

After recording return to:

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Greenwood Village, CO 80111

F-66137

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

(Site 32-5701 South State Street, Murray, UT)

(Larry H. Miller Lexus)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Deed of Trust") is made as of June 22, 2005, by MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company (hereinafter referred to as "Trustor"), 9350 South 150 East, Suite 1000, Sandy, Utah 84070, to FOUNDERS TITLE COMPANY, a Utah corporation (hereinafter referred to as "Trustee"), 746 E. Winchester St., Suite 100, Salt Lake City, Utah 84107, for the use and benefit of COMERICA BANK, a Michigan banking corporation (hereinafter referred to as "Beneficiary," which designation shall include successors and assigns), 411 West Lafayette Boulevard, Detroit, Michigan 48226-3519.

RECITALS

Trustor, by its promissory notes of even date herewith (the "Notes"), is indebted to Beneficiary up to the principal sum of Two Hundred Million and 00/100 Dollars (\$200,000,000.00) in lawful money of the United States of America, with interest thereon at the rate set forth in the Notes and with principal and interest payable as provided in the Notes. Trustor desires to secure the payment and performance of the Notes and the other Indebtedness and Loan Documents, as defined below.

IN CONSIDERATION of the principal sum of the Notes, including future advances as provided under the Loan Documents, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby:

A. Irrevocably grants, bargains, sells, conveys and assigns unto the Trustee IN TRUST, WITH POWER OF SALE, the real property situated in the County of Salt Lake, State of Utah and more fully described in Exhibit A attached hereto and made a part hereof (the "Real Property");

B. TOGETHER WITH all right, title, and interest of the Trustor in and to all buildings and improvements now located or hereafter to be erected upon the Real Property (all hereinafter referred to as the "Building"), and all right, title, and interest of the Trustor, now owned or hereafter acquired, in and to any and all strips and gores of land, and in, to, and under the land within the streets, sidewalks, and alleys adjoining the Real Property, and in and to all and singular the tenements, hereditaments, privileges, easements, franchises, rights, appendages, and appurtenances belonging or in any way appertaining to the Real Property;

C. TOGETHER WITH all the right, title, and interest of the Trustor in and to all existing and future, machinery, apparatus, equipment, fittings, and fixtures of every kind and nature whatsoever, now or at any time hereafter attached to the Building or any part thereof, including, without limiting the generality of the foregoing, all engines, furnaces, boilers, stokers, pumps, heaters, tanks, dynamos, motors, generators, fans, blowers, vents, switchboards, electrical equipment, heating, plumbing, lifting, and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electric fixtures, elevators, escalators, compressors, vacuum cleaning systems, call systems, water fountains, refrigeration equipment, fire prevention and extinguishing apparatus (or any other safety equipment required by governmental regulation), security systems, appliances, building materials, electric signs, shades, venetian blinds, awnings, screens, partitions, draperies, carpeting, and maintenance equipment of every nature whatsoever, including machinery and equipment for general maintenance, telephone equipment, furniture and data processing equipment and peripherals (all of the equipment described in this Paragraph C is hereinafter referred to as the "Building Equipment");

D. TOGETHER WITH all rents, accounts, accounts receivable, issues, royalties, profits, revenues, incomes, and other benefits of and from the Real Property and any other property subject to the lien of this Deed of Trust, and that portion of any and all bank accounts and similar accounts containing any of the foregoing, and all of the estate, right, title, and interest of every nature whatsoever of the Trustor in and to the same and every part and parcel thereof;

E. TOGETHER WITH any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Property as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to or decrease in the value of the property described above, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by the Beneficiary, and of the reasonable attorneys' fees, costs, and disbursements incurred by the Beneficiary in connection with the collection of such award or payment, and the Trustor shall execute and deliver from time to time such further instruments as may be requested by the Beneficiary to confirm such assignment to the Beneficiary of any such award or payment;

F. TOGETHER WITH all existing and future goods located on the Real Property which are now or in the future owned by the Trustor and attached to the Real Property or are to be used in

any construction on the Real Property but which are not effectively made real property under Paragraph B or Section 7.4 hereof, including but not limited to all appliances, carpeting, draperies, building service equipment, building materials, supplies and equipment which are, or will be, attached or affixed to the Real Property or any Building;

G. TOGETHER WITH all existing and future contract rights now or in the future owned by the Trustor in connection with the operation and occupancy of the Real Property, the Building, or the Building Equipment;

H. TOGETHER WITH all existing and future general intangibles directly relating to the development or use of the Real Property or the Building, including but not limited to all governmental permits relating to construction on the Real Property, all existing and future names under or by which the Real Property or the Building may at any time be operated or known, all rights to carry on business under any such names or any variant thereof;

I. TOGETHER WITH all existing and future water stock relating to the Real Property, all existing and future rights to oil, gas, minerals, and geothermal resources under, through, upon, or appurtenant to the Real Property, all existing and future shares of stock or other evidence of ownership of any part of the Real Property that is owned by the Trustor in common with others, and all existing and future documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property;

J. TOGETHER WITH all water and water rights of any type which are appurtenant to the premises or which are or may be used on or in connection with the Real Property at the present time or at any time hereafter, including, but not limited to, the following: adjudicated water rights and decrees and priorities therefor; unadjudicated water rights and appropriations; rights in water from tributary and non-tributary sources, whether surface or underground; conditional water rights; rights existing under well permits issued by the State Engineer or its equivalent; rights and permits in designated groundwater basins; rights in non-tributary groundwater existing by virtue of land ownership; all rights, shares or allotments of water in ditch companies, conservancy districts, or other water distribution organizations and all shares of stock or other instruments evidencing a right to such water; all aboriginal rights, pueblo rights, reserved rights, and other rights not derived from state law; all rights claimed under contract, exchange, or plans for augmentation; all ditches, canals, reservoirs, pipelines, tunnels, wells, and other structures for diverting and conveying water, and all rights of way and easements therefor. It is the express intention of the parties to this Deed of Trust that this Paragraph is to operate independently of and in addition to any description of particular water rights which may be included elsewhere in this document;

