

RECORDING REQUESTED BY:

Proskauer Rose LLP

AND WHEN RECORDED MAIL TO:

Proskauer Rose LLP

2049 Century Park East, Suite 3200

Los Angeles, California 90067

Attn: Douglas B. Frank

Re: NUTRACEUTICAL CORPORATION

Location: 1777 Flanders Way

Municipality: Park City

County: Summit

State: Utah

Tax Parcel No.: SPD-1-A

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Page 1 of 25

Mary Ann Trussell, Summit County Utah Recorder

12/27/2017 11:27:09 AM Fee \$59.00

By Founders Title Company

Electronically Recorded

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

This **SECOND DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**, dated as of December 21, 2017 (as it may be amended, supplemented or otherwise modified from time to time, this "**Deed of Trust**"), by and from **NUTRACEUTICAL CORPORATION**, a Delaware corporation, with an address at c/o 1400 Kearns Boulevard, 2nd Floor, Park City, Utah 84060, as Trustor ("**Trustor**") to **FOUNDERS TITLE COMPANY, INC.**, a Utah corporation, having an office at 746 E. Winchester Street, Suite 100, Salt Lake City, Utah 84107, as trustee (in such capacity, together with its successors and assigns, "**Trustee**"), in favor of **THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY**, a Wisconsin mutual insurance company, with an address at 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, as Administrative Agent and Collateral Agent for the benefit of the Secured Parties (in such capacities, together with its successors and assigns, "**Beneficiary**").

RECITALS:

WHEREAS, reference is made to that certain Second Lien Credit Agreement, dated as of August 23, 2017 (as it may be amended, amended and restated, restated, replaced, supplemented or otherwise modified, from time to time, the "**Credit Agreement**"), entered into by and among Nutrition Sub, Inc., a Delaware corporation, which has merged with and into Nutraceutical International Corporation, a Delaware corporation ("**Company**" or "**Borrower**"), and Nutrition Parent, LLC, a Delaware limited liability company ("**Holdings**"), as a Guarantor, each of the

other Guarantors from time to time party thereto, each of the lenders from time to time party thereto (the "**Second Lien Lenders**") and The Northwestern Mutual Life Insurance Company, as administrative agent for the Second Lien Lenders (in such capacity, together with its successors and assigns, the "**Administrative Agent**") and as collateral agent for the Secured Parties (in such capacity, together with its successors and assigns, the "**Collateral Agent**");

WHEREAS, Trustor is the wholly owned subsidiary of Borrower, as a result of which Trustor is an indirect beneficiary of the Term Loans and other accommodations of the Lenders as set forth in the Credit Agreement and may receive advances therefrom, whether or not Trustor is a party to the Credit Agreement;

WHEREAS, Trustor is the owner and holder of fee simple title in and to certain real estate located in Park City, Summit County, Utah and more fully described in Exhibit A attached hereto and made a part hereof, which real estate forms a portion of the Mortgaged Property defined and described below;

WHEREAS, as provided in Section 5.15 of the Credit Agreement, in consideration of the making of the Term Loans and other accommodations of Lenders as set forth in the Credit Agreement, Trustor has agreed, subject to the terms and conditions hereof and each other Loan Document (as defined in the Credit Agreement), to secure Trustor's obligations under the Loan Documents as set forth herein;

WHEREAS, Antares Capital LP, as administrative agent (in such capacity, together with its successors and assigns in such capacity, "**First Lien Administrative Agent**") and as collateral agent (in such capacity, together with its successors and assigns in such capacity, "**First Lien Collateral Agent**"), Borrower, Holdings, the Subsidiary Guarantors party thereto, the lenders party thereto and certain other parties have entered into that certain First Lien Credit Agreement, dated as of August 23, 2017, pursuant to which the lenders thereunder have agreed to make the First Lien Loans (as defined in the Credit Agreement);

WHEREAS, the First Lien Obligations (as defined in the Credit Agreement) are secured, directly or indirectly, by, among other things, a certain deed of trust executed by Trustor for the benefit of First Lien Collateral Agent, dated as of the date hereof (as it may be amended, supplemented, replaced or otherwise modified from time to time, the "**First Lien Deed of Trust**");

WHEREAS, in order to induce the Lenders to extend credit and other financial accommodations and lend monies to or for the benefit of Borrower and its Subsidiaries, Beneficiary, First Lien Administrative Agent, First Lien Collateral Agent and others have entered into the Intercreditor Agreement (as hereinafter defined);

WHEREAS, pursuant to the Intercreditor Agreement, this Deed of Trust, in second lien and security interest status, will remain subject, junior and subordinate to the First Lien Deed of Trust, and the First Lien Deed of Trust shall remain prior and superior to this Deed of Trust;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Beneficiary, Trustee and Trustor agree as follows:

SECTION 1. DEFINITIONS

1.1 Definitions. Capitalized terms used herein (including the recitals hereto) not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, as used herein, the following terms shall have the following meanings:

"Indebtedness" shall have the meaning ascribed to the defined term "Obligations" in the Credit Agreement in the maximum aggregate principal amount of \$95,000,000.00.

