 21-130-0007; 21-126-0011; 21-126-0012; 23-012-0022; 21-001-0014; and 21-001-0015.

85677-2F

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

SANCTUARY RANCH UTAH, LLC,
a Utah limited liability company, as trustor
(Borrower)

to

COTTONWOOD TITLE INSURANCE AGENCY, INC., as trustee
for the benefit of

MOUNTAIN WEST DEBT FUND, LP,
a Delaware limited partnership, as beneficiary

Dated: July 15, 2016

THIS DOCUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH
Utah Code 70A-9a-502

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "**Deed of Trust**") is made as of July 15, 2016, by SANCTUARY RANCH UTAH, LLC, a Utah limited liability company, whose principal business address is 6405 South 3000 East, Suite 150, Salt Lake City, Utah 84121, and Timothy P. Charlwood, an individual, also known as Timothy Patrick Charlwood, collectively as trustor (collectively "**Trustor**" or "**Borrower**"), to Cottonwood Title Insurance Agency, Inc., as trustee ("**Trustee**"), whose address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of Mountain West Debt Fund, LP, a Delaware limited partnership ("**Beneficiary**" or "**Lender**"), whose address is 357 West 200 South, Suite 200, Salt Lake City, Utah 84101, as beneficiary.

RECITALS:

Borrower is the borrower under that certain Loan Agreement dated of even date herewith, by and between Borrower and Lender (the "**Loan Agreement**"), under which the Lender is making a loan to Borrower in the maximum principal amount of Two Million Twenty Thousand Dollars ($2,020,000) (the "**Loan**"). Capitalized terms used herein and not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

Borrower desires to secure the payment of the Debt (as defined in Section 2.1) and the performance of all of Borrower's obligations under the Loan Agreement and the Other Obligations (as defined in Section 2.2).

ARTICLE 1

GRANTS OF SECURITY

Section 1.1 PROPERTY TRANSFERRED IN TRUST. Borrower does hereby irrevocably, unconditionally and absolutely grant, bargain, sell, convey, warrant, pledge, transfer and assign to Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE and right of entry and possession, for the benefit of Lender, all of Borrower's estate, right, title and interest in, to and under, whether now owned or hereafter acquired, and grants to Lender a security interest in, any and all of the following described property (collectively, the "**Property**"):

(a) Land. (i) That certain land situated in the City of Huntsville, Weber County, State of Utah, comprising approximately five hundred twenty five (525) acres, generally located in Huntsville Utah, and as more particularly described on Exhibit "A" attached hereto (the "**Land**") and by this reference incorporated herein, and (ii) all lands, estates, interests and rights hereafter acquired by Borrower for use in connection with the development, ownership or occupancy of the Land, and all lands, estates, interests and rights which may, from time to time, by supplemental deed of trust or otherwise be expressly made subject to the lien of this Deed of Trust;

(b) Improvements. All fee interest in and to the buildings, structures, fixtures, additions, accessions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(c) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and all reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, now or hereafter acquired;

(d) Entitlements. All rights to and interests in any entitlements, permits, licenses, authorizations and approvals granted to or otherwise, now or hereafter, held by Borrower or otherwise, now or hereafter, issued with respect to the Property, including, without limitation, any and all conditional use permits, zoning variances, building permits, environmental permits and certificates of completion, certificates of occupancy;

(e) Fixtures and Personal Property. All machinery, equipment, goods, inventory, consumer goods, furnishings, fixtures (including, without limitation, all heating, air conditioning, plumbing, inventory, lighting, communications and elevator fixtures) and other personal property of every kind and nature, whether tangible or intangible, whatsoever now or hereafter owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future use, maintenance, enjoyment, operation and occupancy of the Land and the Improvements, and all building equipment, materials and supplies of any nature whatsoever now or hereafter owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements and all proceeds and products of the above;

(f) Leases, Rents and Other Income. All leases, subleases, ground leases, and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into and all security interests, contractual liens and security deposits whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq. as the same may be amended from time to time (the "**Bankruptcy Code**") (individually, a "**Lease**", collectively, the "**Leases**") and all income, rents (including, without limitation, room rents, revenues, accounts and receivables derived from the use or occupancy of all or any portion of the Improvements), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code), and proceeds, if any, from business interruption or other loss of income insurance (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Agreements. All agreements, contracts (including purchase, sale, option, right of first refusal and other contracts pertaining to the Property), certificates, instruments, franchises, franchise agreements, permits, licenses, approvals, consents, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, design, construction, management or operation of the Property (including any Improvements or respecting any business or activity conducted on the Land and any part thereof) and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Other Property. All escrows, deposits, reserves and impounds established pursuant to the Loan Agreement), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code as adopted and enacted by the State of Utah (the "**Uniform Commercial Code**"), and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all revenues and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon (collectively called the "**Intangibles**");

(n) Other Rights. Any and all other rights of Borrower in and to the Property and any accessions, renewals, replacements and substitutions of all or any portion of the Property and all proceeds derived from the sale, transfer, assignment or financing of the Property or any portion thereof; and

(o) Proceeds and Profits. All proceeds from the voluntary or involuntary disposition or conversion, or claim respecting any, of the foregoing items (including judgments, condemnation awards or otherwise).

(p) Water Contract. All rights under that certain Contract and Lien Between Weber Basin Water Conservancy District and Timothy Patrick Charlwood for the Sale and Use of Untreated Water, dated August 29, 2006, and filed as Contract #10055, including, without limitation, all rights in and to the 13 acre-feet of water therein identified (the "**Water Contract**").

Borrower, Trustee and Lender agree that the foregoing is intended to grant in favor of Lender a first priority continuing lien and security interest in all of Borrower's assets. Borrower authorizes Lender and its counsel to file UCC financing statements in form and substance satisfactory to Lender describing the collateral as all assets of Borrower, whether now owned or existing or hereafter acquired or arising, and all proceeds and products thereof, including, without limitation, all fixtures on the Land.

Section 1.2 ASSIGNMENT OF RENTS.

(a) Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to any and all current and future Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Following the occurrence of an Event of Default (as defined in Section 8.1), Borrower hereby grants to Lender the sole, exclusive and immediate right to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents following any notice required pursuant to the Uniform Assignment of Rents Act, as adopted by the State of Utah pursuant to Utah Code Title 57, Chapter 26 (the "**Uniform Assignment of Rents Act**"); it being understood that Lender shall be without liability for any loss which may arise from uncollectible Rents, proceeds or other payments. Borrower irrevocably consents that the respective payors of the Rents shall, upon demand and notice from Lender of an Event of Default, pay said Rents to Lender without liability to such payor for the determination of the actual existence of any Event of Default claimed by Lender.

(b) Nevertheless, subject to the terms of this Section 1.2 and the terms and conditions of that certain Absolute Assignment of Leases, Rents and Income, of even date herewith between Borrower and Lender, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

(c) Upon an Event of Default, Lender may at any time thereafter, in its sole discretion and upon giving notice of termination to Borrower, terminate Borrower's license and may thereafter collect the Rents itself or by an agent or receiver. No action taken by Lender to collect any Rents shall make Lender a "mortgagee-in-possession" of the Property, unless Lender personally or by agent enters into actual possession of the Property. Possession by a court appointed receiver shall not be considered possession by Lender. All Rents collected by Lender or a receiver shall be applied first to pay the expenses of collection, then to the payment of all costs of operation and management of the Property, and then to the payment of the indebtedness and obligations secured by this Deed of Trust in whatever order Lender directs in its absolute discretion and without regard to the adequacy of its security.

Section 1.3 ASSIGNMENT OF LEASES.

(a) To the extent any Leases now exist or hereafter are created affecting the Property, Borrower hereby absolutely and presently assigns to Lender all current and future Leases, each assignment of which shall be recorded at Lender's sole election.