K. TOGETHER WITH all right, title, and interest of the Trustor in and to any bank accounts, security deposits, and any and all other amounts held as security under any leases or

subleases now or hereafter outstanding on the Real Property (such leases and subleases are hereinafter referred to as the "Leases"); and

L. TOGETHER WITH all and singular the privileges and appurtenances thereunto belonging (the Real Property, Building, Building Equipment, interests, privileges, and appurtenances described in Paragraph A through Paragraph L hereof being hereinafter referred to as the "Property"), and WARRANTS THE TITLE TO THE SAME with the exceptions shown on Exhibit B attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same, IN TRUST, NEVERTHELESS, for the purpose of securing:

## ARTICLE 1

### 1 OBLIGATIONS SECURED

1.1 The payment and performance of all obligations under the Notes, more particularly described as a (a) Term Note of even date herewith for the principal sum of One Hundred Eighty Million and 00/100 Dollars (\$180,000,000.00), and a (b) Revolving Note of even date herewith for the principal sum of Thirty Million and 00/100 Dollars (\$30,000,000.00), with interest thereon at the rate set forth therein and with principal and interest payable as provided therein, with the balance of the principal remaining unpaid, together with unpaid interest thereon, being due and payable in full on July 2, 2012, as the same may be amended, modified, replaced or restated from time to time. (Notwithstanding the principal amount of the Notes, the unpaid principal under the Notes shall at no time exceed \$200,000,000.00);

1.2 The payment of all sums expended or advanced by the Beneficiary pursuant to the terms of this Deed of Trust, or any other instrument now in existence or hereafter executed in connection with this Deed of Trust. (The principal and interest on the Notes, and advances made pursuant to the Deed of Trust and other instruments are hereinafter collectively referred to as the "Indebtedness"); and

1.3 The performance of every obligation, covenant, and agreement of Trustor arising under or in connection with the Notes, this Deed of Trust, Trustor's Loan Agreement with Beneficiary of even date herewith (the "Loan Agreement"), or any other instrument now in existence or hereafter executed in connection therewith. (The Notes, this Deed of Trust, the Loan Agreement and other instruments are hereinafter collectively referred to as the "Loan Documents").

## ARTICLE 2

### 2 COVENANTS OF THE TRUSTOR

2.1 Repayment of Indebtedness. The Trustor shall pay when due the principal of and interest on the Indebtedness, and all other sums due pursuant hereto, and shall perform each and every agreement and condition contained in the Notes, this Deed of Trust and the other Loan Documents.

2.2 Payment of Taxes and Assessments. The Trustor shall pay before they become delinquent all taxes, special assessments, water and sewer rents or assessments, and all other charges imposed by law upon or against the Property (the "Impositions").

#### 2.3 Preservation of Lien Priority.

(a) The lien of this Deed of Trust is and shall be maintained as a valid first lien on the Property. The Trustor shall not, directly or indirectly, create or suffer or permit to be created or stand against all or any part of the Property or against the rents, issues, profits, or income therefrom, any lien or charge prior to, subordinate to, or on a parity with the lien of this Deed of Trust. However, nothing in this Deed of Trust shall require the Trustor to pay any Impositions prior to the time they become due and payable or require the Trustor to pay any Imposition so long as the Trustor contests the amount, applicability, or validity in good faith by appropriate proceedings promptly initiated and diligently conducted if: (i) such nonpayment will not result in a forfeiture or impairment of the priority of the lien of this Deed of Trust; and (ii) the Trustor has posted security with the Beneficiary in a form and in an amount satisfactory to the Beneficiary which the Beneficiary shall use in its sole discretion to protect the priority of the lien of this Deed of Trust. The Trustor shall keep and maintain the Property free from all liens of persons supplying labor and materials entering into the construction, modification, or repair of the Building. If any such lien is recorded against the Property, the Trustor shall post a bond, as provided by statute, or discharge the same of record within thirty (30) days after such lien is recorded. The Trustor shall not do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which or the omission of which would impair the security of this Deed of Trust or would constitute grounds for the termination by any lessee or sublessee of any Lease.

(b) All property of every kind acquired by the Trustor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon its acquisition and without any further conveyance, assignment, or transfer, become subject to the lien of this Deed of Trust. Nevertheless, the Trustor shall do all such further acts, and execute, acknowledge, and deliver all such further conveyances, mortgages, security agreements, and assurances as the Beneficiary may reasonably require in order to confirm the lien of

this Deed of Trust on the Property, and the Trustor shall pay all fees for filing or recording such instruments.

(c) If any action or proceeding is instituted to evict the Trustor or to recover possession of the Property or for any other purpose affecting this Deed of Trust or the lien of this Deed of Trust, the Trustor shall deliver to the Beneficiary a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings, and papers, however designated, served in such action or proceedings, immediately after the Trustor receives them.

#### 2.4 Insurance.

(a) The Trustor, at its sole expense, shall keep and maintain constantly during the time any of the Indebtedness remains outstanding, with companies authorized to do business in Utah and reasonably satisfactory to the Beneficiary, the following:

(i) Insurance in an amount not less than the full replacement value of the Building (without regard to depreciation) or the amount of the Indebtedness outstanding, whichever is greater, insuring against loss or damage by fire or other risks included from time to time in what is commonly called extended coverage insurance;

(ii) Personal liability, comprehensive general public liability and property damage, vandalism, and malicious mischief insurance in such form and in an amount not less than \$1,000,000 naming the Beneficiary as an additional insured as its interest may appear;

(iii) Flood insurance if required by the Flood Disaster Protection Act of 1973 and regulations issued thereunder; and

(iv) Such other insurance coverages as may be reasonably required by the Beneficiary from time to time.