"Intercreditor Agreement" means that certain First Lien/Second Lien Intercreditor Agreement, dated as of the date of the Credit Agreement, by and among Holdings, Borrower, the Subsidiary Guarantors, Administrative Agent, Collateral Agent, First Lien Administrative Agent, First Lien Collateral Agent, and the other Persons from time to time party thereto, as the same may be amended, restated modified or supplemented from time to time in accordance with the terms thereof.

"Mortgaged Property" means all of Trustor's right, title and interest, in and to (i) the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater or additional estate therein as hereafter may be acquired by Trustor and all of Trustor's right, title and interest in, to and under all rights, privileges, tenements, hereditaments, rights-of-way, streets and ways adjacent to the land, easements, appendages and appurtenances appertaining to the foregoing in each case whether now owned or hereinafter acquired, including without limitation all riparian, littoral, water rights, mineral, oil and gas rights, air rights, development rights, rights of Trustor as declarant or owner under any covenants, conditions, restrictions or easements, plats and agreements (the **"Land"**); (ii) all buildings, structures, additions and other improvements now owned or hereafter acquired or erected by Trustor, now or at any time situated, placed or constructed upon the Land, or affixed thereto, and in each case, all appurtenances thereof, subject to the Permitted Liens, (the **"Improvements"**); the Land and Improvements are collectively referred to as the **"Premises"**; (iii) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Trustor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land which by the nature of their location or attachment thereto are real property or fixtures under the UCC or other applicable law, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **"Fixtures"**); (iv) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights, licenses, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Trustor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises, but excluding inventory held for sale and accounts (the **"Personalty"**); (v) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Trustor with respect to the Mortgaged Property (the **"Deposit Accounts"**); (vi) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person (other than Trustor) a possessory interest in, or the right to use,

all or any part of the Mortgaged Property, together with all related security and other deposits subject to depositors' rights and requirements of law (the "**Leases**"); (vii) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits subject to depositors' rights and requirements of law, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the "**Rents**"); (viii) to the extent mortgageable or assignable, all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the "**Property Agreements**"); (ix) to the extent mortgageable or assignable, all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (x) all property tax refunds payable to Trustor (the "**Tax Refunds**"); (xi) to the extent mortgageable or assignable, all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "**Proceeds**"); (xii) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Trustor (the "**Insurance**"); and (xiii) any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty (the "**Condemnation Awards**"). As used in this Deed of Trust, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"**Obligations**" means all of the agreements, covenants, conditions, warranties, representations and other obligations of Trustor (including, without limitation, the obligation to repay the Indebtedness) made or undertaken by Trustor to Beneficiary, the Lenders or others as set forth under the Credit Agreement and any other Loan Document.

"**UCC**" means the Uniform Commercial Code of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

1.2 Interpretation. References to "Sections" shall be to Sections of this Deed of Trust unless otherwise specifically provided. Section headings in this Deed of Trust are included herein for convenience of reference only and shall not constitute a part of this Deed of Trust for any other purpose or be given any substantive effect. The rules of construction set forth in the Credit Agreement shall be applicable to this Deed of Trust mutatis mutandis. If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

SECTION 2. GRANT

To secure the full and timely payment and performance of the Obligations, Trustor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, WARRANTS, SELLS and CONVEYS, IN TRUST, WITH POWER OF SALE, the Mortgaged Property to Trustee and Trustee's successors and assigns, for the benefit and security of Beneficiary, subject, however, to the Permitted Liens

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, and Trustor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee for so long as any of the Obligations remain outstanding, upon the trust, terms and conditions contained herein.

Nothing set forth in this Deed of Trust shall relieve Trustor from the performance of any term, covenant, condition or agreement on Trustor's part to be performed or observed under or in respect of any of the Mortgaged Property or from any liability to any person under or in respect of any of the Mortgaged Property or shall impose any obligation on Beneficiary or any other Secured Party to perform or observe any such term, covenant, condition or agreement on Trustor's part to be so performed or observed or shall impose any liability on Beneficiary or any other Secured Party for any act or omission on the part of Trustor relating thereto or for any breach of any representation or warranty on the part of Trustor contained in this Deed of Trust or any other applicable Loan Document, or under or in respect of the Mortgaged Property or made in connection herewith or therewith.

SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS

3.1 Title. Trustor represents and warrants to Beneficiary and Trustee that except for the Permitted Liens, (a) Trustor owns the Mortgaged Property free and clear of any liens, claims or interests, and (b) this Deed of Trust creates valid, enforceable second priority liens and security interests against the Mortgaged Property. Trustor warrants that Trustor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Deed of Trust.

3.2 Second Lien Status. Trustor shall preserve and protect the second lien and security interest status of this Deed of Trust and the other Loan Documents to the extent related to the Mortgaged Property, subject to Permitted Liens. If any lien or security interest other than a Permitted Lien is asserted against the Mortgaged Property, Trustor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) subject to Trustor's right to contest such lien or security interest in accordance with the terms of the Credit Agreement, pay the underlying claim in full or take such other action so as to cause it to be released.

3.3 Due Execution, Delivery and Enforceability. Trustor represents and warrants to Beneficiary and Trustee as of the date hereof that this Deed of Trust has been duly executed and delivered by Trustor and constitutes a legal, valid and binding obligation of Trustor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.4 Existence and Authority. Trustor represents and warrants to Beneficiary and Trustee as of the date hereof that Trustor (a) is duly incorporated or organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to carry on its business as now conducted and to own and lease its property, in each case except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, and (c) is qualified and in good standing (to the extent such

concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

3.5 Waste; Repairs; Replacement of Fixtures and Personalty. Except as otherwise permitted in the Credit Agreement, Trustor shall maintain, preserve and protect all of the Mortgaged Property in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and shall not commit or permit any waste thereof. Trustor shall not suffer any lien of mechanics or materialmen to be imposed with respect to any part of the Mortgaged Property or Improvements, except for (i) Permitted Liens and (ii) liens which were incurred in the ordinary course of business and do not secure indebtedness for borrowed money and which do not in the aggregate materially detract from the value of the Mortgaged Property or the Improvements, and do not materially impair the use thereof in the operation of the business of the Trustor, and which, if they secure obligations that are then more than thirty days overdue and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP. Except as otherwise permitted in the Credit Agreement, Trustor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is worn out or obsolete and is replaced by an article of equal or better suitability and value, owned by Trustor subject to the liens and security interests of this Deed of Trust and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Credit Agreement or first approved in writing by Beneficiary, unless any removal of Fixtures or Personalty is in connection with the cessation of operations at the Mortgaged Property as permitted by the terms of the Credit Agreement, in which case Trustor may remove Fixtures or Personalty in the ordinary course of business.

3.6 Inspection. Subject to the terms of the Credit Agreement, Trustor shall permit Beneficiary, and Beneficiary's agents, representatives and employees, during normal business hours and upon reasonable prior notice to Trustor, to inspect the Mortgaged Property and all books and records of Trustor located thereon.

3.7 Covenants Running with the Land. All Obligations contained in this Deed of Trust are intended by Trustor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Trustor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

3.8 Condemnation Awards and Insurance Proceeds. Except as otherwise stated in the Credit Agreement, Trustor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and

acquittances therefor, subject to the terms of the Credit Agreement. Trustor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, subject to the terms of the Credit Agreement. Trustor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Trustor and Beneficiary jointly, subject to the terms of the Credit Agreement.

3.9 Change in Tax Law. Upon the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (i) deducting or allowing Trustor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon or (ii) subjecting Beneficiary or any of the Lenders to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Deed of Trust, the Obligations or Beneficiary, and the result is to increase the taxes imposed upon or the cost to Beneficiary of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder, then, and in any such event, Trustor shall, on demand, pay to Beneficiary and the Lenders additional amounts to compensate for such increased costs or reduced amounts, *provided* that if any such payment or reimbursement shall be unlawful, or taxable to Beneficiary, or would constitute usury or render the Indebtedness wholly or partially usurious under applicable law, then Trustor shall pay or reimburse Beneficiary or the Lenders for payment of the lawful and non-usurious portion thereof.

3.10 Mortgage Tax. Trustor shall (i) pay when due any tax imposed upon it or upon Beneficiary or any Lender pursuant to the tax law of the state in which the Mortgaged Property is located in connection with the execution, delivery and recordation of this Deed of Trust and any of the other Loan Documents, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

3.11 Reduction Of Indebtedness. In the event that the amount secured by the Deed of Trust is less than the amount of the Indebtedness, then the amount secured shall be reduced only by the last and final sums that Borrower repays with respect to the Indebtedness and shall not be reduced by any intervening repayments of the Indebtedness unless arising from the Mortgaged Property. So long as the balance of the Indebtedness exceeds the amount secured, any payments of the Indebtedness shall not be deemed to be applied against, or to reduce, the portion of the Obligations secured by this Deed of Trust. Such payments shall instead be deemed to reduce only such portions of the Indebtedness as are secured by other collateral located outside of the state in which the Mortgaged Property is located or as are unsecured.