(b) Unless Lender agrees otherwise, each Lease, if any, executed after the date hereof affecting any of the Property must provide, in a manner approved by Lender, that the tenant, lessee or licensee, as appropriate, will attorn to and recognize as its landlord, lessor or licensor any person becoming the owner of the Property upon foreclosure of this Deed of Trust. Each such Lease shall also provide that, upon request of said successor in interest, the tenant, lessee or licensee shall execute and deliver a tenant estoppel certificate and an instrument or instruments confirming its attornment as provided for in this Section 1.3(b).

(c) In the event that Lender institutes proceedings to enforce the lien hereof and shall become a mortgagee-in-possession of the Property, Lender, during such time as it shall be mortgagee-in-possession of the Property, shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases of the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as such mortgagee-in-possession may consider prudent and reasonable, and Borrower expressly acknowledges and agrees that the term of any such Lease may extend beyond the date of any foreclosure sale of the Property while Lender is a mortgagee-in-possession of the Property, Lender shall be considered to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases affecting the Property, and for collecting the Rents therefrom, upon the terms, conditions and provisions considered desirable to Lender and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Borrower to Lender shall be coupled with an interest and shall not be revocable by Borrower. In connection with any action taken by Lender pursuant to this Section 1.3(c), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall, and does hereby, agree to indemnify Lender for, and to hold Lender harmless from, any and all liabilities, loss or damage which may or might be incurred by Lender under any such license, lease or tenancy agreement or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease, except in all such cases to the extent of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Rate, shall be secured hereby and payable upon demand from Lender. Nothing in this Section 1.3(c) shall impose any duty, obligation or responsibility upon Lender for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property not caused solely and exclusively by Lender, or

for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Borrower hereby assents to, ratifies and confirms any and all actions taken by Lender with respect to the Property in accordance with this Section 1.3(c).

(d) Borrower shall strictly observe and perform when due all covenants, terms, conditions and other provisions in the Leases on the part of Borrower to be observed and performed and will promptly furnish Lender with copies of all written notices, correspondence and other communications by and between Borrower and the lessees under said Leases. Subsequent to an Event of Default, Lender shall have the right, but not the obligation, to perform, at Borrower's expense, any such covenant, term, condition or other provision not timely performed by Borrower and to exercise at Borrower's expense any rights available to Borrower thereunder, and such third party out-of-pocket costs and expenses actually incurred by Lender, together with interest thereon, shall be secured hereby and shall be payable by Borrower upon demand from Lender. Borrower shall not, without the prior written consent of Lender, amend, cancel or terminate said Leases or agree to the surrender of any of the aforementioned.

(e) Borrower agrees that the making of any oil, gas, water or mineral lease with respect to the Property or any part thereof or the sale or conveyance of any water, oil, gas, or mineral interest or the right to explore for the same under, through or upon the Property would impair the value of the Property as security for payment of the indebtedness and that Borrower shall have no right, power or authority to lease the Property, or any part thereof, for water, oil, gas or other mineral purposes, or to grant, assign or convey any water, oil, gas, or mineral interest of any nature, or the right to explore for water, oil, gas and other minerals, without first obtaining from Lender express written permission, which permission if granted may be subject to such conditions as Lender may solely determine and shall not be valid until recorded. Borrower further agrees that if Borrower shall make any such lease or attempt to grant water, oil, gas or mineral rights without such prior written permission, then Lender shall have the option, without notice, to declare the same to be an Event of Default and to declare the indebtedness hereby secured immediately due and payable. Whether or not Lender shall consent to such lease or grant of the water, oil, gas or mineral rights, Lender shall, at its option, receive the entire consideration to be paid for such lease or grant of the water oil, gas or mineral rights, with the same to be applied upon the indebtedness as a prepayment of the Note and all other amounts due under the Note, Loan Agreement and other Loan Documents; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Deed of Trust on the entire Property and all rights therein and the water rights or all oil, gas, and other mineral rights, including any such rights covered by any such consent, shall remain subject to this Deed of Trust.

Section 1.4 **DEFINITION OF PERSONAL PROPERTY**. For purposes of this Deed of Trust, the Property identified in Sections 1.1(e) through 1.1(p), inclusive, shall be collectively referred to herein as the "**Personal Property**."

Section 1.5 **PLEDGE OF MONIES HELD**. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, all insurance proceeds and condemnation awards or payments described in Sections 3.3 and 3.7, as additional security for the Obligations until expended or applied as provided in this Deed of Trust.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, that if Borrower shall pay or cause to be paid to Lender the principal and interest and all other sums due or to become due under the Loan Agreement at the time and in the manner stipulated therein and shall pay or cause to be paid all other sums payable hereunder and all indebtedness hereby secured, then in such case, the estate, right, title and interest of Trustee and Lender in the Property shall cease, and upon written notice from Lender that all sums secured hereby have been paid and upon surrender of this Deed of Trust, the Note secured hereby to Trustee for cancellation and retention and upon payment of Trustee's fees, Trustee shall reconvey, without warranty, the Property. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five (5) years after issuance of such full reconveyance, Trustee may destroy the Note and all other notes, if any, secured hereby and this Deed of Trust (unless otherwise directed in such notice). Notwithstanding the foregoing, Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof or other Loan Documents shall survive any such reconveyance.

ARTICLE 2

DEBT AND OBLIGATIONS SECURED

Section 2.1 **DEBT**. This Deed of Trust and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"):

(a) the payment of the indebtedness evidenced by the Note (in the original principal amount of $2,020,000.00) and the Loan Agreement in lawful money of the United States of America;

(b) the payment of interest, default interest, late charges, fees and other sums, as provided in the Loan Agreement, the Note, this Deed of Trust or the other Loan Documents;

(c) the payment of all other moneys agreed or provided to be paid by Borrower in the Loan Agreement, the Note, this Deed of Trust or the other Loan Documents; and

(d) the payment of all sums advanced to protect and preserve the Property and the lien and the security interest created hereby, together with interest thereon at the Default Rate.

Section 2.2 **OTHER OBLIGATIONS**. This Deed of Trust and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower contained in any other agreement given by Borrower to Lender which is for the purpose of further securing the obligations secured hereby, and any extensions, renewals, modifications, substitutions and amendments thereto; and

(c) the performance of each obligation of Borrower contained in any extension, renewal, modification, substitution, amendment, consolidation, change of, or replacement for, all or any part of the Loan Agreement, this Deed of Trust or the other Loan Documents.

This Deed of Trust shall secure any and all future advances made to Borrower by Lender. This provision shall not constitute an obligation upon or commitment of Lender to make additional advances or loans to Borrower.

Section 2.3 **DEBT AND OTHER OBLIGATIONS**. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**".

Section 2.4 **PAYMENTS**. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

ARTICLE 3

BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 **INCORPORATION BY REFERENCE**. All the covenants, conditions and agreements contained in the Loan Agreement and the other Loan Documents (other than this Deed of Trust) are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Notwithstanding any provision of this Deed of Trust or any other Loan Document to the contrary, none of (a) the obligations of the indemnitors under that certain Environmental Indemnity Agreement of even date herewith executed by Borrower and Timothy P. Charlwood (whether one or more, "Indemnitor") in favor of Lender (the "Environmental Indemnity"), and (b) the obligations of the guarantor under that certain Non-Recourse Carve-Out Guaranty of even date herewith executed by Timothy P. Charlwood in favor of Lender (the "Non-Recourse Guaranty"), shall be deemed or construed to be secured by this Deed of Trust or otherwise restricted or affected by the foreclosure of the lien hereof or any other exercise by Lender of its remedies hereunder or under any other Loan Document, such Environmental Indemnity and Non-Recourse Guaranty being intended by the signatories thereto to be its (or their) unsecured obligation(s).

