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07/15/1999 04:17 PM 48.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
BY: ZJH, DEPUTY - WI 20 P.

WHEN RECORDED, MAIL TO:  
BANK ONE, UTAH, NA  
Business Banking Center  
2200 South State Street, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84115  
ATTN: Ned Combs

ATC-D244971

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(Leasehold Interest)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made as of the date provided below between D D & B, LIMITED COMPANY, a Utah limited liability company, (sometimes hereafter referred to as "Borrower"), , Trustor, whose address is 600 West 3300 South, Salt Lake City, Utah 84119 , and BANK ONE, UTAH, NATIONAL ASSOCIATION as Trustee and Beneficiary, (hereafter referred to as "Lender"), whose address is Business Banking Center, 2200 South State Street, 2<sup>nd</sup> Floor, Salt Lake City, UT 84115.

1. Grant in Trust.

a. Trustor, irrevocably and unconditionally grants, transfers, assigns, conveys and warrants to Trustee in trust for the benefit of Lender, and its successors and assigns, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of the leasehold estate, right, title and interest, which Trustor now has acquired or may later acquire as Lessee under that certain Amended Ground Lease Agreement originally dated October 16, 1991 and amended on October 2, 1992, March 24, 1993, October 12, 1995 and December 9, 1997, with Borrower, as Lessee, and with Central Valley Water Reclamation Facility Board, a regional governmental entity, as Lessor for the real property located in Salt Lake County, Utah, as more particularly described on Exhibit A attached hereto;

b. Trustor further irrevocably and unconditionally grants, transfers, assigns, conveys and warrants to Trustee in trust for the benefit of Lender, and its successors and assigns, IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all estate, right, title and interest in and to the following property (hereinafter, together with the above described real property, are collectively referred to as the "Property"):

i. All buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Property, and all materials intended for construction, reconstruction, alteration, maintenance and repair of such buildings, structures or improvements, and all fixtures and articles of personal property now or hereafter attached to such buildings, structures or improvements so that the same are fixtures under applicable law, including without limitation, machinery, motors, elevators, and plumbing, heating, air conditioning, lighting, ventilating, alarms, sprinkler equipment and fixtures, miniature golf course equipment and apparatus, and all replacement thereof, and all substitutions therefore;

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ii. All appurtenant water and water rights and all non-appurtenant water and water rights now owned or hereafter held, owned, or used in connection with said Property, together with all wells, pumps, and appurtenant facilities, pipelines, ditches, reservoirs, and related diversion and conveyance facilities, and rights-of-way and easements used in connection therewith, and all stock or other evidence of ownership of water or the right of use thereof in water, reservoir, irrigation ditches, or canal companies which is appurtenant to or held or used in connection with the Property;

iii. All right, title, interest, privileges, authority and benefits in all leases and leasehold interests (the "Leases"), options, contracts, all guaranties of and security for lessee's performance under any and all Leases, or other agreements pursuant to which Borrower is granted or has granted any possessory, legal, equitable, beneficial or other interest to the Property or for the Property or any part thereof now owned or hereafter obtained by Borrower, together with all cash or security deposits, advance rentals and deposits or payments of similar nature;

iv. All rents, issues, profits, royalties, income, privileges, and/or benefits derived from the Property (collectively the "Rents"), subject however, to the right, power and authority hereinafter given to and conferred upon Lender to collect and apply such rents;

v. Any and all rights, licenses, easements, agreements, privileges, tenements, hereditaments, rights of way, rights of access, riparian rights, mineral rights, mining rights, homestead rights, easements, appendages and appurtenances in any way appertaining thereto, and all right, title and interest of Trustor in and to any streets, ways, alleys, waterways, strips or gores of land adjoining the Property or any part thereof;

vi. Any and all present and future rights, privileges, betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests thereof and thereto and all reversions and remainders therein owned by Trustor which relate to or are used in the ownership and/or operation of the Property;

vii. Any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the indebtedness evidenced by the Note or the performance and discharge of all obligations under the Loan Documents;

viii. All proceeds, including all claims to and demands for them of the voluntary or involuntary conversion of any of the real property, buildings, or other property described above, into cash or liquidated claims, including proceeds of all present and future fire hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by a public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage, or injury to or defect in the real property, buildings, or any other property described above or any of them;