3.12 Prohibited Transfers. Except as expressly permitted by the Credit Agreement, Trustor shall not, without the prior written consent of Beneficiary, sell, assign, lease, convey or grant a security interest in all or any part of the Mortgaged Property.

3.13 Maintenance of Rights of Way, Easements and Licenses. Trustor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and, unless a Permitted Lien, will not, without the prior consent of Beneficiary, which consent shall not be unreasonably withheld, conditioned or delayed, consent to any public restriction (including any

zoning ordinance) or private restriction as to the use of the Mortgaged Property. Trustor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property, except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

SECTION 4. DEFAULT AND FORECLOSURE

4.1 Remedies. If an Event of Default has occurred and is continuing, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses: (a) in accordance with the Credit Agreement, declare the Indebtedness and the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Trustor), whereupon the same shall become immediately due and payable; (b) enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon, and if Trustor remains in possession of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Trustor; (c) hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (including, without limitation, completing construction of the Improvements (with such modifications as Beneficiary may deem desirable) and making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions hereof; (d) institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Trustor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Trustor. Beneficiary or any of the Secured Parties may be a purchaser at such sale and if Beneficiary is the highest bidder, Beneficiary shall credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisal of the Mortgaged Property is waived; (e) make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Trustor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Trustor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions

hereof; and/or (f) exercise all other rights, remedies and recourses granted under the applicable Loan Documents or otherwise available at law or in equity.

4.2 Separate Sales. Subject to applicable law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

4.3 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the applicable Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary or the Secured Parties, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or the Secured Parties in the enforcement of any rights, remedies or recourses under the applicable Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.4 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by this Deed of Trust or the Loan Documents or their status as a second lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness or the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

4.5 Waiver of Redemption, Notice and Marshalling of Assets. After the occurrence and during the continuance of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the payment or performance of the Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in the aid of the enforcement hereof, Trustor shall enter its voluntary appearance in such action, suit or proceeding. To the fullest extent permitted by law, Trustor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Trustor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) except as otherwise expressly required under the Credit Agreement, all notices of any Event of Default or of Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation. Trustor waives the statutory right of redemption and equity of redemption.

4.6 Discontinuance of Proceedings. If Beneficiary or any other Secured Party shall have proceeded to invoke any right, remedy or recourse permitted under any applicable Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or the applicable Secured Party shall have the unqualified right to do so and, in such an event, Trustor and Beneficiary or such other Secured Party, as the case may be, shall be restored to their former positions with respect to the Indebtedness, Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary or the other Secured Party(s) shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or any Secured Party thereafter to exercise any right, remedy or recourse under the applicable Loan Documents for such Event of Default.

4.7 Application of Proceeds. Subject to applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

4.8 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof will divest all right, title and interest of Trustor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Trustor retains possession of such property or any part thereof subsequent to such sale, Trustor will be considered a tenant at sufferance of the purchaser, and will, if Trustor remains in possession after demand to remove, to the fullest extent permitted by law, be subject to eviction and removal, forcible or otherwise, with or without process of law.

4.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default exists, Beneficiary and each of the Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Trustor in accordance with the Credit Agreement. All reasonable and out-of-pocket sums advanced and expenses incurred at any time by Beneficiary or any Secured Party under this Section, or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred if not repaid within five (5) days after demand therefor, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Deed of Trust. In addition to any other debt or obligation secured hereby, this Deed of Trust shall also secure unpaid balances of advances made with respect to the Premises for the payment of real estate taxes, real estate assessments, insurance premiums or costs incurred for maintaining improvements on or for the protection of the Premises. Trustor shall pay all expenses (including reasonable out-of-pocket attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Deed of Trust or the Secured Parties in respect thereof, by litigation or otherwise.

4.10 No Mortgage/Beneficiary in Possession. Neither the enforcement of any of the remedies under this Section, the assignment of the Rents and Leases under Section 5, the security interests under Section 6, nor any other remedies afforded to Beneficiary or the Secured Parties under the applicable Loan Documents, at law or in equity shall cause Beneficiary or any Secured Party to be deemed or construed to be a mortgagee or beneficiary in possession of the Mortgaged Property, to obligate Beneficiary or any Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

4.11 Actions and Proceedings. Beneficiary or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Beneficiary or Trustee, in its reasonable discretion, decides should be brought to protect its interest in the Mortgaged Property.

SECTION 5. ASSIGNMENT OF RENTS AND LEASES; BANKRUPTCY-RELATED TERMS

5.1 Assignment. In furtherance of and in addition to the assignment made by Trustor herein, Trustor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Trustor shall have a revocable license from Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Trustor, the license herein granted shall automatically expire and terminate, without notice by Beneficiary (any such notice being hereby expressly waived by Trustor).