(b) All insurance policies required by this Deed of Trust shall contain a standard noncontributory lenders' loss payable clause in favor of the Beneficiary and to the extent available a waiver of subrogation rights. All insurance policies shall provide that the Beneficiary shall be named as a loss payee, as its interest may appear, of all claims, and that such policy shall not be canceled without at least thirty (30) days' prior written notice to the Beneficiary.

(c) Upon the execution of this Deed of Trust, and thereafter not less than thirty (30) days prior to the expiration dates of the expiring insurance policies required by this Section, the Trustor shall deliver to the Beneficiary originals or certificates of the policies bearing notations evidencing

the payment of premiums or accompanied by other evidence satisfactory to the Beneficiary of such payment.

(d) The Trustor and the Beneficiary shall adjust with the insurance companies the loss, if any, under any policies required by this Deed of Trust in the case of any particular casualty resulting in damage or destruction. The proceeds of any such insurance shall be payable to the Beneficiary to be applied in accordance with the terms of Section 2.5 hereof.

(e) Approval by the Beneficiary of any insurance policy obtained or delivered pursuant to this Section shall not be deemed a representation by the Beneficiary as to the adequacy of coverage of such policy or the solvency of the insurer.

(f) If the Trustor fails to procure, pay the premium of, or deliver to the Beneficiary any of the insurance policies or renewals as required herein, the Beneficiary may elect, but shall not be obligated, to effect such insurance and pay the premiums. The Trustor shall pay to the Beneficiary on demand any premiums so paid with interest thereon at the default rate set forth in the Notes (the "Default Rate") from the time of the Beneficiary's payment, and said advance and interest shall be secured by this Deed of Trust.

(g) If the Beneficiary acquires title to the Property in any manner, it shall thereupon (as between the Trustor and the Beneficiary) become the sole and absolute owner of all insurance policies required by this Section, with the sole right to collect and retain all unearned premiums thereon, and the Trustor shall be entitled only to a credit, in reduction of the then outstanding Indebtedness, in the amount of the short-rate cancellation refund.

2.5 Casualty. The Trustor shall promptly give written notice to the Beneficiary of fire or other casualty to the Property. Regardless of the amount of any damage or destruction and whether or not the insurance proceeds, if any, are sufficient for the purpose, the Trustor shall, at its sole cost and expense, restore, repair, replace, rebuild, or alter such Property as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, or make such changes or alterations as the Beneficiary approves in writing. Unless Trustor is in default under this instrument, all insurance money paid to the Beneficiary on account of such damage or destruction, less the reasonable cost, fees, and expenses, if any, incurred in connection with adjustment of the loss, shall be applied to payment of the costs of such restoration, repair, replacement, rebuilding, or alteration, including the cost of temporary repairs or of the protection of the Property pending the completion of permanent restoration, repair, replacement, rebuilding, or alteration (hereinafter collectively referred to as the "Restoration"). If Trustor is in default under this instrument, the Beneficiary may elect, in the Beneficiary's sole discretion, to apply the award or proceeds (net of costs of collection) to the reduction of Indebtedness, in inverse order of maturity, whether due or not, in lieu of applying the proceeds to the cost of Restoration. If the insurance proceeds are applied to the payment of the costs of the Restoration, the Beneficiary may make such payments from time to time as such Restoration

progresses in the manner and pursuant to whatever terms and conditions the Beneficiary deems reasonable.

2.6 Condemnation. If all or any part of the Property is taken in condemnation proceedings or by exercise of any right of eminent domain, or by conveyance in lieu of condemnation (hereinafter collectively called "Proceedings"), the Trustor and the Beneficiary shall have the right to participate in any Proceedings at the Trustor's expense, including reasonable attorneys' fees, notwithstanding any provisions in any other documents now in existence or hereafter executed. Any resulting award or proceeds shall be deposited with the Beneficiary and distributed in the manner set forth in this Section. The parties agree to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit. If title to the whole or materially all of the Property is taken in condemnation proceedings or by agreement between the Trustor and the Beneficiary and those authorized to exercise such right, the Beneficiary shall apply such award or proceeds first to payment of the reasonable costs of their collection, including reasonable attorneys' fees, second to payment of the Indebtedness, in inverse order of maturity, whether due or not, and third to the Trustor. "Materially all of the Property" shall be deemed to have been taken if the portion of the Property not so taken cannot be repaired or reconstructed so as to constitute a complete and rentable facility and so as to be capable of producing net annual income sufficient to pay when due all debt service on the Indebtedness, after the payment of all operating expenses. "Operating expenses" shall be deemed to exclude depreciation, income taxes, franchise taxes, interest, and amortization of the Indebtedness. If title to less than the whole or materially all of the Property is taken, the Beneficiary shall hold and apply all of the award or proceeds first to the payment of the reasonable costs of their collection, including reasonable attorneys' fees, and then unless the Trustor is in default under this instrument, to the payment of the cost of demolition, repair, and restoration, substantially in the same manner and subject to the same conditions as those provided in Section 2.5 (pertaining to damage or destruction with respect to insurance proceeds and other moneys). If the Trustor is in default under this instrument, the Beneficiary may elect, in the Beneficiary's sole discretion, to apply the award or proceeds (net of the costs of collection) to the reduction of the Indebtedness, in inverse order of maturity, whether due or not, in lieu of applying the proceeds to award or proceeds to the cost of demolition, repair, and restoration pursuant to the proceeding sentence. If the Beneficiary elects to apply such award or proceeds to the cost of the demolition, repair, and restoration, and if any balance remains after payment of the cost of such demolition, repair, and restoration, the Beneficiary shall apply such balance toward reduction of the Indebtedness, in the inverse order of maturity, whether due or not. If the costs of such demolition, repairs, and restoration exceed the net amount collected by the Beneficiary, the Trustor shall pay the deficiency upon demand.