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ix. All proceeds of additions and accretions to substitutions entered and replacements for and changes in any of the Property;

x. All interest, estate or other claims both in law and in equity which Trustor now has or may hereafter acquire in the Property;

xi. All property of every kind acquired by the Borrower after the date hereof which by the terms hereof is intended to be subject to the lien of this Deed of Trust shall immediately upon the acquisition thereof by the Borrower and without further mortgage, conveyance or assignment become subject to the lien of this Deed of Trust as fully as though now owned by the Borrower and specifically described herein. Nevertheless, the Borrower shall take such actions and execute and deliver such additional instruments as Lender shall reasonably require to furnish evidence or confirm the subjection to the lien of this Deed of Trust of any such property;

xii. All present and future agreements, however denominated, which are presently in existence or which shall be executed in the future for the purpose of providing for the development, operation, servicing, supply, franchises, and/or management of all or any part of the Property, including, without limitation, Trustor's rights in and to any and all agreements which provide for services to be provided to or rendered on behalf of the Property including, but not limited to, agreements to provide management, development, operation, electricity, natural gas, water, sanitary waste disposal, trash removal, maintenance, leasing services, vending services, concession accounts, equipment service and maintenance agreements;

xiii. All present and future deposits of funds, deferred payments, refunds, and savings costs of any nature received as lessor or from any lessee or with any governmental entity, municipality, contractor, architect, engineer, utility company, or any other person that has a deposit that in any way relates to the Property;

xiv. All present and future rights which Trustor may have to use any trade name and trademark under which the Property will be developed or operated and including any other assumed name, any other trade name or other designation commonly used in the construction or operation of the Property, together with all designs, logos, diagrams, renderings related to such names or designations or with the operation and management of the Property;

xv. All now owned or hereafter acquired marketing brochures, market studies, and other materials of any kind to be used or required in the operation of the business conducted or to be conducted by Trustor on the Property;

xvi. All now owned or hereafter acquired site plans, plans and specifications, construction contracts, bonds, agreements, subcontracts, architect's agreements, loan commitments, surveys, soil and substrata studies, architectural renderings, environmental reports, environmental studies, environmental histories of the Property, engineering plans and studies, floor plans, landscape plans and other plans or diagrams or studies of any kind relating to the Property;

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xvii. All now owned or hereafter acquired business licenses, tax permits, occupancy permits, building permits, environmental control authorization, and waste disposal permits, or other permits or authorizations obtained by Trustor and used, in any manner, for the Property;

xviii. All now owned or hereafter acquired books and records maintained by or on behalf of Trustor which contain the records of the construction, maintenance and/or operation of the Property, including books of account, bank statements and records, concession accounts, financial statements, all computers and other equipment (and computer software used in connection therewith) used in connection with the record keeping for the Property, all telephone numbers, telephone listings and yellow pages advertising, if any, and all keys and/or combinations to locks on the Property;

xix. All other present and future rights, privileges and appurtenances owned by Trustor which relate to or are used in the ownership and/or operation of the Property; and

xx. All present and future claims against any supplier for any of the Property, including claims arising out of purchases by Trustor of defective goods or overpayments to or undershipments by suppliers, and all present and future warranty and other claims which the Trustor may have against any vendor or lessor of any of the Property.

c. Trustor hereby further grants to Lender a security interest in all personal property collateral above set forth for the purpose of securing all obligations of Borrower contained herein. This Deed of Trust shall also be deemed a Security Agreement and also constitutes a financing statement and fixture filing under the Uniform Commercial Code of Utah with respect to the personal property and fixtures and for the remedies for any violation of the covenants, terms and conditions of the agreements herein contained. Trustor shall execute and deliver to Lender any financing statements, supplements thereto, or other instruments which Lender may, from time to time, reasonably require to perfect or preserve Lender's interests in the Property or the priority thereof.

## 2. Secured Obligations.

Trustor makes the grants, conveyances, transfers and assignments set forth in Section 1 for the purpose of securing the following obligations, in any order of priority that Lender may choose: (1) the indebtedness of up to the principal amount of up to EIGHT HUNDRED SEVENTY-SEVEN THOUSAND DOLLARS (\$877,000) evidenced by a Promissory Note of even date herewith (the "Note"), made by Borrower, and payable to the order of Lender, together with interest thereon and other charges provided in said Note, and any extensions and/or renewals or modifications thereof; (2) the performance of all obligations of Borrower under a "Loan Agreement" and loan documents executed of even date herewith and in connection with and for the transaction related to the Note and this Deed of Trust and each other agreement herein contained or referred to herein between the Borrower and Lender (all such documents and agreements being referenced hereafter collectively as the "Loan Documents"); (3) the payment and performance of each agreement of Trustor herein contained; (4) the payment of

such additional loans or advances as hereafter may be made to Borrower, or its successors or assigns, when advanced as provided herein or when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; (5) the payment of all sums expended or advanced by Lender under or pursuant to the terms hereof, together with interest thereon as herein provided; and (6) performance of every other obligation of Borrower in any other agreement, instrument, or obligation executed in favor of or owing to Lender.