5.2 Perfection Upon Recordation. Trustor acknowledges that Beneficiary has taken all reasonable actions necessary to obtain, and that upon recordation of this Deed of Trust, Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, second priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Liens and in the case of security deposits, rights of depositors and requirements of law. Trustor acknowledges and agrees that upon recordation of this Deed of Trust, Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Trustor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

5.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Trustor and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

SECTION 6. SECURITY AGREEMENT

6.1 Security Interest. This Deed of Trust constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards (the foregoing, collectively, the "**UCC Property**"). To this end, Trustor grants to Beneficiary a second security interest in the UCC Property and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations subject to the Permitted Liens, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the UCC Property sent to Trustor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Trustor.

6.2 Financing Statements. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time, as necessary to perfect or maintain the perfection of the security interest granted to Beneficiary in Section 6.1 above, to file one or more financing or continuation statements and amendments thereto, relative to all or any part of the UCC Property, without the signature of Trustor where permitted by law. Trustor agrees to furnish Beneficiary, promptly upon written request, with any information reasonably required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments prior to the date hereof in connection with the security interests granted by this Deed of Trust, Trustor ratifies and confirms its authorization of all such filings. Trustor acknowledges that it is not authorized to file any amendment or termination statement with respect to any financing statement filed by Beneficiary with respect to the UCC Property without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary's prior written consent (which consent in all such instances shall not be unreasonably withheld, conditioned or delayed), subject to Trustor's rights under Section 9 509(d)(2) of the UCC. Trustor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Trustor's address for notices is set forth in the first paragraph of this Deed of Trust.

6.3 Fixture Filing. This Deed of Trust covers goods that are or will become fixtures on the Premises shall also constitute a "fixture filing" for the purposes of the UCC (including with respect to Section 9a-502 of the UCC in effect in the state of Utah) against all of the

Mortgaged Property which is or is to become fixtures and is to be filed for record in the real property records where mortgages and deeds of trust on real estate are recorded. For purposes of this fixture filing, the "Debtor" is the Trustor and the "Secured Party" is Beneficiary. A description of the Land which relates to the fixtures is set forth in Exhibit A attached hereto and incorporated herein by this reference. Trustor is the record owner of such land. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Trustor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

SECTION 7. ATTORNEY-IN-FACT

Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Trustor and in the name of Trustor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary reasonably deems appropriate to protect Beneficiary's interest, if Trustor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the UCC Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Trustor hereunder; provided, (i) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (ii) any reasonable and out-of-pocket sums advanced by Beneficiary in such performance shall be added to and included in the definition of Obligations and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness *provided* that from the date incurred said advance is not repaid within five (5) days demand therefor; (iii) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (iv) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

SECTION 8. BENEFICIARY AS AGENT

Beneficiary has been appointed to act as Beneficiary hereunder by the Secured Parties. Beneficiary shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Mortgaged Property), solely in accordance with this Deed of Trust, the Credit Agreement and the other Loan Documents; *provided*, Beneficiary shall exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the Required Lenders. Beneficiary shall at all times be the same Person that is Collateral Agent under the Credit Agreement. Written notice of resignation by Collateral Agent pursuant to terms of the Credit Agreement shall also constitute notice of resignation as Beneficiary under this Deed of Trust; removal of Collateral Agent pursuant to the terms of the Credit Agreement shall also constitute removal as Beneficiary under this Deed of Trust; and appointment of a successor Collateral Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Beneficiary under this Deed of Trust. Upon the

acceptance of any appointment as Collateral Agent under the terms of the Credit Agreement by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Beneficiary under this Deed of Trust, and the retiring or removed Beneficiary under this Deed of Trust shall promptly (i) transfer to such successor Beneficiary all sums, securities and other items of Mortgaged Property held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Beneficiary under this Deed of Trust, and (ii) execute and deliver to such successor Beneficiary such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Beneficiary of the security interests created hereunder, whereupon such retiring or removed Beneficiary shall be discharged from its duties and obligations under this Deed of Trust thereafter accruing. After any retiring or removed Collateral Agent's resignation or removal hereunder as Beneficiary, the provisions of this Deed of Trust shall continue to enure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was Beneficiary hereunder.

SECTION 9. TERMINATION AND RELEASE.

Upon payment and performance in full of the Obligations (other than contingent indemnification obligations for which no claim has been asserted that expressly survive the termination of this Deed of Trust), subject to and in accordance with the terms and provisions of the Credit Agreement, Beneficiary, at Trustor's expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Mortgaged Property to Trustor, or, at the request of Trustor, assign this Deed of Trust without recourse.