Section 3.2 **INSURANCE REQUIREMENTS**. Borrower shall obtain, and maintain at all times during term of the Loan, such insurance as Lender may require, including, without limitation, the insurance coverage set forth in the Loan Agreement. Unless Borrower provides Lender with evidence of the insurance coverage required by the Loan Agreement, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property. This insurance may, but need not, protect Borrower's interest. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the Loan Agreement. If Lender purchases insurance for the Property, Borrower will be responsible for the cost of that insurance, including interest at the Default Rate and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of the insurance and interest thereon at the Default Rate may be added to the Obligations. The cost of insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

Section 3.3 **CONDEMNATION**. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served or delivered in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for said condemnation or eminent domain and to make any compromise or settlement in connection with such proceeding after consultation with Borrower, subject to the provisions of this Deed of Trust. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Loan Agreement and in this Deed of Trust and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Loan Agreement. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Lender may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Loan Agreement, the Note, or the other Loan Documents shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.4 **USE AND MAINTENANCE OF PROPERTY**. Borrower shall cause the Property to be maintained and operated in a good and safe condition and repair and in keeping with the condition and repair of properties of a similar use, value, age, nature and construction and shall pay all expenses incurred in connection therewith. Borrower shall not use, maintain or operate the Property in any manner which constitutes a public or private nuisance or which makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property with items of the same utility and of equal or greater value) without the prior written consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in this Section 3.4 and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other

public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof, without the consent of Lender. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender. Borrower shall not take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of management, except as set forth in Permitted Encumbrances.

Section 3.5 **WASTE**. Borrower shall not commit or suffer any waste of the Property or, without first obtaining such additional insurance as may be necessary to cover a proposed change in use of the Property or any portion thereof, make any change in the use of the Property or any portion thereof which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Deed of Trust. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 **COMPLIANCE WITH LAWS; ALTERATIONS.**

(a) Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof, including, without limitation, the Americans with Disabilities Act (the "**ADA**") (collectively "**Applicable Laws**").

(b) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(c) Borrower shall give prompt notice to Lender of the receipt by Borrower of any written notice of a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(d) Borrower shall take appropriate measures to prevent and will not engage in or knowingly permit any illegal activities at the Property.

Section 3.7 **CASUALTY PROCEEDS.**

(a) Borrower hereby assigns to Lender all compensation, awards, proceeds, damages, claims, rights of action and payments payable in the event the Property or any interest therein is damaged by casualty or other cause or is taken by exercise of the power of eminent domain (or a conveyance in lieu thereof). Lender shall be entitled to receive all payments therefor and enforce all claims thereon. Lender is hereby irrevocably constituted and appointed

the attorney-in-fact of Borrower (which power of attorney shall be irrevocable, shall be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, after consultation with Borrower, to settle, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the person or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

(b) Casualty Proceeds. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice thereof to Lender.

(i) In case of loss covered by the insurance policies purchased in accordance with Section 3.2 (the "**Insurance Policies**"), Lender may either (A) settle and adjust any claim without the consent of Borrower, or (B) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that Borrower may adjust losses aggregating not in excess of $100,000.00 if such adjustment is carried out in a competent and timely manner, and provided that in any case Lender shall and is hereby authorized to collect and receive any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Obligations and be secured hereby and shall be reimbursed by Borrower to Lender upon demand with interest thereon at the Default Rate (unless deducted by and reimbursed to Lender from such proceeds).

(ii) Subject to clause (iv) below, the proceeds of insurance collected upon any Insured Casualty (as hereinafter defined) shall, at the option of Lender in its sole discretion, be applied: (A) to the payment of the Obligations, or (B) applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof subject to the Insured Casualty, in the manner set forth below, or (C) any combination of the foregoing clauses (A) and (B) as determined by Lender in its sole discretion. Any such application to the Obligations shall be considered a voluntary prepayment requiring payment of the Minimum Yield Fee and other fees applicable under the Loan Agreement, and shall not reduce or postpone any payments otherwise required pursuant to the Loan Agreement or the other Loan Documents.

(iii) Borrower hereby covenants to restore, repair, replace or rebuild the same to the substantially identical condition, value, functionality, utility, size and dimensions as immediately prior to the Insured Casualty, all to be effected in accordance with applicable law and plans and specifications approved in advance by Lender.

(iv) In the event of any insured damage to or destruction of the Property or any part thereof (herein called an "**Insured Casualty**"), if (A) in the reasonable judgment of Lender, the Property can be restored to substantially identical condition, value, functionality, utility, size and dimensions as required immediately prior to the Insured Casualty (including an assessment by Lender of the impact of the termination of any Leases due to such Insured Casualty), within six (6) months after insurance proceeds are made available and prior to the date three (3) months before the Maturity Date and following such restoration will adequately secure the outstanding balance of the Obligations, (B) no Event of Default shall have occurred, and (C) the delivery to Lender of evidence acceptable to Lender (I) that after completion of the work the income from

the Property will be sufficient to pay all expenses and debt service for the Property; (II) of the continuation of Leases acceptable to and required by Lender; (III) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (IV) that there has been no material adverse change in the financial condition or credit of Borrower and Guarantor since the date of this Deed of Trust; and (V) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security, then the proceeds of insurance shall be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof subject to an Insured Casualty, as provided below; and Borrower hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, however, that in any event Borrower shall pay all costs (and Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof (including, without limitation, any deductible amounts).

(v) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Lender in its sole discretion, be applied: (A) to the payment of the Obligations, or (B) applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Property or part thereof subject to the Insured Casualty, in the manner set forth below, or (B) any combination of the foregoing clauses (A) and (B) as determined by Lender in its sole discretion.

(vi) If Borrower is entitled to reimbursement out of insurance proceeds held by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (A) evidence satisfactory to Lender (which evidence may include inspection(s) of the work performed) that the restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Lender, (B) evidence satisfactory to Lender of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (C) funds, or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (D) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. Disbursement of insurance proceeds shall be subject to Borrower's satisfaction of the conditions precedent to the disbursement of funds under the Loan Agreement, including, without limitation, submission by Borrower of such certificates, information, materials, invoices and lien waivers as required under the Loan Agreement for disbursement of Loan Proceeds. With respect to disbursements of insurance proceeds to be made by Lender: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least

sufficient in the judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien and the costs described in this Section 3.7. In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding. In addition, at Lender's election, Borrower shall purchase a Performance Bond and Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the proposed restoration, repair, replacement and rebuilding costs, and each such bond shall be in a form approved by Lender.

(vii) Disbursements may be made by Lender either to Borrower alone, to Borrower and any contractor or other person jointly or to any contractor or other person alone, as Lender may elect. Lender shall not be required to make the final disbursement until after the period of time provided by law for the filing of mechanics' and materialmen's liens has elapsed or until Borrower provides to Lender, at Borrower's expense, an endorsement, satisfactory to Lender, to Lender's title insurance policy to insure as of the date of the final disbursement that the lien of this Deed of Trust remains prior to any liens or encumbrances affecting the Property other than those shown on the policy when issued and then current real estate taxes and insurance.

(viii) Upon the completion of and payment in full for the restoration, repair, replacement or rebuilding, the balance, if any, of the proceeds will be applied to the indebtedness secured by this Deed of Trust, subject to payment of any other fees and interest payable to Lender. Upon any failure on the part of Borrower promptly to commence and diligently to pursue and complete the restoration, repair, replacement or rebuilding (except during the existence of proven delays due to strike, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire or similar causes, provided such similar causes are beyond Borrower's reasonable control, which in no event shall exceed sixty (60) days in the aggregate), Lender may apply all or any portion of the proceeds then in the possession of Lender to the payment of the indebtedness secured by this Deed of Trust, subject to payment of any other fees and interest payable to Lender.