3. Rights and Duties of the Parties.

a. Trustor agrees to keep the Property and all improvements thereon in good condition and repair and not to commit or permit waste thereof; not to remove, demolish, materially alter, or impair the design or structural character of any building, fixture, equipment, fence, parking, and/or any other improvement now or hereafter situated on the Property except as contemplated by Trustor for the improvements to be constructed on the Property as described in the Loan Documents; to complete or restore promptly and in good and workmanlike manner any building, fixture, equipment, fence, parking, or any other improvement which may be damaged or destroyed; to comply with all laws, covenants and restrictions affecting the Property; not to commit, suffer or permit any act upon the Property in violation of law; to comply with all terms of all Loan Documents; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; and promptly and diligently perform each and every covenant and condition of the Loan Documents.

b. Trustor agrees to provide and maintain insurance, of such type or types and amounts as Lender requires as specified in the Loan Agreement. At least thirty days prior to the expiration of such policy, Trustor shall furnish Lender with evidence satisfactory to Lender of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. If Trustor fails to provide, maintain, keep in force or deliver and furnish to Lender the policies as required by this Deed of Trust, Lender may, upon thirty days written notice to Trustor, procure such insurance or single interest insurance for such risk covering the Lender's interest only and Trustor will pay all premiums thereon promptly upon demand by Lender and until such payment is made by Trustor the amount of all such premiums shall bear interest at the rate set forth in the Note. In the event of foreclosure of this Deed of Trust, all right, title and interest of Trustor in and to all policies of insurance shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, to the extent such policies are assignable pursuant to the terms thereof.

c. Trustor agrees to deliver to, pay for and maintain with Lender until the indebtedness secured hereby is paid in full, such evidence of title as Lender may require, and an ALTA extended coverage mortgagee's loan title insurance policy with endorsements requested by Lender or equivalent issued by a title company satisfactory to Lender in the amount of the Loan. The policy shall insure (1) the Deed of Trust as a valid first lien on the property described therein; (2) Trustor as the sole owner of marketable leasehold title to the Property and (3) the Lender's interest granted herein to be free and clear of all liens and encumbrances, easements, encroachments or other interests of any kind, except as are specifically approved in writing by Lender. The title insurance policy shall certify compliance of the Property with all zoning laws,

rules, ordinances and regulations for the Property and all improvements thereon for the use permitted for the Property.

d. Trustor agrees to appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Lender or Trustee; and should Lender or Trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Lender or Trustee.

e. Trustor agrees to pay before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. After an event of default and upon notice from Lender to Trustor, there shall be added to any periodic payments required by the Note, such equal periodic payments as are necessary to create a non-interest bearing demand cash reserve for the payment of taxes and insurance when due, and such amount shall be a first deduction from any payment made by Trustor and shall be held separately by Lender for such purposes. The creation of any reserves does not relieve Trustor of the duties required herein to pay the costs of taxes and insurance but only vests in Lender the right to apply any reserves to the tax and insurance obligations. Such reserves are pledged to Lender to secure the Note and the performance of the agreements contained in this Deed of Trust. If such periodic reserve payments are not required, Lender shall be furnished evidence of payment of taxes, assessments and insurance policies due and owing with respect to the Property.

f. Should Trustor fail to make any payment or to do any act as herein provided, then Lender or Trustee, but without obligation to do so, and without notice or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Lender or Trustee being authorized to enter upon and take possession of the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem reasonably necessary therefor, including cost of evidence of title, and to employ counsel, and pay its reasonable fees and expenses.

g. Trustor agrees to pay immediately and without demand all sums expended hereunder by Lender or Trustee, with interest from date of expenditures at the default rate which is four percent per annum above the interest rate provided in the Note until paid, and the repayment thereof shall be secured hereby.

h. Trustor shall not create or permit to exist any lien or encumbrance upon the Property, except (i) liens provided for the benefit of Lender; (ii) liens existing as of the date

hereof and approved by Lender in writing as provided herein; (iii) liens as may be otherwise authorized by the terms of this Deed of Trust and the Loan Documents; (iv) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings; or (v) liens for which Lender shall give its prior written consent, which consent shall not be unreasonably withheld.

i. At any time and from time to time upon written request of Lender, payment of its fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Lender may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; and (d) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

j. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Lender shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage, subject to the provisions of the Loan Agreement for use of the compensation, awards, or payments received for the purpose of building or reconstructing the Property by Trustor.