SECTION 10. STATE SPECIFIC PROVISIONS.

10.1 Assignment of Rents.

(a) It is the intention of the parties hereto that this Deed of Trust shall create an "assignment of rents" arising from the Land and the Improvements, that said assignment of rents creates a presently effective "security interest" in all accrued and unaccrued rents arising from the Land and the Improvements and that said security interest is separate and distinct from any other security interest held by Beneficiary in the Mortgaged Property, all within the meaning of the Utah Uniform Assignment of Rents Act (Utah Code Ann. §§ 57-26-101 et seq.) (the "Utah UARA"). If an Event of Default shall occur and be continuing, then in addition to having any other right or remedy available at law or in equity, Beneficiary shall have the option of enforcing said assignment of rents using one or more of the methods specified in Sections 57-26-107, 57-26-108 or 57-26-109 of the Utah UARA or any other method sufficient to enforce such assignment of rents under the laws of the State of Utah other than the Utah UARA, including without limitation, (i) filing a petition with a court of competent jurisdiction for the appointment of a receiver for the Land and the Improvements; (ii) providing notice to Trustor demanding that Trustor pay over the proceeds of any rents that Beneficiary is entitled to collect under Section 57-26-106 of the Utah UARA, and providing a copy of such notice, within ten days, to any other person who held a recorded assignment of rents arising from the Land and the Improvements ten days prior to the date of such notice; and (iii) providing notice to any tenant of Trustor or the Land or the Improvements demanding that said tenant pay to Beneficiary all

unpaid accrued rents and all unaccrued rents as they accrue, and providing a copy of such notice, within ten days, to any other person who held a recorded assignment of rents arising from the Land and the Improvements ten days prior to the date of such notice.

(b) From the date of enforcement, Beneficiary or, in the case of enforcement by appointment of receiver, the receiver shall be entitled to collect all rents arising from the Land and the Improvements that (i) have accrued but remain unpaid on that date; and (ii) accrue on or after the date, as those rents accrue.

(c) In the event the Trustor collects rents that Beneficiary is entitled to collect under the Utah UARA or this Instrument, (i) the Trustor shall surrender the proceeds thereof to Beneficiary, less any amount representing payment of expenses authorized by Beneficiary, in writing; and (ii) Beneficiary shall continue to have a security interest in such proceeds so long as they are identifiable. In addition to any other remedy available to Beneficiary under the Utah UARA or the laws of the State of Utah, if the Trustor fails to surrender such proceeds to Beneficiary as required above, Beneficiary may recover from the Trustor in a civil action (y) the proceeds, or an amount equal to the proceeds, and (z) reasonable attorneys' fees and costs incurred by Beneficiary, and such action may be maintained without bringing an action to foreclose any security interest that Beneficiary may have in the Mortgaged Property.

(d) Beneficiary's enforcement of the assignment of rents by one or more of the methods specified above, the application of proceeds by Beneficiary as set forth above, Beneficiary's payment of expenses, if any, to protect or maintain the Land or the Improvements, or an action brought by Beneficiary to recover any rent proceeds collected by the Trustor does not:

- (i) make Beneficiary a purchaser in possession of the Land or the Improvements;
- (ii) make Beneficiary an agent of the Trustor;
- (iii) constitute an election of remedies that precludes a later action to enforce the Obligations;
- (iv) make the Obligations unenforceable;
- (v) limit any right available to Beneficiary with respect to the Obligations;
- (vi) limit, waive, or bar any foreclosure or power of sale remedy under this Instrument;
- (vii) violate Utah's so-called "One-Action Rule" codified in Section 78B-6-901 of the Utah Code (Utah Code Ann. § 78B-6-901); or
- (viii) bar a deficiency judgment pursuant to any law of the State of Utah governing or relating to deficiency judgments following the enforcement of any encumbrance, lien or security interest.