(ix) Nothing herein contained shall prevent Lender from at any time applying the whole or any part of the proceeds to cure any Event of Default by Borrower under this Deed of Trust or under any other document evidencing, securing or relating to the indebtedness evidenced by the Note. Lender's agreement to release insurance proceeds and condemnation awards as provided above does not constitute a subordination of this Deed of Trust to any mechanics', materialmen's or other liens arising in connection with the restoration, repair, replacement or rebuilding of the Property.

(x) Notwithstanding anything to the contrary contained herein, the proceeds of insurance reimbursed to Borrower in accordance with the terms and provisions of this Deed of Trust shall be reduced by the costs (if any) incurred by Lender in the adjustment and collection thereof and in the costs incurred by Lender of paying out such proceeds and interest thereon at the Default Rate (including, without limitation, attorneys' fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor).

(xi) Nothing set forth in this Section 3.7(b) shall be construed or deemed to have delayed the time period for Borrower's performance under the Loan Agreement or an extension of the Completion Date.

Section 3.8 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Encumbrances. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith any such claim or demand, provided that it does so diligently and without prejudice to Lender. In the event Borrower elects to contest any such claim or demand, Borrower shall as a condition precedent to the contest, promptly provide a bond, cash deposit or other security satisfactory to Lender to protect Lender's interest and security and, if Lender so requires, to remove the lien as an encumbrance against the Property should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender shall upon demand be paid by Borrower to Lender and shall be secured by the lien of this Deed of Trust.

Section 3.9 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.10 EASEMENTS AND RIGHTS OF WAY. Borrower shall not grant any easement or right of way, or cancel, terminate or otherwise modify any existing easement or right of way with respect to all or any portion of the Property, without the prior written consent of Lender.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

Section 4.1 BORROWER'S REPRESENTATIONS. Borrower represents and warrants to Lender that each of the representations and warranties set forth in Article III of and elsewhere in the Loan Agreement are true and correct as of the date hereof and are hereby incorporated and restated in this Deed of Trust by this reference.

Section 4.2 WARRANTY OF TITLE.

(a) Borrower represents and warrants that it has good and marketable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple estate in the Land and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances. Borrower shall, at its sole cost and expense, forever warrant, defend and preserve the title and the validity and priority of the lien of this Deed of Trust and shall, at its sole cost and expense, forever warrant and defend the same to Lender against the claims of all persons whomsoever. Borrower shall promptly and completely observe, perform

and discharge each and every obligation, covenant, condition, restriction and agreement affecting the Property, whether the same is prior and superior or subject and subordinate to the lien of this Deed of Trust. The warranties of title contained in this Section 4.2 shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by any Person who may acquire title to the Property pursuant to a foreclosure sale.

(b) Without limiting or waiving any other rights and remedies of Lender hereunder, if, while this Deed of Trust is in force, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, after five (5) days prior written notice from Lender and Borrower's failure to immediately take all necessary and proper steps for the defense of said title or interest, hereby authorizes Lender, at Borrower's expense, to take all necessary and proper steps for the defense of said title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest.

Section 4.3 STATUS OF PROPERTY.

(a) No portion of the Improvements are located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.2 hereof.

(b) Borrower has obtained or will obtain all necessary certificates, permits, certificates of incorporation, licenses and other approvals, governmental and otherwise, necessary for Borrower's current and intended use, occupancy and operation of the Property and the conduct of the business of building and selling fractional ownerships in lodges and cabins (including, without limitation, any certificates of completion and certificates of occupancy) and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are or will be in full force and effect prior to the time necessary for Borrower to perform its obligations under the Loan Documents (collectively, the "**Licenses**").

(c) The Property and the present and contemplated use and occupancy thereof are to Borrower's knowledge, after due and diligent inquiry, in full compliance with all Applicable Laws, including, without limitation, zoning ordinances, building codes, land use and environmental laws, laws relating to the disabled (including, without limitation, the ADA) and other similar laws.

(d) The Property is or will be served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or will accept or is equipped or will be equipped to accept such utility service.

(e) All public and private roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and are physically and legally open for use.

(f) The Property is or will be served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty. There is no pending or, to Borrower's knowledge, after due and diligent inquiry, threatened condemnation proceedings affecting the Property or any portion thereof.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements as of the date hereof have been paid in full and no notice of any mechanics' or materialmen's liens or of any claims of present right to any such liens have been received.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are to Borrower's knowledge, after due and diligent inquiry, in a good and safe condition and repair and in compliance with all Applicable Laws.

(k) All Improvements currently constructed lie within the boundary of the Land and all Improvements planned to be constructed are designed and planned to lie within the boundary of the Land.

Section 4.4 **NO FOREIGN PERSON**. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

Section 4.5 **SEPARATE TAX LOT**. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 4.6 **EXECUTION AND DELIVERY**. The execution, delivery and recordation of

time to time for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Applicable Laws but without, in all cases, expanding Borrower's liability hereunder. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender effective upon an Event of Default, an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 6.2.

Section 6.3 CONFIRMATION STATEMENT.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender a statement, duly acknowledged and certified, confirming to Lender: (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, and (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Loan Agreement or this Deed of Trust; provided, however, Lender shall not be entitled hereunder to receive more than one (1) such statement in each calendar year.

(b) Subject to the provisions of the Leases, Borrower shall deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including, without limitation, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) At Lender's request, Borrower, Guarantor and any Indemnitors shall provide an estoppel certificate to any purchaser, assignee or participant or any prospective any purchaser, assignee or participant in such form, substance and detail as Lender, such any purchaser, assignee or participant or prospective any purchaser, assignee or participant may reasonably require.

Section 6.4 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, Loan Agreement or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note, Loan Agreement or other Loan Document, Borrower, at its expense, will issue, in lieu thereof, replacement Note, Loan Agreement or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 7

DUE ON SALE/ENCUMBRANCE

Section 7.1 **LENDER RELIANCE**. Borrower acknowledges that Lender has examined and relied on the creditworthiness of Borrower and experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 7.2 **NO SALE/ENCUMBRANCE**.

(a) Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent.

(b) Section 7.2(a) shall apply to: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; and (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder, or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents.

Section 7.3 **NO IMPLIED FUTURE CONSENT**. Lender's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property made in contravention of this Article 7 shall be null and void and of no force and effect.

Section 7.4 **COSTS OF CONSENT**. Borrower agrees to bear and shall pay or reimburse Lender on demand for all expenses (including, without limitation, all recording costs, actual, out-of-pocket, third party attorneys' fees and disbursements and title search costs) incurred by Lender in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

ARTICLE 8

DEFAULT

Section 8.1 **EVENT OF DEFAULT**. The occurrence of an Event of Default (as defined in the Loan Agreement) under the Note, the Loan Agreement or any of the other Loan Documents

or the occurrence of an event expressly described as an Event of Default under any of the provisions of this Deed of Trust or any other Loan Document shall constitute an "**Event of Default**" under this Deed of Trust.

ARTICLE 9

RIGHTS AND REMEDIES

Section 9.1 **REMEDIES**. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) Lender may, without notice demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Debt and Other Obligations, declare the entire unpaid balance of the Debt and Other Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt and Other Obligations shall be immediately due and payable.

(b) 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 Property, or any part thereof, and do any and all acts which may be desirable in Lender's judgment to complete any unfinished construction on the Property, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, against the indebtedness secured by this Deed of Trust in such order as Lender may determine, without in any way curing or waiving any default of Borrower;

(c) Commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the obligations secured by this Deed of Trust;

(d) Deliver to Trustee a statement of breach or non-performance and notice of election to sell under deed of trust and cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law;

(e) Make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property and the cost and expense thereof (including, without limitation, actual attorneys' fees and expenses to the extent permitted by law) with interest at the Default Rate shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying

any Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinafter provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Deed of Trust and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor; and/or

(f) Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

Section 9.2 **SALE**. Should Lender elect to foreclose by exercise of the power of sale under this Deed of Trust, Lender shall:

(a) If Lender elects to sell Borrower's interest in the Property by exercise of the power of sale herein contained, Lender shall notify Trustee in the manner then required by law. Upon receipt of such notice from Lender and at the direction of Lender, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust. Trustee shall, only at the direction of Lender and without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in such notice of sale, either as whole or in separate lots or parcels or items as Lender shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Lender may require Borrower to assemble the Personal Property and make it available to Lender at a place or places designated by Lender. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee or Lender, may purchase at such sale. Trustee may in the manner provided by law postpone the sale of all or any portion of the Property.