#### 4. Assignment of Leases and Rents.

For the assignment and security of the Leases and Rent, Trustor covenant and agree as follows:

a. Trustor Representations and Warranties Concerning Leases and Rents. Trustor represents and warrants, as of the date hereof and as of all dates hereafter, that:

i. Trustor has good title to the Leases and Rents hereby assigned and good right and authority to assign them, free from any act or other instrument that might limit Trustor's right to make this Assignment or Lender's rights hereunder, and no other person, firm or corporation has any right, title or interest therein;

ii. Trustor has duly and punctually performed all the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by it;

iii. The Leases and any amendments or modifications thereto are valid, unamended, unmodified and in full force and effect;

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iv. Trustor has not previously sold, assigned, transferred, encumbered or pledged the Leases or the Rents, whether they are due now or to become due hereafter;

v. Any of the Rents due and issuing from the Property or from any part thereof for any period subsequent to the date hereof have not been collected, and payment thereof has not otherwise been anticipated, abated, conceded, waived, released, discounted, set off or compromised;

vi. Trustor has not received any funds or deposits for which credit has not already been made on account of accrued rents; and

vii. The tenants under all Leases are not in default of any of the terms thereof.

b. Trustor Covenants of Performance. Trustor covenants and agrees to:

i. Observe, perform and fulfill, duly and punctually, all the obligations, terms, covenants, conditions and warranties of the Note, Deed of Trust other Loan Documents, and all Leases affecting the Property that Trustor is to keep, observe and perform, and give prompt notice to Lender of any failure on the part of Trustor to observe, perform and discharge the same;

ii. The assignment and security interest of the Leases and Rents shall not operate to release or relieve Trustor from the full performance of any of his obligations and covenants under the Leases. Trustor shall notify Lender in writing in the event of any default by Trustor under the Leases. Trustor shall enforce, at its cost and expense, the full performance of all of the conditions, obligations and covenants under the Leases to be observed and performed by the lessee and shall appear and defend any action growing out of or in any manner connected with the Leases;

iii. Permit Lender, at its option, but without the assumption of any of Trustor's obligations to perform any obligations of Trustor under the Leases without releasing Trustor from any obligation herein or under the terms of the Leases. In the exercise of such power, Lender shall be entitled to reimbursement for all costs and expenses, including attorney's fees, and the same shall be payable upon demand or added to the Note and secured hereby. Except to the extent of Lender's own acts, Trustor hereby indemnify and save harmless Lender from any and all cost, expense or liability under the Leases or by reason of this Deed of Trust and against claims or demands whatsoever which may be asserted against it by reason of any alleged obligations of Lender to perform or discharge any of the terms of the Leases, it being understood and agreed that said Lender does not, by the execution of this Deed of Trust or by its acceptance thereof, assume any liability or become liable in any manner whatsoever for the performance of any of the terms and conditions of the Leases including any option agreement in a Lease, unless and until the Lender shall definitely assume any such obligations in writing;

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iv. Give prompt notice to Lender of any notice, demand or other document received by Trustor from any tenant or subtenant under the Leases, including, without limitation, those specifying any default claimed to have been made by Trustor under the Leases;

v. Enforce or secure the performance of each and every obligation, term, covenant, condition and warranty in the Leases to be performed or fulfilled by any tenant, and notify Lender of the occurrence of any default under the Leases;

vi. Appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Trustor and any tenant thereunder;

vii. Pay all costs and expenses of Lender, including attorneys fees, in any action or proceeding in which Lender may appear in connection herewith; and

viii. Except for liens created with respect to the proposed time period loan, neither create nor permit any lien, charge or encumbrance upon its interest in the Property, Leases or Rents, or as lessor of the Leases, except for the lien of the Deed of Trust.

c. **Approved Leases.** At all times, so long as any portion of the Loan remains unpaid, Lender shall have the right to approve the form and substance of any and all Leases of the Property, as well as any proposed standard form lease for the Property or any part thereof, or other agreement for occupancy of the Property or any part thereof, and such approval shall not be unreasonably withheld or delayed; provided, however, if a default or event of default exists or an event occurs which with the passage of time or the giving of notice, or both, may become a default or event of default, Lender shall have the right to withhold its approval in its sole and unconfined discretion. All leases approved, in writing, by Lender are herein collectively referred to as the "Approved Leases."

d. **Prior Approval for Actions Affecting Leases.** Trustor further covenant and agree that they shall not, without the prior written consent of Lender:

i. Receive or collect any Rents, in cash or by promissory note, from any tenant of the Property or any part thereof which is not affiliated with the Trustor or members of the Trustor for a period of more than one (1) month in advance of the date on which such payment is due, or further pledge, transfer, mortgage, or otherwise encumber or assign the Leases or future payments of Rents, or incur any indebtedness, liability or other obligation to any tenant; or

ii. Waive, excuse, condone, abate, concede, discount, set off, compromise or in any manner release or discharge any tenant under any of the Leases of and from any obligation, covenant, condition or warranty to be observed, performed or fulfilled by the tenant, including the obligation to pay the rents thereunder in the manner and at the place and time specified therein; or

iii. Except in the ordinary course of his business and/or for action on a default of a tenant under a Lease, cancel or terminate any of the Leases, nor accept a surrender thereof, nor permit any cancellation or termination thereof, except upon default of a tenant in accordance with the terms of the tenant's lease; or

iv. Except in the ordinary course of his business, renew or extend the term of any of the Leases (unless an option therefor was originally reserved by the tenant in the Lease and the Lease qualifies and will continue to qualify as an Approved Lease), or consent to any assignment of or subletting under any of the Leases, or modify, amend or alter any term of any of the Leases.