2.7 Maintenance of Property. The Trustor shall not commit any waste on the Property or take any actions that might invalidate any insurance carried on the Property. The Trustor at its sole cost and expense shall maintain the Property and the landscaping, sidewalks, curbs, and vaults adjoining the Building in good condition and make all necessary repairs, interior and exterior,



structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. No improvements may be removed, demolished, or materially altered without the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld or delayed. All repairs shall be equal in quality and class to the original work. No personal property used in connection with the Property in which the Beneficiary has a security interest may be removed from the Property, with the exception of inventory and operating equipment of tenants, unless it is immediately replaced by similar property of at least equivalent value on which the Beneficiary will immediately have a valid first lien and security interest.

2.8 Compliance. The Trustor shall comply promptly with all present and future laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, and officers, any national or local Board of Fire Underwriters, or any other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to the Property, the landscaping, sidewalks, curbs, and vaults adjoining the Property, or to the use or manner of use of the Property whether or not such law, statute, ordinance, order, rule, regulation, restriction, or requirement necessitates structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural, or otherwise, onto or over the streets adjacent to the Property, or onto or over property contiguous or adjacent thereto, and including without limitation all zoning, building code, environmental protection and equal employment opportunity laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements. The Trustor and the use of the Property shall comply with all conditions, covenants, restrictions, easements, rights of way, licenses and other agreements or instruments affecting the Property.

2.9 Cost of Defending Title to Property. If the Beneficiary is made a party to any action affecting this Deed of Trust or the title to the Property, the Beneficiary may at its option defend such action. Furthermore, in the event of any actions or proceedings affecting this Deed of Trust or title to the Property, the Beneficiary may, at its option, elect to participate or join in any such actions or proceedings. If the Beneficiary elects to so defend or participate, all court costs and reasonable expenses, including attorneys' fees and costs of evidence of title to the Property, shall become part of the Indebtedness and be secured by this Deed of Trust.

2.10 Due on Sale or Transfer; Acceleration. The full principal of the Notes and all Indebtedness and obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of the Beneficiary, and without demand or notice, shall immediately become due and payable, and the Notes shall thereafter bear interest at the Default Rate set forth in the Notes if the Trustor without the prior written consent of the Beneficiary:

(a) voluntarily or involuntarily sells, assigns, transfers, leases with option to purchase, disposes of, or encumbers, or agrees to sell, assign, transfer, lease with option to purchase, dispose

of, or further encumber, all or any portion of or any interest in the Property, including, but not limited to, any development rights, air rights, or similar rights;

(b) changes or alters, or allows to be changed or altered, in any way whatsoever the effective control of the Property by the Trustor; or

(c) is divested of title to all or part of the Property in any manner, whether voluntarily or involuntarily.

2.11 Waiver of Right to Marshall Assets. The Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to have the Property and any other property now or hereafter constituting security for the Indebtedness marshalled upon any foreclosure of the lien of this Deed of Trust. The Beneficiary shall have the right to order the Trustee to sell the Property as a whole or in separate parcels.

2.12 Zoning and Private Covenants. The Trustor shall not initiate, join in, or consent to any change in any zoning ordinance or classification, any private restrictive covenant, or any other public or private restriction limiting or denying the uses of all or any part of the Property without the Beneficiary's prior written consent, nor shall Trustor consent to or permit the Property to be included in any special district with the authority to tax or assess the Property. If the use of all or any part of the Property is or becomes a nonconforming use under applicable zoning provisions, the Trustor shall not cause or permit such use to be discontinued or abandoned without the Beneficiary's prior written consent.

2.13 Alterations. Without the Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed, the Trustor shall not engage in any major construction, addition, alteration, expansion, or extension of the Building or any other improvements on the Property, or consent to or permit any such construction, addition, alteration, expansion, or extension.

2.14 Further Acts. Trustor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof, to carry into effect its objective and purposes, and to protect the lawful owner of the Notes and the other Indebtedness. Promptly upon request by Beneficiary, Trustor shall execute, acknowledge, and deliver to Beneficiary such other and further instruments as in the reasonable opinion of Beneficiary may be necessary to correct and defect, error, or omission which may be discovered in any of the Loan Documents or otherwise effect the intent of this Deed of Trust.

2.15 Environmental Requirements. Without limiting the generality of Section 2.8 above, the Trustor shall keep the Property in material compliance with all Environmental Requirements. The term "Environmental Requirements" as used herein shall mean all applicable federal, state and

local laws and regulations relating to pollution control and environmental contamination, including, but not limited to:

(i) All laws and regulations governing the generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Materials and all laws and regulations with regard to recordkeeping, notification and reporting requirements respecting Hazardous Materials. The term "Hazardous Materials" as used herein shall mean:

(A) materials defined as "hazardous substances," "hazardous wastes," "hazardous constituents" or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601-9657, and any amendments thereto and regulations thereunder;

(B) materials defined as "hazardous wastes" under the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6987, and any amendments thereto and regulations thereunder; and

(C) all other materials and substances which are now or hereafter prohibited or controlled under any federal, state or local laws and regulations relating to pollution control and environmental contamination.

(ii) All laws and regulations governing the generation, treatment, storage, discharge or disposal of wastewaters as provided for under the Federal Clean Water Act, as amended, 33 U.S.C. §§1251-1376, and any amendments thereto and regulations thereunder.

(iii) All laws and regulations governing the generation, treatment, emission or discharge of atmospheric pollutants as provided for under the Federal Clean Air Act, as amended, 42 U.S.C. §§7401-7642, and any amendments thereto and regulations thereunder.

(iv) All laws and regulations relating to Asbestos. The term "Asbestos," as used herein, shall mean actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite, and also any waste which contains commercial asbestos including asbestos mill tailings, control device asbestos waste, friable asbestos waste material, and bags or containers that previously contained commercial asbestos, as set out in the Code of Federal Regulations, 40 Protection of Environment, Revised July 1, 1981.