(b) The proceeds of any trustee's sale under this Deed of Trust shall be applied in the following manner:

First: Payment of the costs and expenses of the sale incurred by Trustee or Lender, including, without limitation, Trustee's fees, legal fees, title charges, appraisals and environmental reports.

Second: Payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums at the Default Rate.

Third: Payment of all obligations of Borrower secured by this Deed of Trust, including, without limitation, interest at the Default Rate.

Fourth: The remainder, if any, to the person or persons legally entitled thereto.

Section 9.3 **RECEIVER**. In addition to all other remedies herein provided for, Borrower agrees that upon the occurrence of an Event of Default hereunder Lender shall, as a matter of right, be

entitled to the appointment of a receiver for all or any part of the Property, without regard to the value of the Property or the solvency of Borrower or any person or persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby consent to the appointment of such receiver or receivers, waives any and all notices of (except as provided below in this Section 9.3) and defenses to such appointment and agrees not to oppose any application therefor by Lender, provided, however, nothing herein shall be construed to deprive Lender of any other right, remedy or privilege Lender may now possess to have a receiver appointed and further provided, however, the appointment of a receiver shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents pursuant to other terms and provisions hereof. Lender shall notify Borrower of any application made by Lender seeking the appointment of a receiver for the Property, but in addition to the modes of communication of notice described in Section 13.1 of this Deed of Trust, Lender may give such notice to Borrower by telephone at the telephone number for the address to which written notices to Borrower are to be given under this Deed of Trust (or if such phone number is not known to Lender, then by delivery to the Property, addressed to the "Property Manager", of a copy of the application for appointment of a receiver) and such notice shall be considered given at the time of the telephone communication (or hand delivery if applicable). Any money advanced by Lender in connection with a receivership shall be a demand obligation owing by Borrower to Lender shall bear interest from the date of making such advancement by Lender until paid at the Default Rate, shall be a part of the secured indebtedness and shall be secured by this Deed of Trust and any other instrument securing the indebtedness evidenced by the Note. The receiver and the receiver's agents shall be entitled to enter upon and take possession of the Property to the same extent and in the same manner as Borrower might lawfully do. The receiver, personally or through its agents or attorneys, may exclude Borrower and its agents, servants and employees wholly from the Property and may have, hold, use, operate, manage and control the same and each and every part thereof, and in the name of Borrower or Borrower's agents, may exercise all of their rights and powers and use all of the then existing materials, supplies, stores and assets and, at the expense of the Property, maintain, restore, insure and keep insured the properties, equipment and apparatus provided or required for use in connection with the business or businesses operated on the Property and may make, all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as the receiver may consider judicious. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured or until title to the Property shall have passed by foreclosure sale under this Deed of Trust.

Section 9.4 OCCUPANCY AFTER FORECLOSURE.

(a) Tenancy at Will. If upon completion of a foreclosure sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower are occupying or using the Property, or any part thereof, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied, such rental to be due daily to purchaser. In the event the tenant fails to surrender possession of the Property upon the exercise of such option, the purchaser shall be entitled to institute and maintain an action for unlawful detainer.

(b) Notice to Account Debtors. Lender may, at any time after an Event of Default by Borrower hereunder, notify the obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly.

Section 9.5 **CUMULATIVE REMEDIES**. All remedies contained in this Deed of Trust are cumulative, and Lender shall also have all other remedies provided at law or in equity or in any other of the Loan Documents. No act of Lender shall be construed as an election to proceed under any particular provision of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default by Borrower. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

Section 9.6 **PAYMENT OF EXPENSES**. Borrower shall reimburse Lender for all attorneys' fees, costs and expenses, arising from and after the date hereof, incurred by Lender in connection with the enforcement of Lender's rights under this Deed of Trust and each of the other Loan Documents, including, without limitation, attorneys' fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements, and for enforcement of rights under any state or federal statute, including, without limitation, attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) in connection with seeking relief from stay in a bankruptcy proceeding. The term "expenses" means any expenses incurred by Lender in connection with any of the out-of-court, or state, or federal or bankruptcy proceedings referenced above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Lender in connection with any of those proceedings. Lender shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the reconveyance or other termination of this Deed of Trust.

Section 9.7 **INSURANCE POLICIES**. Lender (i) may surrender the Insurance Policies maintained pursuant to this Deed of Trust or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Obligations, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; (ii) may apply the funds in any account, and any other funds held by Lender toward payment of the Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.

Section 9.8 **DISCONTINUANCE OF REMEDIES**. In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

Section 9.9 **BANKRUPTCY ACKNOWLEDGMENT**. In the event the Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Deed of Trust, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of the Bankruptcy Code so to permit Lender to pursue its rights and remedies against Borrower as provided under this Deed of Trust and all other rights and remedies of Lender at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under § 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Borrower shall not contend or allege in any pleading or petition filed in any court proceeding that

Lender does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

Section 9.10 **RIGHT OF ENTRY**. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times and upon one (1) Business Day prior written notice to Borrower, subject to the rights of tenants under any Leases.

ARTICLE 10

INDEMNIFICATION; SUBROGATION

Section 10.1 **GENERAL INDEMNIFICATION**.

(a) Borrower shall indemnify, defend, protect and hold Lender and Lender's Affiliates harmless against: (i) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the Debt; and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Debt, this Deed of Trust, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to them under this Deed of Trust; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend, protect and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Lender by reason of Lender's willful misconduct or gross negligence.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Lender shall notify Borrower of such litigation or claim and Borrower shall indemnify, defend, protect and hold Lender harmless from and against all liability by reason of said litigation or claims, including attorneys' fees (together with appellate counsel fees, if any). The right to such attorneys' fees (together with appellate counsel fees, if any) and expenses incurred by Lender in any such litigation or claim of the type described in this Section 10.1(b), whether or not any such litigation or claim is prosecuted to judgment, shall be deemed to have accrued on the commencement of such claim or action and shall be enforceable whether or not such claim or action is prosecuted to judgment. If Lender commences an action against Borrower to enforce any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, Borrower shall pay to Lender their attorneys' fees (together with appellate counsel fees, if any) and expenses, together with interest thereon at the Default Rate from the date of payment or incurring by Lender until paid by Borrower. If Borrower breaches any term of this Deed of Trust, Lender may engage the services of an attorney or attorneys to protect their rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender's actual, third party, out-of-pocket attorneys' fees (together with appellate counsel fees, if any) and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach, together with interest thereon at the Default Rate for the date of payment or incurring by Lender until paid by

Borrower. All references to "attorneys" in this Section 10.1(b) and elsewhere in this Deed of Trust shall include without limitation any attorney or law firm engaged by Lender and Lender's in-house counsel, and all references to "fees and expenses" in this Section 10.1(b) and elsewhere in this Deed of Trust shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Lender's in-house counsel. Wherever in the Loan Documents Borrower is obligated to pay Lender's attorneys' fees, such obligation shall include the actual fees and expenses charged by those attorneys selected by Lender based upon such attorneys' then-prevailing hourly rates, which fees shall not be based upon any statutory schedule or fees prescribed by any applicable law.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

Section 10.2 ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as hereinafter defined) from and against any and all Losses (as hereinafter defined) imposed upon or incurred by or asserted against any Indemnified Parties and arising out of or relating to any one or more of the following: (a) any presence of any Hazardous Substances (as hereinafter defined) in, on, above, or under the Property; (b) any past, present or future Release (as hereinafter defined) of Hazardous Substances (as hereinafter defined) in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property in connection with any actual or proposed Remediation (as hereinafter defined) of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including, without limitation, any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Law (as hereinafter defined) (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including, without limitation, any failure by Borrower, any person or entity affiliated with Borrower, and any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the future imposition, recording or filing of any Environmental Lien (as hereinafter defined) encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Section 10.2; (h) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations under the Environmental Indemnity; and (i) any diminution in value of the Property in any way connected with any occurrence or other matter referred to in this Section 10.2, except in all cases set forth in (a)-(i) above to the extent such Losses arise solely and exclusively as a result of an Indemnified Party's gross negligence or willful misconduct.