e. Termination of Leases and New Leases. Trustor further covenants and agrees to promptly notify Lender, in writing, and obtain its prior written approval of (i) any and all lease terminations or cancellations, and (ii) all new Leases, except Lender's prior written approval is not required for Approved Leases.

f. Rejection of Leases. In the event any lessee under the Leases should be the subject of any proceeding under the United States Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Trustor covenants and agrees that if any of the Leases is so rejected, no settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for rejection of any such Lease will be made payable both to Trustor and Lender. Trustor hereby agree to assign any such payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender, or, at Lender's election, to such title company as Lender shall designate, any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment as Lender may elect.

g. Right to Collect Rent. Trustor shall have the right to collect the Rents due under the Leases until an event of default shall occur under the Loan Documents (hereafter defined). After an event of default, and after any required notice, Lender may, at its option enforce any of the conditions, covenants or agreements contained in the Leases, collect any and all of the Rents thereunder and/or contained in any option to purchase the Property contained in a lease, and give good and valid receipts therefor, and Lender shall have full power to do anything that the Trustor could have done as if this Deed of Trust had not been made, the lessees, the successors, assigns, or legal representatives of said lessees, being by this instrument expressly authorized to pay to Lender any and all of the Rents now due or to become due under the terms of such leases and/or any such option. Lender shall not be responsible for diligence in collecting any Rents, but shall be accountable only for Rents actually received. Trustor agrees that after any default, Rents as Lender may receive may (i) be applied upon or, at the option of said Lender, retained as security for payment on the Note, this Deed of Trust and the Loan Documents, regardless of whether any payments are due and payable to Lender and including, but not limited to costs of collection, expenses of operation, advances and attorney's fees; and/or (ii) be applied from time to time, in payment of taxes, assessments and/or other liens affecting the Property (whether or not delinquent, if payable); and/or (iii) be released to the Trustor in

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such order, at such time or times, in such amount or amounts, and to the extent as Lender, in its sole discretion, may determine. The receipt, application, retention, or release by said Lender of any Rents after default under said Note, Deed of Trust or Loan Documents shall be applied upon any deficiency recoverable by Lender in the same manner and for the same purposes as the proceeds of the sale of the Property made under any trustee's or foreclosure proceedings or pledged sale. Such rights may be exercised by Lender without regard to other security and without releasing Trustor from any obligation. Trustor hereby irrevocably appoints and constitutes Lender as its true and lawful attorney-in-fact with full power of substitution for and on behalf of Trustor to request, demand, enforce payment, collect and receive the rentals payable under the Leases, to change, modify, release, waive, terminate, alter or amend the Leases or any of the terms and provisions thereof, including the rentals thereunder, to endorse any checks, drafts or orders evidencing the payment of rentals under the Leases, and to do and perform any acts which Trustor might do for and on his own behalf so long as Lender acts reasonably.

5. Default and Remedies.

a. Any of the following shall constitute a "default" hereunder:

i. An Event of Default under the Note or other Loan Documents for the failure to pay in full, when due, any payment required hereunder or under the Note or other Loan Documents or any other agreement securing the Note;

ii. An Event of Default under the Note or other Loan Documents for the failure to pay in full, make complete performance of any obligation due under the Note, or otherwise pay, perform, complete or satisfy any term or condition of this Deed of Trust or any other Loan Documents;

iii. The failure to observe and perform any term, covenant, promise, payment or agreement by Trustor under this Deed of Trust, the Borrower under the Note or any of the Loan Documents, other than a monetary payment due, and that such failure continues for a period of ten days following notice thereof by the Lender or Trustee, unless a shorter period of notice is provided in the applicable Loan Document;

iv. Any sale, conveyance, assignment, further encumbrance or other transfer of title to the Property or any part thereof or interest therein, or any interest in Borrower, whether legal or equitable, whether voluntary or by operation of law, without the Lender's prior written consent shall constitute an Event of Default hereunder. For the purpose of, and without limiting the generality of the preceding sentence, it shall be deemed to be an unpermitted transfer and therefore an Event of Default hereunder, giving Lender the rights and remedies of its election hereunder if without Lender's prior written consent:

(A) Trustor shall sell, convey, assign or alienate, the Property or any part thereof or interest therein or enter into any contract, agreement, commitment or option to do so; or