(v) All laws and regulations governing the collection, treatment, handling, disposal, discharge, storage, transportation, or removal of polychlorinated byphenyls (PCB's), chlorofluorocarbons, and any "new" chemicals as provided for under the Federal Toxic Substances and Control Act, 15 U.S.C. §§2601-2629, and any amendments thereto and regulations thereunder.

The Trustor shall clean to a level reasonably satisfactory to the Beneficiary any contamination from Hazardous Materials at the Property existing from time to time, including, without limitation, any contamination of the air, soil, groundwater or surface waters associated with or adjacent to the Property. The Trustor shall keep the Property free of any lien imposed pursuant to any of the Environmental Requirements and shall pay immediately when due the costs of remedying Hazardous Material contamination and the costs of complying with any of the Environmental Requirements. The Trustor shall notify the Beneficiary within seventy-two hours of any release of Hazardous Materials at the Property that could form a basis for any claim, demand or action by any party. In the event that the Trustor fails to discharge any of its obligations pursuant to this Section, the Beneficiary may take whatever action it deems necessary or advisable to free the Property from any Hazardous Materials or comply with the Environmental Requirements (in which case the Trustor shall give the Beneficiary and its agents and its employees access to the Project to respond to such conditions relating to Hazardous Materials). The cost of any such action shall be added to the Indebtedness evidenced by the Notes and secured by this Deed of Trust and other Loan Documents (regardless of whether such cost causes the outstanding balance of the Notes to be in excess of the maximum principal amount thereof). The Beneficiary shall have the right to conduct an environmental audit of the Property at any time at which the Beneficiary reasonably believes such audit to be advisable, and the Trustor shall cooperate in the conduct of and pay for such environmental audit.

2.16 Indemnification. The Trustor agrees to indemnify, defend, protect and hold the Beneficiary harmless against any and all losses, costs, damages, liabilities, expenses (including attorneys' fees and expenses), obligations, fines, penalties, judgments, and charges that the Beneficiary may sustain as a result of or in connection with:

- (a) the failure by the Trustor, or any of the Trustor's tenants or predecessors in title to the Property, to perform any of its, or their, obligations pursuant to any of the Environmental Requirements;
- (b) the breach of any of the warranties and representations contained in Article 3 or of any of the representations or covenants contained in Article 4 of this Deed of Trust; or
- (c) the presence on or in, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property (including any building, structure, or equipment thereon) of any Hazardous Materials.

The indemnification contained in this Section shall be a full recourse obligation of the Trustor for which the Trustor shall have joint and several personal liability notwithstanding any exculpation on or exculpation from liability contained herein or in any of the Loan Documents. The indemnification contained in this Section shall survive payment of the Notes and performance of all other obligations under this Deed of Trust and the other Loan Documents.

2.17 Guarantors. The Trustor hereby authorizes the Beneficiary, at its sole discretion and without notice to or consent of the Trustor, to disclose to any of the Guarantors any information, financial or otherwise, which the Beneficiary may possess concerning the Trustor. The Trustor shall indemnify and hold harmless the Beneficiary from any liability arising out of the furnishing of such information, including, but not limited to, any liability arising out of the inaccuracy of all or any portion of such information. The Beneficiary shall have no obligation, however, to disclose any such information to any of the Guarantors.

2.18 Notification of Default. The Trustor, or its successors or assigns, including but not limited to any subsequent owner of the Property, shall notify the Beneficiary of the occurrence of any Event of Default under this Deed of Trust, the Notes, or any of the other Loan Documents, or the occurrence of any event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder or thereunder.

### ARTICLE 3

## 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties under the Loan Agreement. Trustor restates the representations and warranties set forth in the Loan Agreement, which are hereby incorporated in this Deed of Trust by reference.

3.2 Taxes Paid. The Trustor has paid (or established adequate reserves for the payment of) all taxes, assessments, contributions, fees, and other governmental charges (other than those which are currently being or may hereafter be contested in good faith in accordance with the provisions of Section 2.3(a)) upon the Property. No tax liens have been filed against any assets of the Trustor.

3.3 Access. The Property is and will be contiguous to streets or roads or highways to be adequately completed and maintained, and vehicular and pedestrian access from the Property is and will be permitted to any such streets or roads or highways.

3.4 Condemnation. To the best of Trustor's knowledge, no condemnation or eminent domain proceeding has been commenced or threatened against the Property. Trustor has not received a notice regarding any such proceedings.

3.5 Environmental Compliance. The Property currently complies with, and will continue to comply with, all of the Environmental Requirements.

3.6 Environmental Proceedings and Investigations. The Property is not subject to any judicial or administrative proceeding alleging the violation of any of the Environmental

Requirements. The Property is not the subject of a federal or state investigation regarding Asbestos or evaluating whether any remedial action is needed to respond to a release of any hazardous or toxic waste, substance or constituent, or other substance into the environment.

3.7 Use of the Property. The Property is in a clean and healthful condition free of Asbestos and all other Hazardous Materials. Except for the incidental use of solvents, gasoline, motor oils, fluids and similar substances in the ordinary course of any motor vehicle sales or service business conducted on the Property, no Asbestos or Hazardous Materials have been or are placed, held, located, generated, treated, stored or disposed of on, under or at the Property, or any part thereof, and the Property has never been used as a disposal or storage site for any Hazardous Material. No underground storage tanks or surface impoundments are located on the Property.

3.8 Environmental Liens. No lien in favor of any governmental entity for any liability under any of the Environmental Requirements, or damages arising from or costs incurred by such governmental entity in response to Asbestos or to a release of a hazardous or toxic waste, substance or constituent, or other substance into the environment has been filed against or attached to the Property.