The term "**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of

other actual or threatened danger to human health or the environment. The term "**Environmental Law**" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including, without limitation, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "**Environmental Law**" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

The term "**Environmental Lien**" includes but is not limited to any lien or other encumbrance imposed pursuant to Environmental Law, whether due to any act or omission of Borrower or any other person or entity.

The term "**Hazardous Substances**" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, without limitation, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paints, radon, radioactive materials, flammables and explosives and mold and mildew.

The term "**Indemnified Parties**" includes but is not limited to Lender, any person or entity who is or will have been involved in originating the Loan evidenced by the Note, any person or entity who is or will have been involved in servicing the Loan, any person or entity in whose name the encumbrance created by this Deed of Trust is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, without limitation, those who may acquire any interest in the Loan, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assign of any and all of the foregoing (including, without limitation, to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan, or the Property, whether during the term of the Loan or as part of or following foreclosure pursuant to the Deed of Trust) and including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial part of Lender's or any Lender's assets and business.

The term "**Losses**" includes any claims, suits, liabilities (including, without limitation, strict liabilities), administrative or judicial actions or proceedings, obligations, debts, damages, losses, costs,

expenses, diminutions in value, fines, penalties, charges, fees, expenses, costs of Remediation (whether or not performed voluntarily), judgments, award, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineer's fees, environmental consultants' fees and investigation costs (including, without limitation, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings.

The term "**Release**" with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

The term "**Remediation**" includes but is not limited to any response, remedial, removal, or corrective action; any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in this Article 10.

Section 10.3 DUTY TO DEFEND AND ATTORNEYS AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party relating to any Losses covered by the indemnity provided in Section 10.2, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the actual out-of-pocket fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals actually incurred by Lender in connection therewith.

Section 10.4 SURVIVAL OF INDEMNITIES. Notwithstanding any provision of this Deed of Trust or any other Loan Document to the contrary, the provisions of Sections 10.1, 10.2, and 10.3, and Borrower's obligations thereunder, shall survive (a) the repayment of the Note, (b) the foreclosure of this Deed of Trust, and (c) the release (or reconveyance, as applicable) of the lien of this Deed of Trust.

Section 10.5 ENVIRONMENTAL INDEMNITY AGREEMENT. The terms, conditions, covenants and indemnities set forth in Article 10 herein are in addition to the terms, conditions, covenants and indemnities contained in the Environmental Indemnity.

ARTICLE 11

SECURITY AGREEMENT

Section 11.1 SECURITY AGREEMENT. This Deed of Trust is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower by executing and delivering this Deed of Trust has granted and hereby grants to Lender, as security for the Obligations, a security interest in all of Borrower's right, title and interest in, to and under the Property and all proceeds and products thereof, in

each case, whether now owned or existing, or hereafter acquired or arising to the full extent that the Property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called in this paragraph the "**Collateral**"). Borrower hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such financing statements, continuation statements, other uniform commercial code forms and shall pay all expenses and fees in connection with the filing and recording thereof, and such further assurances as Lender may from time to time, consider necessary to create, perfect, and preserve Lender's security interest herein granted. This Deed of Trust shall also constitute a "fixture filing" from the date of recording hereof in accordance with Utah Code 70A-9a-502, and for such purpose (i) the name of the debtor is the name of Borrower set forth in the opening paragraph of this Deed of Trust and the address of the debtor is the address of the Borrower as set forth in Section 13.1; (ii) the name of the secured party is the name of Lender set forth in the opening paragraph of this Deed of Trust and the address of the secured party is the address of the Lender as set forth in Section 13.1; and (iii) the Collateral covered hereby includes items of Personal Property that are or are to become fixtures related to the Land described in Exhibit A attached hereto. The foregoing address of Lender, as the secured party, is also the address from which information concerning the security interest may be obtained by any interested party. If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Borrower's obligations under the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents. Borrower hereby authorizes Lender and its counsel to file Uniform Commercial Code financing statements in form and substance satisfactory to Lender describing as the collateral covered thereby "all assets of the debtor, whether now owned or existing or hereafter acquired or arising and all proceeds and products thereof, including, without limitation, all fixtures on the Land" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Deed of Trust. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as Borrower's attorney-in-fact, in connection with the Collateral covered by this Deed of Trust. Notwithstanding the foregoing, Borrower shall appear and defend in any action or proceeding which affects or purports to affect the Property and any interest or right therein,

whether such proceeding effects title or any other rights in the Property (and in conjunction therewith, Borrower shall fully cooperate with Lender in the event Lender is a party to such action or proceeding).

ARTICLE 12

WAIVERS

Section 12.1 **MARSHALLING AND OTHER MATTERS**. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.

Section 12.2 **WAIVER OF NOTICE**. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Deed of Trust or the other Loan Documents specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Deed of Trust or the other Loan Documents does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 12.3 **SOLE DISCRETION OF LENDER**. Wherever pursuant to this Deed of Trust Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 12.4 **SURVIVAL**. The indemnifications made pursuant to Article 10, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Deed of Trust, any assignment or other transfer of all or any portion of this Deed of Trust or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, without limitation, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Deed of Trust, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Section 12.5 **WAIVER OF AUTOMATIC OR SUPPLEMENTAL STAY**. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower (other than an involuntary petition filed by or joined in by Lender), Borrower shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights they have by virtue of this Deed of Trust, or any other rights that Lender has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Borrower shall not seek a supplemental stay or any

other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Deed of Trust against any guarantor of the Debt. The waivers contained in this paragraph are a material inducement to Lender's willingness to enter into this Deed of Trust and Borrower acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Lender's rights and remedies against Borrower or any guarantor of the Debt.

ARTICLE 13

NOTICES

Section 13.1 **NOTICES**. Any notices to be given under this Deed of Trust or any of the other Loan Documents must be in writing and shall be (a) delivered personally, (b) mailed by certified or registered mail, return receipt requested, (c) sent via nationally recognized overnight courier (e.g. Federal Express), or (d) transmitted by facsimile, in each case to the parties at the following addresses:

If to Borrower: SANCTUARY RANCH UTAH, LLC
c/o YORK HOWELL & GUYMON
Attn: Paxton Guymon/ Timothy P. Charlwood
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040
Fax: (801) 527-1000

If to Lender: MOUNTAIN WEST DEBT FUND, LP
Attn: Rocky Derrick
357 West 200 South, Suite 200,
Salt Lake City, Utah 84101
Telephone: (855) 702-5600
Fax: 801-880-2191

Any party hereto may change its address for service of notices by giving notice to the other parties in the manner provided in this Section. Any notice delivered pursuant to this Section 13.1 shall be deemed to have been received: (a) when the notice is received by the recipient or when delivery to said address is attempted but refused or on the date of attempted delivery if the address is no longer valid if sent by registered or certified mail or overnight courier, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), and (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day).