(B) Trustor shall create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, deed of trust, pledge, lien, attachment, levy (whether mechanics, judgment, tax, statutory, constitutional, contractual or other ), security interest, encumbrance or charge on, or conditional sale or other title retention agreement with respect to the Property or any portion thereof or interest therein, regardless of whether same is allegedly or expressly subordinate and inferior to the liens and security interests created by this Deed of Trust and the other Loan Documents, other than the Permitted Exceptions, as defined in the Loan Agreement, unless the same are bonded or insured over by Trustor in accordance with the laws of the State of Utah and the requirements of the title insurance company insuring the first lien priority of this Deed of Trust; or

(C) Borrower shall convey, transfer, distribute, lease or otherwise dispose of all or substantially all of its property, assets or business; or

v. An event of default occurs under any of the Loan Documents, to the extent that such event of default is not included within the above-described events of default.

b. Time is the essence hereof. At any time after a default hereunder, Lender may, at its option, and without further notice or demand, declare all indebtedness secured hereby immediately due and payable, and take the further action authorized herein and described below, regardless of: (i) Lender's delay or failure in exercising such option; (ii) Lender's failure to exercise such option for any prior default or abandonment; or (iii) the adequacy of Lender's security. Lender may, at its option and in its sole discretion, without any additional notice or demand to or upon Trustor , do one or more of the following:

i. Trustee and Lender, and either of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Document, Loan Documents or other agreement or any laws now or hereafter in force notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, guaranty, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustee or Lender, and either of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender or Trustee in such order and manner as they or either of them in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Lender or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Lender and any of them may pursue inconsistent remedies.

ii. Lender shall, without regard to the adequacy of any security for the indebtedness hereby secured, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Property, and operate the same and collect the rents therefrom.

iii. Lender may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to enforce any of the covenants hereof.

iv. Lender may elect to cause the Property or any part thereof to be sold pursuant to the power of sale granted herein in accordance with the laws of the State of Utah:

(A) Lender may proceed as if all of the Property were real property, in accordance with subparagraph (d) below, or Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (d) below, separate and apart from the sale of real property, the remainder of the Property being treated as real property.

(B) Lender may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.

(C) Should Lender elect to cause any of the Property to be disposed of as personal property as permitted by subparagraph (a) above, it may dispose of any part thereof in any manner now or hereafter permitted by the applicable Uniform Commercial Code or in accordance with any other remedy provided by law. Trustor and Lender shall be eligible to purchase any part or all of the Property at any such disposition. Any such disposition may be either public or private as Lender may so elect, subject to the provisions of the applicable Uniform Commercial Code. Lender shall give Trustor at least ten (10) days' prior written notice of the time and place of any public or private sale or other disposition of such property and if such notice is sent to Trustor, it shall constitute reasonable notice to Trustor.

(D) Should Lender elect to sell any part of the Property which is real property or which Lender has elected to treat as real property, upon such election, Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Property or any portion thereof specified by Lender, at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Lender, shall, from time to time and as permitted by law, postpone the sale by public announcement thereof at the time and place

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noticed therefor. If the Property consists of several lots or parcels, Trustor may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Trustor or Lender, but not the Trustee, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession. Trustor agrees to surrender possession of the Property or any part thereof to the purchaser thereof immediately after any sale, if such possession has not previously been surrendered by Trustor .

(E) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of deed or other conveyance pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein;

(F) Trustee shall apply the proceeds of any sale or disposition hereunder to payment of the following: (1) the expenses of such sale or disposition together with Trustee's fees and reasonable attorneys' fees, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search and/or other evidence of title procured in connection therewith; (3) all sums expended under the terms hereof, not then repaid, with accrued interest in the amount provided herein; (4) all other sums secured hereby; (5) the remainder, if any, to the person or persons legally entitled thereto, or at Trustee's option be paid to the clerk of the court of competent jurisdiction over the Property.

c. The remedies listed herein are illustrative only and Lender shall also have any and all other rights in law or equity, whatever they may be.

d. Upon any default by Trustor hereunder, Lender may, at any time without notice, either in person, by agent, or by a receiver, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect the rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Lender may determine.

e. Upon any event of default described herein, Lender, as a matter of right and without notice to Trustor or anyone claiming under Trustor , and without regard to the then value of the Property or the interest of Trustor herein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property or any part thereof and Trustor hereby irrevocably consents to such appointment and waive notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and shall continue as such and exercise all such powers until the date of confirmation of sale of such Property unless such receivership is sooner terminated.

f. The entering upon and taking possession of the Property, any part of the Property, the collection of the rents or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

g. The failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Lender of any default shall not constitute a waiver of any other or subsequent default.

h. In the event that Lender incurs any expenses (including reasonable attorneys' fees whether or not the attorney is a salaried employee of Lender and court costs) to collect and enforce Trustor's obligations hereunder, Trustor shall, upon demand by Lender, immediately reimburse Lender therefor, together with interest thereon at the rate set forth in the Loan Documents from the date incurred by Lender, including, without limitation, reasonable attorneys' fees incurred in any litigation, bankruptcy, insolvency, administrative and arbitration proceedings and appeals therefrom.