#### ARTICLE 4

#### 4 ASSIGNMENT OF RENTS AND LEASES

4.1 Assignment of Rents. As additional security for the payment of the Indebtedness, the Trustor hereby assigns, transfers, and sets over to the Beneficiary: (i) the rents, profits, and income derived from the Property including all prepaid rent and security deposits (the "Rents"); (ii) the Leases, all guaranties of any lessee's obligations under the Leases, and any modifications or renewals of the Leases and such guaranties; (iii) any award or other payment to which Trustor may become entitled with respect to the Lease as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving the tenants under the Lease; and (iv) all payments made by or on behalf of any tenant of any part of the Property in lieu of Rent.

4.2 License to Collect. The Trustor reserves and the Beneficiary grants to the Trustor a license to collect the Rents. If an Event of Default occurs, the Beneficiary may terminate such license without regard to the adequacy of its security hereunder and without notice to or demand upon the Trustor, and shall thereafter have full and complete right and authority to demand, collect, receive, and receipt for the Rents, to take possession of the Property without having a receiver appointed, to rent and manage the Property from time to time, and to apply the net proceeds of the Rents to the Indebtedness until all delinquencies, advances, and the Indebtedness are paid in full or until the Beneficiary obtains title to the Property through foreclosure or otherwise. The Trustor hereby irrevocably authorizes and directs the lessees under the Leases, upon receipt of notice from the Beneficiary that an Event of Default has occurred, to pay thereafter all Rents directly to the

Beneficiary. Upon the occurrence of an Event of Default, the Beneficiary may enforce its rights to the Rents by any appropriate civil suit or proceeding.

4.3 Mortgagee in Possession. Neither the foregoing assignment of Rents to the Beneficiary nor the exercise by the Beneficiary of any of its rights or remedies hereunder shall be deemed to make the Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property, unless and until the Beneficiary, in person or by agent, obtains title to the Property. The appointment of a receiver for the Property by any court at the request of the Beneficiary or by agreement with the Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make the Beneficiary a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

4.4 Further Assignments. The Trustor shall not execute any further assignment of the Rents or suffer or permit any such assignment to occur by operation of law. The Trustor shall at any time or from time to time, upon request of the Beneficiary, transfer and assign to the Beneficiary in such form as may be satisfactory to the Beneficiary, the Trustor's interest in the Rents or in any Lease, subject to and upon the condition, however, that prior to the occurrence of any Event of Default hereunder Trustor shall have a license to collect and receive all Rents under such Leases as set forth in this Section.

4.5 Representations and Covenants Regarding the Leases. The Trustor covenants, represents and warrants that (a) the Trustor has full right and title to assign their interest in the Leases and the Rents; (b) the Leases are or when executed will be valid, in full force and effect, and have not been modified or amended except as stated herein; (c) there is no outstanding assignment or pledge of the Trustor's interest in the Leases or of the Rents; (d) no Rents have been or will hereafter be collected more than one month in advance; (e) the interest of all lessees under the Leases is and will be as lessee only, with no options to purchase or rights of first refusal; (f) each Lease shall provide for the attornment of the lessee thereunder to any person succeeding to the Trustor's interest as the result of any foreclosure or transfer in lieu of foreclosure hereunder, said provision to be in form and substance approved by Beneficiary; and (g) the Beneficiary shall be deemed to be the creditor of each lessee with respect to any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of the Beneficiary, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).

## ARTICLE 5

### 5 EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default ("Event of Default") hereunder.

5.1 Monetary Breach. The Trustor fails to pay within ten (10) days after notice of non-payment, any installment of principal or of interest or any other sum payable pursuant to the terms of the Notes, this Deed of Trust, or any Loan Document.

5.2 Non-Monetary Breach. The Trustor commits any breach not involving the payment of moneys in the due observance and performance of any covenant, condition, or agreement contained in the Notes, this Deed of Trust, or any Loan Document, and the Trustor fails to cure such breach within thirty (30) days after the Beneficiary gives written notice to the Trustor of such breach; provided that if a different period or notice requirement is specified for any particular breach under this Deed of Trust, the Notes or any Loan Document, such specific provision shall control.

5.3 Acceleration. The Beneficiary has accelerated the payment of the Indebtedness pursuant to the provisions of Section 2.10 hereof.

5.4 Voluntary Insolvency. The Trustor commences (by petition, application, or otherwise) a voluntary case or other proceeding under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of it or any substantial part of its property, or consents (by answer or failure to answer or otherwise) to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or makes an assignment for the benefit of creditors, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or takes any action to authorize any of the foregoing.

5.5 Involuntary Insolvency. An involuntary case or other proceeding is commenced under the laws of any jurisdiction against the Trustor seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of sixty (60) days, or a trustee, receiver, custodian, or other similar official shall be appointed in such involuntary case.



5.6 Governmental Control. Any governmental authority takes possession of any part of the property of, or assumes control over the affairs or operations of, or a receiver is appointed for the property of, the Trustor.

5.7 False Representations. Any of the representations or warranties contained herein or in any of the other Loan Documents was false, misleading, or untrue in any material respect when made, or, so long as this Deed of Trust remains in effect, becomes false, misleading, or untrue in any material respect, in which event the Trustor shall have no opportunity to cure such default and the whole of the Indebtedness shall become immediately due and payable at the option of the Beneficiary, and the Beneficiary may exercise all other remedies granted it hereunder.

5.8 Default Under Other Loan Documents. A default or Event of Default occurs pursuant to the terms of the Notes, or any of the other Loan Documents.

## ARTICLE 6

### 6 REMEDIES

The Beneficiary shall have the following rights and remedies:

6.1 Certain Actions of Trustee. At any time or from time to time, and without notice to Trustor, upon written request of the Beneficiary and presentation of this Deed of Trust and the Notes for endorsement, and without affecting the personal liability of any person for payment of the Indebtedness, and without affecting the security hereof for the full amount secured hereby on all Property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the Indebtedness, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

6.2 Release and Reconveyance of Property at Request of Beneficiary. Upon written request of the Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Notes to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. 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."