ARTICLE 14

APPLICABLE LAW

Section 14.1 **GOVERNING LAW; JURISDICTION**. Each Loan Document shall be governed by, and construed and enforced in accordance with, the Laws of the State of Utah without giving effect to its conflict of laws principles. The parties stipulate and agree that the State of Utah has a

substantial relationship to the underlying transaction related to this Deed of Trust and to the parties involved.

Section 14.2 **USURY LAWS**. This Deed of Trust and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holders of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Deed of Trust or the Loan Agreement, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under this Deed of Trust and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 14.3 **PROVISIONS SUBJECT TO APPLICABLE LAW**. All rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Deed of Trust or any application thereof shall be invalid or unenforceable, the remainder of this Deed of Trust and any other application of the term shall not be affected thereby.

ARTICLE 15

COSTS

Section 15.1 **PERFORMANCE AT BORROWER'S EXPENSE**. Borrower acknowledges and confirms that Lender shall impose certain normal and customary administrative processing fees in connection with (a) the extension, renewal, modification, amendment and termination (excluding the scheduled maturity of the Note) of the Loan, (b) the release or substitution of collateral therefor, or (c) obtaining certain consents, waivers and approvals with respect to the Property (the occurrence of any of the above shall be called an "**Event**"). Borrower hereby agrees to pay, immediately, upon demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event. Borrower shall promptly pay and perform each Obligation for which it is responsible hereunder or under the Loan Agreement or the other Loan Documents when due. If Borrower fails to timely pay or perform any portion of the Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Borrower's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be payable by Borrower to Lender on demand, together with interest thereon at the Default Rate and the amount so expended plus the return thereon shall be added to the Obligations.

ARTICLE 16

MISCELLANEOUS PROVISIONS

Section 16.1 **GENERAL DEFINITIONS**. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the term "**Lender**" shall mean "Lender and any successor or assign of Lender," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Deed of Trust," the word "**person**" or "**Person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**," "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre- trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 16.2 **NO ORAL CHANGE**. This Deed of Trust, the Note, the Loan Agreement and the other Loan Documents and any provisions hereof or thereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 16.3 **LIABILITY**. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Deed of Trust shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 16.4 **INAPPLICABLE PROVISIONS**. If any term, covenant or condition of the Loan Agreement, the Note or this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Deed of Trust shall be construed without such provision.

Section 16.5 **SUBROGATION**. If any or all of the proceeds of the Note or the Loan Agreement have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 16.6 **INTEGRATION; CONSTRUCTION** This Deed of Trust and the Exhibits and Schedules hereto, together with the other Loan Documents, comprise the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersede prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, course of dealing, representations, statements, assurances and understandings, whether oral or written, and may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral agreement of the parties hereto. The parties hereto expressly

acknowledge and agree that, with regard to the subject matter of this Deed of Trust and the transactions contemplated herein, there are no oral agreements between the parties hereto. In the event of any conflict between the provisions of this Deed of Trust and those of any other Loan Document, the provisions of this Deed of Trust shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of Lender in any other Loan Document shall not be deemed a conflict with this Deed of Trust. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 16.7 **ENTIRE AGREEMENT**. The Loan Agreement, the Note, this Deed of Trust and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Loan Agreement, this Deed of Trust and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Agreement, this Deed of Trust and the other Loan Documents.

Section 16.8 **INTANGIBLE AND MORTGAGE TAX**. Borrower agrees to indemnify, defend, protect and hold Lender harmless from and against any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with Borrower's failure to pay any recording, mortgage, transfer or other tax or imposition due in connection with the execution, delivery or recordation of this Deed of Trust, including, without limitation, any intangible tax and documentary transfer tax. The agreement set forth in this paragraph shall survive the termination of this Deed of Trust.

Section 16.9 **MERGER**. Unless Lender shall otherwise expressly consent in writing, the fee title to the Land, the leasehold estate in the Land, any interest in the other Property, the interest created pursuant to this Deed of Trust or any two or more of the foregoing estates or interests, shall not merge, but shall always remain separate and distinct, notwithstanding the union of two or more of such estates in Borrower, Lender, or in a third party by purchase or otherwise.

Section 16.10 **CERTAIN RIGHTS OF LENDER**. Without affecting Borrower's liability for the payment of any of the obligations secured by this Deed of Trust, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of said indebtedness; or (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing said indebtedness.

Section 16.11 **WAIVER**. Lender shall not be considered to have waived any provision of this Deed of Trust, of the Note secured hereby or of any of the other Loan Documents unless such waiver is in writing and is signed by Lender. Without limiting the generality of the preceding sentence, Lender's acceptance of any payment with knowledge of a default by Borrower shall not be a waiver of any default. No waiver by Lender of any default on the part of Borrower shall constitute a waiver of any other or subsequent default, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be a waiver of such rights and powers.

Section 16.12 COUNTERPARTS This Deed of Trust and any other Loan Document may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Deed of Trust or any other Loan Document, as the case may be, when taken together will be deemed to be but one and the same instrument.

Section 16.13 BINDING EFFECT; ASSIGNMENT This Deed of Trust and the other Loan Documents shall be binding upon and shall inure to the benefit of Borrower, Lender and their respective successors and assigns. Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of Lender.

Section 16.14 [INTENTIONALLY OMITTED]

Section 16.15 ATTORNEYS FEES Wherever in the Loan Documents Borrower is obligated to pay Lender's attorneys' fees, such obligation shall include the actual fees and expenses charged by those attorneys selected by Lender based upon such attorneys' then-prevailing hourly rates, which fees shall not be based upon any statutory schedule or fees prescribed by any applicable law.

Section 16.16 NONLIABILITY OF LENDER Borrower acknowledges and agrees that:

(a) Any inspections of the Property made by or through Lender are for purposes of administration of the Loan only and, if disclosed to Borrower, is disclosed without representation, warranty or liability of Lender;

(b) By accepting or approving anything required to be observed, performed, fulfilled or given to Lender pursuant to the Loan Documents, including any certificate, financial statement, insurance policy or other document, Lender shall not be deemed to have warranted or represented 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 constitute a warranty or representation to anyone with respect thereto by Lender; and

(c) The relationship among Borrower and Lender is, and shall at all times remain, solely that of a borrower and lender; and Lender shall not under any circumstance be construed to be partners or joint venturers of Borrower or its Affiliates; Lender shall not under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Borrower or its Affiliates, or to owe any fiduciary duty to Borrower or its Affiliates; Lender does not undertake or assume any responsibility or duty to Borrower or its Affiliates to select, review, inspect, supervise, pass judgment upon or inform Borrower or its Affiliates of any matter in connection with the Property, any Collateral held by Lender or the operations of Borrower or its Affiliates; Borrower and its Affiliates shall rely entirely upon their own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Lender in connection with such matters is solely for the protection of Lender and neither Borrower nor any other Person is entitled to rely thereon.

Section 16.17 NO THIRD PARTIES BENEFITED This Deed of Trust is made for the purpose of defining and setting forth certain obligations, rights and duties of Borrower and Lender in connection with the Loan, and is made for the sole benefit of Borrower and Lender's successors and assigns. No other Person shall have any rights of any nature hereunder or by reason hereof and no other Person is intended to be a beneficiary of this Deed of Trust.

Section 16.18 FURTHER ASSURANCES. Borrower shall, at its expense and without expense to Lender do, execute and deliver such further acts and documents as Lender from time to time requires for the assuring and confirming unto Lender of the rights hereby created or intended now or hereafter so to be, or for carrying out the intention of facilitating the performance of the terms of any Loan Document, or for assuring the validity, perfection, priority or enforceability of any lien under any Loan Document, but without materially expanding Borrower's liability hereunder or under the other Loan Documents.

Section 16.19 SEVERABILITY OF PROVISIONS Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of all the Loan Documents are declared to be severable.