6. Sale; Transfer; Liens.

a. Except for the Approved Leases, Trustor covenants and agrees not to sell or transfer all or any part of the legal or equitable title or ownership of the Property or any interest therein or any part thereof change the ownership or structure of Trustor in any manner without the prior written consent of Lender. Any violation of this provision shall be deemed a default hereunder and Lender is entitled to exercise all remedies provided herein by the Note and any other loan agreement.

b. Trustor hereby covenants that no lien of any mechanics or materialmen has attached, or may validly attach, to the Property or any part thereof; that Trustor will pay all sums which if not paid, may result in the acquisition or creation of a lien prior to or of equal priority with or junior to the lien of this Deed of Trust, or which may result in conferring upon a tenant of any part of the Property a right to recover sums as prepaid rent or as a creditor or offset against any future rental obligation; and, that Trustor will not grant any other lien or security interest on any part of the Property or personal property without full disclosure to and prior written consent by Lender. Trustor shall not acquire any equipment or fixtures for the Property which are not covered by this Deed of Trust and which may be subject to any security interest or other charge or lien having priority over the lien or security interest granted under this Deed of Trust.

7. Miscellaneous Provisions.

a. Upon the request of Trustor, Lender may hereafter, at its sole option, at any time before full payment of the indebtedness secured hereby, make further advances to the Trustor, and the same, with interest and late charges, is secured by this Deed of Trust; provided, however, that the amount of principal secured by this Deed of Trust and remaining unpaid, shall

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not at the time of and including any such advances exceed the original principal sum secured hereby.

b. All of the Leases or renewals, modifications, consolidations, replacements or extensions of such leases affecting the Property shall be made subject and subordinate to the lien of this Deed of Trust and related security instruments. No prepayment of rent of more than 30 days shall be permitted. Trustor covenants that they will fully perform all of their duties as lessor or lessee under any lease pertaining to the Property. If Trustor shall default under any such lease, it shall also constitute a default under this Deed of Trust.

c. Trustor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, deeds of trust, security agreements, financing statements and assurances as Lender shall require for accomplishing the purpose of this Deed of Trust. Without limitation of the foregoing, Trustor shall assign to Lender, upon request, as further security for the indebtedness secured hereby, his interests in all agreements, contracts, licenses and permits affecting the Property, such assignments to be made by instruments satisfactory to Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon Lender any obligations with respect thereto. From time to time, Trustor will furnish within ten business days after Lender's request a written and duly acknowledged statement of the amount due under the Note and under this Deed of Trust and whether any alleged offsets or defenses exist against the indebtedness or obligations secured hereby.

d. The rights accorded Lender by this Deed of Trust are in addition to, and not in substitution or limitation of any right, remedy, power or authority of Lender under any of the other Loan Documents, or under now existing or hereafter arising applicable law. All rights, remedies, powers or authorities of Lender under the Loan Documents or under now existing or hereafter arising applicable law are distinct and cumulative and may be exercised concurrently, independently or successively.

e. Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Trustor of any of the terms, provisions or conditions of such other Loan Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Trustor of any and all of such terms, provisions and conditions.

f. All obligations contained in the Loan Documents are intended by the parties to be, and shall be construed as, covenants running with the Property.

g. The interpretation, construction and enforcement of this Deed of Trust shall be governed by the laws of the State of Utah.

h. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address set forth above.



i. The invalidity of any one or more covenants, phrases, clauses, sentences or paragraphs of this Deed of Trust shall not affect the remaining portions of this Deed of Trust or any part thereof, and this Deed of Trust shall be construed as if such invalid covenants, phrases, clauses, sentences or paragraphs, if any, had not been inserted herein.

j. Trustor warrants that the Property is and shall remain in compliance with all applicable governmental laws, statutes, ordinances, acts, rules and regulations or similar requirements to allow the proper use of the Property for its proposed purposes. Trustor further covenants to take any and all action required to cause the Property to remain in such compliance.

k. Lender may appoint a successor trustee at any time by filing for recording in the office of the County Recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

l. Trustor, unless prohibited by law, shall pay directly or reimburse Lender for any claim, payment or obligation for any tax due or payable as a result of Lender granting the loan to Trustor evidenced by the Note secured by this Deed of Trust, including, but not limited to any intangible or other tax on the indebtedness of the Note or created by the documents executed in connection with the loan transaction.

m. All agreements or representations directly or indirectly relating to the Property and the secured obligation are merged into and incorporated in this Deed of Trust and this Deed of Trust can only be amended by a writing subscribed by all parties hereto.

n. This Deed of Trust constitutes a "Construction Mortgage," as defined in Utah Code Ann. § 70A-9-313 (1953, as amended) and secures an obligation incurred for the construction of the improvements to be constructed on the Property, including the acquisition cost of the land. Trustor agrees to commence construction promptly and pursue the same with reasonable diligence to completion in accordance with the plans and specifications approved by Lender and pursuant to the terms and conditions of the Loan Documents.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing as of July 14, 1999, by the undersigned thereunto duly authorized.