6.3 Acceleration and Power of Sale.

(a) Time is of the essence hereof. Upon the occurrence of any Event of Default described in Section 5.4, Section 5.5 or Section 5.6 of this Deed of Trust, to the extent permitted by law, the entire principal amount of the Indebtedness then outstanding (if not then due and payable), and accrued and unpaid interest thereon, and all other sums or payments required hereunder shall be and become immediately due and payable, and the Indebtedness shall thereafter bear interest at the Default Rate from the due date until paid and payment of such default interest shall be secured by this Deed of Trust.

(b) Upon the occurrence of any Event of Default other than those described in Section 5.4, Section 5.5 or Section 5.6 of this Deed of Trust, to the extent permitted by law, the Beneficiary may declare the entire principal amount of the Indebtedness then outstanding (if not then due and payable), and accrued and unpaid interest thereon, and all other sums or payments required thereunder, to be due and payable immediately, and notwithstanding the stated maturity in the Notes, the principal amount of the Indebtedness and the accrued and unpaid interest thereon and all other sums or payments required thereunder shall thereupon become and be immediately due and payable, and the Indebtedness shall thereafter bear interest at the Default Rate from the due date until paid and payment of such default interest shall be secured by this Deed of Trust.

(c) As required by law, Beneficiary shall execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Property is located. Beneficiary also shall deposit with the Trustee this Deed of Trust, the Notes, and all documents evidencing expenditures secured hereby.

(d) After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand by Beneficiary, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), in the manner required by law, the Property at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee, or any other person conducting the sale, may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale; provided, if the sale is postponed for longer than seventy-two hours beyond the day designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to such purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The conveyance shall be without right of redemption, and clear of the interests of junior encumbrancers in the Property whose interests have been effectively foreclosed

by the proceeding. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee, or the Beneficiary, may purchase at such sale.

(e) After deducting all costs, fees, and expenses of the Trustee and of this Trust, including, without limitation, cost of evidence of title in connection with sale, appraisal fees, property inspection fees, and reasonable attorneys' fees, the Trustee shall apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Property is located. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment of any balance due hereunder, and Beneficiary shall retain the right to pursue all other legal and equitable remedies for the collection of the Indebtedness which it is owed, it being expressly understood and agreed that all rights and remedies of Beneficiary are cumulative and may be exercised in any order.

(f) The purchaser at the sale shall be entitled to immediate possession of the property against the Trustor and shall have a right to the summary proceedings to obtain possession as provided in Utah Code Annotated, together with costs and reasonable attorneys' fees.

6.4 Judicial Action. Upon the occurrence of any Event of Default, in the alternative to foreclosure by a Trustee's sale, the Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, or to enforce any of the covenants and agreements hereof or of the Notes or any Loan Document. In such event, the election to declare the unpaid balance immediately due and payable may be made in the complaint.

6.5 Beneficiary's Right to Cure Trustor's Default. If the Trustor fails to pay any sum due hereunder prior to delinquency, whether for taxes, insurance premiums, or other charges, the Beneficiary may elect, but shall not be obligated, to pay all or part of such items. The Trustor shall repay immediately and without demand all funds so advanced by the Beneficiary with interest thereon from the date of such payments until repaid at the Default Rate, and all of such advances and the interest thereon shall become part of the Indebtedness and shall be secured by this Deed of Trust.

6.6 Receiver. Upon the occurrence of any Event of Default, the Beneficiary shall have the right, with the irrevocable consent of the Trustor hereby given and evidenced by the execution of this Deed of Trust, to obtain appointment of a receiver by any court of competent jurisdiction WITHOUT NOTICE to Trustor, which receiver shall be authorized and empowered to enter upon and take possession of the Property, including all personal property used upon or in connection with the Property and all bank accounts containing funds associated with the Property, to let the Property, to manage the Property, to receive all the Rents due or to become due, and apply the Rents after

payment of all necessary charges and expenses to reduction of the Indebtedness. The Trustor hereby assigns the Rents to the Beneficiary as additional security for the Indebtedness, together with the Leases and all other documents evidencing the Rents, bank accounts, and any and all deposits held as security under the Lease. At the option of the Beneficiary, the receiver shall accomplish such entry and taking possession of the Property by actual entry and possession or by notice to the Trustor. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by the Beneficiary for the purpose of protecting the value of the Property as security for the Indebtedness. The amounts evidenced by receiver's certificates shall bear interest at the Default Rate and may be added to the cost of redemption if the owner of the Property, the Trustor, or a junior lienholder redeems the Property.

6.7 Attorneys' Fees. If this Deed of Trust is foreclosed by the Trustee, a reasonable amount of attorneys' fees for services rendered in the supervision of the foreclosure proceedings as a part of the Beneficiary's cost of foreclosure shall be added to the Indebtedness. If the foreclosure proceedings are made through court proceedings, Beneficiary's attorneys' fees in an amount determined by the court to be reasonable shall be taxed by the court as a part of the cost of such foreclosure proceedings.

6.8 Cumulative Remedies. Each right, power, and remedy herein conferred upon the Beneficiary or the Trustee is cumulative of every other right or remedy of the Beneficiary or the Trustee, whether conferred herein or by law, and may be enforced concurrently.

## ARTICLE 7

### 7 MISCELLANEOUS

7.1 Waiver. Failure by the Beneficiary to insist upon the strict performance of any covenant, agreement, term, or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term or condition in this Deed of Trust and no breach thereof, may be waived, altered, or modified except by a written instrument executed by the Beneficiary. The waiver of any breach shall not affect or alter this Deed of Trust, but each and every covenant, agreement, term, and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

7.2 Notices. All notices, demands, and requests given or required to be given hereunder shall be given in the manner set forth in the Loan Agreement. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth above.

7.3 Inspection of Property. The Beneficiary and its authorized representatives may enter and inspect all portions of the Property upon reasonable notice and at all reasonable times (subject to the rights of lessees and other occupants of the Property).