10.2 Power of Sale. If following the occurrence, and during the continuance, of an Event of Default, Beneficiary invokes the power of sale, then with respect to the Mortgaged Property, the following procedures and those outlined in Section 57-1-19 through 57-1-36, *Utah Code Annotated*, as hereinafter supplemented and amended, shall apply in place of any inconsistent procedures specified elsewhere in this Deed of Trust. Beneficiary shall execute or cause the Trustee to execute a written notice of the occurrence of an Event of Default and of Beneficiary's election to cause the Mortgaged Property to be sold and shall cause such notice to be recorded in each county in which the Mortgaged Property or some part thereof is located. The Trustee shall give notice of default and notice of sale and shall sell the Mortgaged Property according to applicable law. The Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and, to the extent permitted by applicable law, in such order as the Trustee may determine. The Trustee may postpone sale of all or any parcel of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale to the extent permitted by law. Beneficiary or Beneficiary's designee may purchase the Mortgaged Property at any sale. Trustor agrees to surrender possession of the Mortgaged Property to the purchaser immediately after such sale. The Trustee shall deliver to the purchaser a trustee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be, to the extent permitted by applicable law, prima facie evidence of the truth of the statements made therein, absent fraud or gross negligence. The Trustee shall apply the proceeds of the sale in the following order: (i) to all reasonable, out-of-pocket costs and expenses of the sale, including, but not limited to, the Trustee's and attorneys' reasonable fees and costs of title evidence; (ii) to all sums secured by this Deed of Trust in such order as Beneficiary in Beneficiary's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto, or the Trustee, in his discretion, may deposit the balance of such proceeds with the county clerk of the county in which the sale took place or if required by applicable law, with the clerk of the district court of the county in which the sale took place.

10.3 One Action Rule. Notwithstanding any provision in this Deed of Trust, in the event of any conflict between the provisions in the Deed of Trust and the requirements and restrictions of Utah Code Annotated Sections 78B-6-901 et seq., relating to a creditor seeking to recover on a debt or other rights secured solely by a mortgage or deed of trust on real property, Utah Code Annotated Sections 78B-6-901 et seq. shall govern.

10.4 Final Expression. Pursuant to Utah Code Annotated Section 25-5-4, this Deed of Trust is the final expression of the agreement between Beneficiary and Trustor and this written agreement may not be contradicted by evidence of any alleged oral agreement.

SECTION 11. MULTI-SITE REAL ESTATE TRANSACTIONS.

Trustor acknowledges that this Deed of Trust is one of a number of Mortgages and other security documents ("**Other Mortgages**") that secure the Obligations. Trustor agrees that, subject to the terms of Section 9 hereof, the lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Beneficiary of any security for or guarantees of the Obligations, or by any failure, neglect or omission on the part of Beneficiary to realize upon or

protect any Obligation or any collateral security therefor including the Other Mortgages. Subject to the terms of Section 9 hereof, the lien of this Deed of Trust shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations or of any of the collateral security therefor, including the Other Mortgages or any guarantee thereof, and, to the fullest extent permitted by applicable law, Beneficiary may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Beneficiary's rights and remedies under any or all of the Other Mortgages shall not in any manner impair the indebtedness hereby secured or the lien of this Deed of Trust and any exercise of the rights and remedies of Beneficiary hereunder shall not impair the lien of any of the Other Mortgages or any of Beneficiary's rights and remedies thereunder. To the fullest extent permitted by applicable law, Trustor specifically consents and agrees that Beneficiary may exercise its rights and remedies hereunder and under the Other Mortgages separately or concurrently and in any order that it may deem appropriate and waives any right of subrogation.

SECTION 12. MISCELLANEOUS

12.1 Notices. Any notice and other communication required or permitted to be given under this Deed of Trust shall be given in accordance with the notice provisions of the Credit Agreement to the address set forth therein. Pursuant to Utah Code Annotated Section 57-1-26, Trustor requests that copies of any notice of default and notice of sale hereunder be sent to Trustor at Trustor's address as set forth in this Deed of Trust.

12.2 GOVERNING LAW. THE PROVISIONS OF THIS DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF TRUSTOR AND BENEFICIARY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK, AND FURTHER, WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE MORTGAGED PROPERTY, THE CREATION OF THE SECURITY INTEREST SHALL BE GOVERNED BY THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATE OF NEW YORK (THE "NY UCC") AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF THE SECURITY INTEREST WILL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE NY UCC.

12.3 Severability. In case any provision in or obligation under this Deed of Trust shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall

be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

12.4 Credit Agreement. In the event of any conflict or inconsistency with the terms of this Deed of Trust and the terms of the Credit Agreement, the Credit Agreement shall control.

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

12.6 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

12.7 Intercreditor Agreement.

(a) Notwithstanding anything herein to the contrary, the lien and security interest granted to or for the benefit of Beneficiary under or pursuant to this Deed of Trust and the exercise of any right or remedy by or for the benefit of Beneficiary hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the subject matter provisions of the Intercreditor Agreement and this Deed of Trust, such provisions set forth in the Intercreditor Agreement shall govern. Any reference in this Deed of Trust to "second priority lien" or words of similar effect in describing the security interests created hereunder shall be understood to refer to such priority as set forth in the Intercreditor Agreement. All representations, warranties, and covenants in this Deed of Trust shall be subject to the provisions and qualifications set forth in this Section 12.7.

(b) No amendment or waiver of any provision of this Deed of Trust shall be effective unless such amendment or waiver is made in compliance with the Intercreditor Agreement to the extent provided for therein.