Section 16.20 HEADINGS The heading in this Deed of Trust and the other Loan Documents are included for convenience of reference only and are not part of this Deed of Trust or the other Loan Documents for any other purpose and shall not in any way limit, amplify or be used in interpreting the terms of this Deed of Trust.

Section 16.21 TIME OF THE ESSENCE Time is of the essence of this Deed of Trust and the other Loan Documents.

Section 16.22 JURY WAIVER.

(a) TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN CONSIDERATION OF LENDER'S AGREEMENT TO THE PROVISIONS OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, BORROWER AND LENDER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER OR BORROWER IN CONNECTION WITH THE LOAN AND/OR THIS DEED OF TRUST, ANY AND EVERY RIGHT IT MAY HAVE TO A TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS DEED OF TRUST, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH INCLUDING, BUT NOT LIMITED TO THOSE RELATING TO (A) ALLEGATIONS THAT A PARTNERSHIP EXISTS BETWEEN LENDER AND BORROWER; (B) USURY OR PENALTIES OR DAMAGES THEREFOR; (C) ALLEGATIONS OF UNCONSCIONABLE ACTS, DECEPTIVE TRADE PRACTICE, LACK OF GOOD FAITH OR FAIR DEALING, LACK OF COMMERCIAL REASONABLENESS, OR SPECIAL RELATIONSHIPS (SUCH AS FIDUCIARY, TRUST OR CONFIDENTIAL RELATIONSHIP); (D) ALLEGATIONS OF DOMINION, CONTROL, ALTER EGO, INSTRUMENTALITY, FRAUD, REAL ESTATE FRAUD, MISREPRESENTATION, DURESS, COERCION, UNDUE INFLUENCE, INTERFERENCE OR NEGLIGENCE; (E) ALLEGATIONS OF TORTIOUS INTERFERENCE WITH PRESENT OR PROSPECTIVE BUSINESS RELATIONSHIPS OR OF ANTITRUST; OR (F) SLANDER, LIBEL OR DAMAGE TO REPUTATION. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY

PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.

(b) ADDITIONAL WAIVERS. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN CONSIDERATION OF LENDER'S AGREEMENT TO THE PROVISIONS OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER IN CONNECTION WITH THE LOAN AND/OR THIS DEED OF TRUST, ANY AND EVERY RIGHT IT MAY HAVE TO (i) INTERPOSE ANY COUNTERCLAIM THEREIN, EXCEPT TO THE EXTENT THAT SAID COUNTERCLAIM MUST BE ASSERTED PURSUANT TO APPLICABLE LAW OR OTHERWISE BE BARRED FROM BEING ASSERTED IN ANY OTHER ACTION AND (ii) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION WITH RESPECT TO ANY ASSERTED CLAIM SUBJECT TO ANY LIABILITY THEREFOR UNDER THE NON RECOURSE CARVE OUT GUARANTY.

Section 16.23 HOLD HARMLESS. Borrower represents and warrants to Lender that there are no commissions, finder's fees, brokerage fees or financial advisory fees arising out of the transactions contemplated by this Deed of Trust. Borrower shall indemnify, protect, defend and hold Lender harmless from and against any and all liabilities, claims, demands, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, in connection with claims for any such commissions, finders' fees, brokerage fees, or financial advisory fees arising out of the inaccuracy of the foregoing representation and warranty of Borrower.

Section 16.24 WAIVER OF STATUTE OF LIMITATIONS Borrower hereby waives all rights to plead or assert at any time any statute of limitations as a defense or bar to any action or proceeding brought to enforce this Deed of Trust or any of the other Loan Documents or any Obligations hereunder or thereunder.

Section 16.25 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 16.26 JURISDICTION AND FORUM. Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the County of Weber, State of Utah over any dispute relating to this Deed of Trust or any other Loan Document. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Borrower in any other court or jurisdiction. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of Utah may be made by certified or registered United States mail, return receipt requested, directed to Borrower at its address for notice set forth in this Deed of Trust, or at a subsequent address of which Lender received actual notice from Borrower in accordance with the notice section of this Deed of Trust, and service so made shall be complete five (5) days after the same shall have been so mailed.

ARTICLE 17

TRUSTEE MATTERS

Section 17.1 **CERTAIN POWERS OF TRUSTEE**. At any time or from time to time, without liability therefor and without notice, upon written request of Lender and presentation of this Deed of Trust and the Note, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Dead of Trust upon the remainder of the Property, Trustee may: (a) reconvey any part of the Property; (b) consent in writing to the making of any subdivision map or plat thereof; (c) join in granting any easement thereon; or (d) join in any extension agreement or any agreement subordinating the lien hereof.

Section 17.2 **SUBSTITUTED TRUSTEE**. Lender may, from time to time, by instrument in writing complying with applicable law, substitute a successor or successors to the Trustee named herein or acting hereunder, which instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees. The successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor Trustee's title, estate, rights, powers and duties.

Section 17.3 **DEED OF TRUST TAX**. Borrower agrees to indemnify, defend and hold Lender harmless from and against any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with Borrower's failure to pay any recording, mortgage, transfer or other tax or imposition due in connection with the execution, delivery or recordation of this Deed of Trust. The agreement set forth in this paragraph shall survive the termination of this Deed of Trust.

[Signatures on following page.]

IN WITNESS WHEREOF, THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING has been executed by Borrower the day and year first above written.

BORROWER:

SANCTUARY RANCH UTAH, LLC, a Utah limited liability company

By: _____
Timothy P. Charlwood, Manager

_____
Timothy P. Charlwood, an Individual, also known as Timothy Patrick Charlwood

State of Utah)
:ss
County of Salt Lake)

On July 15, 2016 before me, Marie Klaszky
(insert name and title of the officer)

personally appeared Timothy P. Charlwood,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his individual capacity and in his capacity as Manager of Sanctuary Ranch Utah, LLC.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

MARIE KLASZKY
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 676804
COMM. EXP. 08-26-2018

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTSVILLE, WEBER COUNTY, STATE OF UTAH IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3, 6 and Private Roadways within THE SANCTUARY SUBDIVISION, according to the official plat thereof as recorded in the office of the Weber County Recorder, State of Utah.

Lots 4, 5, 7 and 8 within THE SANCTUARY FIRST AMENDMENT SUBDIVISION, according to the official plat thereof as recorded in the office of the Weber County Recorder, State of Utah.

Lots 4 and 5 (the same being the East half of the Northeast quarter) of Section 4, Township 6 North, Range 2 East, Salt Lake Base and Meridian.

EXCEPTING THEREFROM that portion lying within the bounds of The Sanctuary Subdivision and The Sanctuary First Amendment Subdivision.

The Northwest quarter of Section 3, Township 6 North, Range 2 East, Salt Lake Base and Meridian.

EXCEPTING THEREFROM that portion lying within the bounds of The Sanctuary Subdivision and The Sanctuary First Amendment Subdivision.

The Southwest quarter of Section 34, Township 7 North, Range 2 East, Salt Lake Base and Meridian.

ALL OF THE ABOVE DESCRIBED PROPERTY IS TOGETHER WITH a perpetual easement for ingress, egress and utilities over and across the existing 50' private road as more particularly described and conveyed in that certain Right of Way and Easement recorded January 14, 1998 as Entry No. 1515370 in Book 1901 at Page 2685, and in that certain Easement Agreement and Declaration of Covenants recorded September 23, 2004 as Entry No. 2058175 of official records.

All of the parcels of land located in Weber County, State of Utah, identified by the following Tax Parcel Numbers: 21-126-0001; 21-126-0007; 21-126-0002; 21-126-0008; 21-126-0003; 21-130-0001; 21-130-0002; 21-130-0003; 21-126-0006; 21-130-0004; 21-130-0005; 21-130-0006; 21-130-0007; 21-126-0011; 21-126-0012; 23-012-0022; 21-001-0014; and 21-001-0015