7.4 Deed of Trust as Security Agreement and Financing Statement. This Deed of Trust shall cover the Building Equipment, all other Property affixed to the Real Property described herein, and all articles of personal property and all materials delivered to the Property for incorporation or use in any construction being conducted thereon and owned by the Trustor, together with all proceeds thereof (which to the fullest extent permitted by law shall be deemed fixtures and a part of the real property). If any Property covered by this Deed of Trust consists of rights in action, accounts receivable or personal property covered by the Uniform Commercial Code, this Deed of Trust constitutes a security agreement and financing statement and is intended when recorded to create a perfected security interest in such property in favor of Beneficiary. This Deed of Trust shall be self-operative with respect to such property, but the Grantor shall execute and deliver on demand such security agreements, financing statements, and other instruments as the Beneficiary may request in order to impose the lien hereof more specifically upon any of such property and to pay all recording and/or filing fees associated therewith. If the lien of this Deed of Trust on any property is subject to a prior security agreement covering such property, then if any Event of Default occurs, the Trustor hereby assigns to the Beneficiary all its right, title, and interest in and to all deposits thereon, together with the benefit of any payments now or hereafter made thereon. For purposes of treating this Deed of Trust as a security agreement and financing statement, the Beneficiary shall be deemed to be the secured party and the Trustor shall be deemed to be the debtor.

7.5 Successor Trustee. The Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. The Trustee may resign by mailing or delivering notice thereof to the Beneficiary and the Trustor, which resignation shall be effective upon the appointment of a successor trustee.

7.6 Acceptance by Trustee. The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

7.7 Effect of Foreclosure on Insurance Claims. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment of the Indebtedness, all right, title, and interest of the Trustor in and to any insurance policies then in force shall pass to the purchaser or grantee. If, prior to any such transfer of title, any claim under any hazard insurance policy had not been paid and distributed in accordance with the terms of this Deed of Trust and any such claim is paid after any such transfer of title, then, to the extent the Indebtedness was not fully discharged in conjunction with such transfer of title, the insurance proceeds so paid shall be the property of the

Beneficiary and shall be paid to the Beneficiary, and the Trustor hereby assigns, transfers, and sets over to the Beneficiary all of its right, title, and interest in and to said sum. The balance, if any, shall belong to the Trustor as its interests may appear. Notwithstanding the above, the Trustor shall retain an interest in the insurance policies above described during any redemption period.

7.8 Severability of Clauses. If any term, covenant, condition, or provision of this Deed of Trust or the Notes is held to be invalid, illegal, or unenforceable, this Deed of Trust or the Notes shall be construed without such provision.

7.9 Writing Required. No waiver, change, amendment, modification, cancellation, or discharge of any provision of this Deed of Trust, or any part hereof, will be valid unless in writing and signed by the parties hereto.

7.10 Binding Effect. This Deed of Trust shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.


7.11 Applicable Law. The creation of this Deed of Trust, the perfection of the lien or security interest in the Property, and the rights and remedies of Beneficiary or Trustee hereunder shall be governed by the laws of the State of Utah. Otherwise, this Deed of Trust shall be governed by the laws of the State of Michigan.

7.12 WAIVER OF TRIAL BY JURY. TRUSTOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY AND ALL ACTIONS OR PROCEEDINGS AT ANY TIME IN WHICH TRUSTOR AND BENEFICIARY ARE PARTIES, TRUSTOR IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY AND ALL ACTIONS OR PROCEEDINGS AT ANY TIME IN WHICH PROCEEDINGS ARISE OUT OF THIS DEED OF TRUST, THE TRANSACTIONS SET FORTH HEREIN OR OTHERWISE.

7.13 Joint and Several Liability. The obligations of the Trustor under this Deed of Trust shall be joint and several.

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

**MILLER FAMILY REAL ESTATE, L.L.C.,**  
a Utah limited liability company

By   
Lawrence H. Miller, Operating Manager

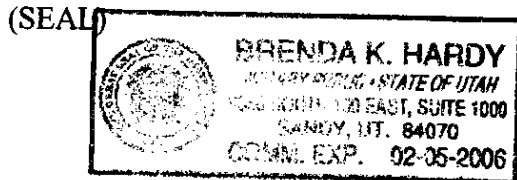
STATE OF UTAH            )  
                                  ) ss.  
County of Salt Lake        )

The foregoing Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement was acknowledged before me this 22 day of June, 2005, by Lawrence H. Miller, as Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company.

WITNESS my hand and official seal.

My commission expires: 2-5-06

Brenda K Hardy  
Notary Public



**EXHIBIT A TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

(Legal Description)

Real property situated in the County of Salt Lake, State of Utah, to-wit:

Beginning at a point which is South 02°15'00" West 10.77 feet from the Northwest corner of Lot 1, White Terrace Subdivision, according to the official plat thereof, said point also being East 1046.20 feet and South 1781.43 feet and South 02°15'00" West 10.77 feet from the Northwest corner of Section 18, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence South 02°15'00" West 476.36 feet; thence North 89°31'52" West 24.23 feet to the East line of State Street; thence along said East line North 02°15'00" East 494.12 feet; thence South 85°31'39" East 254.29 feet to the point of beginning.

*The following is shown for informational purposes only: Tax ID No. 22-18-153-036*



**EXHIBIT B TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

(Permitted Exceptions)

1. Taxes and assessments for the year 2005 and subsequent years, a lien not yet due or payable.
2. Easement as delineated and/or dedicated on the recorded plat.
3. Easement granted to Mountain States Telephone and Telegraph Company dated January 31, 1986, recorded April 2, 1986, Entry No. 4223902, Book/Page 5751/1880.
4. Easement granted to Mountain States Telephone and Telegraph Company dated April 6, 1990, Entry No. 4911189, Book/Page 6217/729.
5. Easement granted to Murray City Corporation dated August 23, 1990, recorded August 30, 1990, Entry No. 4959932, Book/Page 6248/2483.