12.8 Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Trustor and their respective successors and assigns. Subject to the terms of the Credit Agreement, Trustor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

12.9 No Waiver. Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver

of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions. No failure or delay on the part of Beneficiary or any Secured Party in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Deed of Trust and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

12.10 Subrogation. To the extent proceeds of the Term Loans have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

12.11 Waiver of Stay, Moratorium and Similar Rights. Trustor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Trustor and Beneficiary or any rights or remedies of Beneficiary.

12.12 Entire Agreement. This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Trustor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12.13 Counterparts. This Deed of Trust may be executed in one or more counterparts, all of which are identical. Each such counterpart shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

SECTION 13. RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

13.1 Exercise of Remedies by Trustee. To the extent that this Deed of Trust or applicable law authorizes or empowers Beneficiary to exercise any remedies set forth in Section 4 hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any

indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

13.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to reimburse or indemnify Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same rights to reimbursement of expenses and indemnification as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

13.3 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

13.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment may be executed by any authorized officer or agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

13.5 Effect of Appointment of Successor or Substitute Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, Trustee's entire estate and title in the Mortgaged Property shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, the new Trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written

request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in such Trustee's place

13.6 Confirmation of Transfer and Succession. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or its successor or successors in this trust, shall do lawfully by virtue hereof. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act (other than recordation of a notice of substitution of trustee to the extent required by Utah law), deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Mortgaged Property of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

13.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

13.8 Endorsement and Execution of Documents Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Loan Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Mortgaged Property. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

13.9 Multiple Trustees If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

13.10 No Required Action Trustee shall not be required to take any action under this Deed of Trust or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in Trustee's opinion such action will be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all costs, expense and liabilities arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourses of Beneficiary.

13.11 Terms of Trustee's Acceptance Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(c) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Loan Obligations secured hereunder, for all reasonable disbursements and out-of-pocket expenses (including reasonable out-of-pocket legal fees and expenses) incurred by reason of or arising from an Event of Default and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Trustor has on the date set forth in the acknowledgment hereto, effective as of the date first above written, caused this instrument to be duly executed and delivered by authority duly given.

NUTRACEUTICAL CORPORATION

By: 

Name: Cory McQueen


Title: President and Chief Financial Officer

ACKNOWLEDGMENT

STATE OF UTAH)

COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 07th day of December, 2017, by Cory McQueen the President and Chief Financial Officer of Nutraceutical Corporation, a Delaware corporation.



NOTARY PUBLIC

Residing at: SALT LAKE COUNTY, UTAH

My Commission expires:

10/14/2019

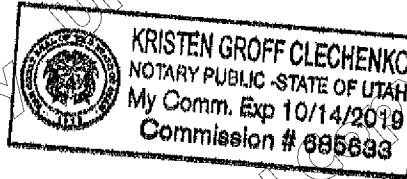


EXHIBIT A TO
DEED OF TRUST

Legal Description of Premises:

The Land referred to herein below is situated in the County of Summit, State of Utah, and is described as follows:

Parcel 1:

A portion of Lot 1, SUN PEAK DRIVE DEDICATION AND PARCEL SUBDIVISION PLAT, recorded November 22, 1994 as Entry No. 419725 of the official records in the office of the Summit County Recorder more particularly described as follows:

Commence at the Northwest corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian; said corner being a brass cap set by the County Surveyor in 1958; thence along the West line of said Section 31 (Basis of bearing being South 00°00'06" East 2641.45 feet between the Northwest corner and the West quarter corner of said Section 31) South 00°00'06" East a distance of 2283.01 feet; thence East 896.16 feet to the point of beginning; thence East 483.77 feet to a point, said point being on the right-of-way of State Highway U-224; thence along said right-of-way North 00°13'32" West 346.44 feet; thence departing said right-of-way West 149.41 feet to the beginning of a 410 foot radius curve to the right (Center bears North); thence along said curve, through a central angle of 08°27'52" 60.57 feet; thence South 12°39'39" West 115.57 feet to the beginning of a 260 foot radius curve to the right (Center bears North 77°20'21" West); thence along said curve through a central angle of 75°55'25" 344.53 feet; thence departing said curve South 35.22 feet to the point of beginning.

The following is shown for information purposes only:

Tax Parcel No. SPD-1-A
Account ID No. 0316970

Parcel 2:

Benefits, easements, conditions and limitations contained in AGREEMENT FOR EASEMENTS AND MAINTENANCE dated May 14, 1999, executed by and between the Jack Johnson Office Lodge, LC, a Utah limited liability company and Red Barn Development, LC, a Utah limited liability company, recorded November 5, 1999 as Entry No 00552275 in Book 01294 at Page 00533, Official Records.

Exhibit A