**TRUSTOR :**

D D & B, LIMITED COMPANY,  
a Utah limited liability company, Borrower

By: Its Managers

*Douglas O. Vilven*  
\_\_\_\_\_   
Douglas O. Vilven

*Brad E. Libin*  
\_\_\_\_\_   
Brad E. Libin

*Douglas C. Rosecrans*  
\_\_\_\_\_   
Douglas C. Rosecrans

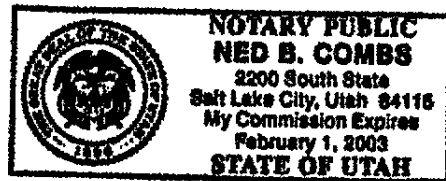
STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 14 day of July, 1999, by Douglas O. Vilven, Manager of D D & B, LIMITED COMPANY, a Utah limited liability company.

*Ned B. Combs*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_



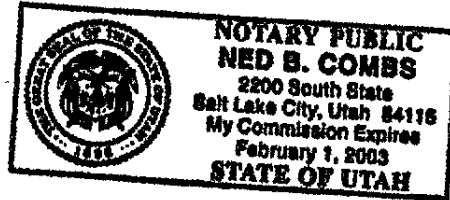
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STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 14 day of July, 1999, by Douglas C. Rosecrans, Manager of D D & B, LIMITED COMPANY, a Utah limited liability company.

Ned B. Combs  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

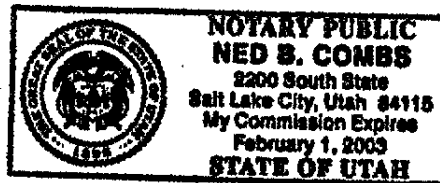


STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 14 day of July, 1999, by Brad E. Libin, Manager of D D & B, LIMITED COMPANY, a Utah limited liability company, on behalf of said limited liability company.

Ned B. Combs  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_



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## EXHIBIT A

### {Description of Real Property}

That certain real property situated in Salt Lake County, Utah and more particularly described as follows:

COMMENCING at a Salt Lake County Monument at the intersection of 3300 South and 700 West; thence North 87°21'07" East along a monument line for 435.76 feet to a point from which a monument lying North 87°21'07" East 1,152.14 feet at the intersection of 3300 South and 500 West; thence perpendicular to said monument line North 02°38'53" West for 139.32 feet to the point of beginning, said point of beginning being South 1,423.14 feet and East 5,478.63 feet from a found monument marking the East quarter corner of Section 27, Township 1 South, Range 1 West; thence with a non-tangent curve to the right having a radius of 580.00 feet, a central angle of 49°44'36" (chord bearing and distance of North 68°51'46" West 487.88 feet) and for an arc distance of 503.55 feet; thence North 06°23'53" West 280.87 feet; thence North 01°49'23" East 115.94 feet; thence North 01°49'57" East 99.98 feet; thence North 28°53'04" East 94.10 feet; thence North 44°42'58" East 100.32 feet; thence North 47°09'54" East 111.78 feet; thence North 50°51'00" East 103.68 feet; thence North 49°27'58" East 65.10 feet; thence North 00°06'10" West 102.20 feet; thence North 89°53'50" East 203.63 feet; thence North 00°05'58" West 22.50 feet; thence North 89°53'50" East 464.59 feet; thence South 00°07'54" East 236.07 feet; thence South 33°01'17" East 254.35 feet; thence South 49°20'23" East 77.66 feet; thence South 30°20'41" East 160.35 feet; thence South 00°02'40" West 127.74 feet, thence South 89°50'15" East 279.89 feet; thence South 00°09'45" West 317.16 feet; thence South 89°57'20" East 50.39 feet to a point on the West right of way of 500 West; thence South 00°09'45" West along said right of way 68.45 feet; thence South 84°57'08" West 194.61 feet; thence North 86°47'43" West 197.48 feet; thence South 88°18'20" West 75.08 feet; thence North 87°52'27" West 324.29 feet; thence North 83°34'06" West 205.69 feet; thence South 86°15'56" West 130.32 feet to the point of BEGINNING.